

**VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT  
Contract Administration Memorandum No. 2017-1  
Date: April 5, 2017**

This CONTRACT ADMINISTRATION MEMORANDUM ("**CAM**") is made pursuant to Section 26.7(B) of the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between the City of San Antonio, Texas (the "**City**") acting by and through the San Antonio Water System Board of Trustees ("**SAWS**") and Vista Ridge LLC (the "**Project Company**"), dated November 4, 2014, amended on June 10, 2016, November 2, 2016, and April 5, 2017 (the "**Water Transmission and Purchase Agreement**"), for the purpose of confirming the agreement of the parties as to certain matters of interpretation and application under the Water Transmission and Purchase Agreement. All capitalized terms used, but not defined herein, shall have the meanings defined in the Water Transmission and Purchase Agreement.

Subject: Conformed Water Transmission and Purchase Agreement

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The parties hereby acknowledge and agree that:

1. The parties entered into the Third Amendment to the Water Transmission and Purchase Agreement ("**Third Amendment**") on April 5, 2017 in accordance with Section 26.7(A) of the Water Transmission and Purchase Agreement.
2. Section 3 of the Third Amendment requires that the parties execute this CAM in order to provide for a conforming Water Transmission and Purchase Agreement reflecting the changes contained therein.
3. Such conformed Water Transmission and Purchase Agreement, which incorporates the Third Amendment in its entirety, is attached hereto.

This CAM, together with the Water Transmission and Purchase Agreement, contains the entire agreement between the parties with respect to the above matters and supersedes all oral negotiations and prior writings with respect thereto.

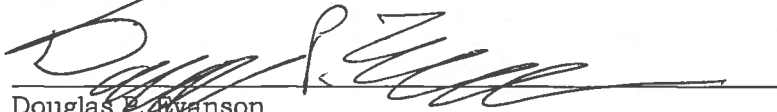
This CAM may be executed in any number of original counterparts. All such counterparts shall constitute one and the same CAM.

[Signature Page Follows]

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

THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

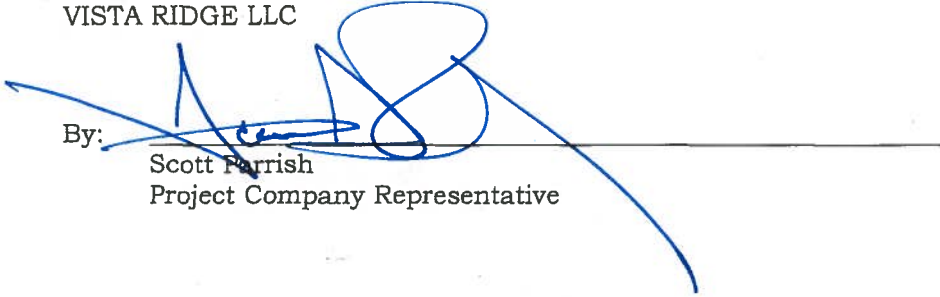
By:



Douglas P. Evanson  
SAWS Representative

VISTA RIDGE LLC

By:



Scott Parrish  
Project Company Representative

[Signature Page to CAM No. 2017-1]

VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS

ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

and

VISTA RIDGE LLC

Dated  
November 4, 2014  
As Amended on  
June 10, 2016,  
November 2, 2016  
and April 5, 2017

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VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

This VISTA RIDGE REGIONAL SUPPLY PROJECT WATER TRANSMISSION AND PURCHASE AGREEMENT is entered into on November 4, 2014, and amended on June 10, 2016, November 2, 2016 and April 5, 2017, between the City of San Antonio, Texas (the “**City**”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“**SAWS**”), and Vista Ridge LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “**Project Company**”).

RECITALS

WHEREAS, the City and SAWS have determined that it is in the City’s and SAWS’ best interests to contract with a private entity to supplement and diversify SAWS’ existing and projected water inventory; and

WHEREAS, the water supply project will consist of the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, based on the acquisition of water rights and the design, construction, financing, operation and maintenance of new production wells, pumping stations, raw water collection and transmission pipelines, storage tanks and appurtenant facilities; and

WHEREAS, pursuant to Section 252.021 of the Texas Local Government Code, SAWS issued on January 14, 2011, Solicitation No. P-11-003-DS entitled Request for Competitive Sealed Proposals Regarding the Provision and Delivery of Alternative Water Supplies for the purpose of bringing SAWS’ future water supply needs to the marketplace and inviting proposals for potential non-Edwards Aquifer supplies to be compared, selected or rejected on a competitive basis; and

WHEREAS, SAWS received nine responses to the solicitation on July 22, 2011, from a variety of public and private vendors, including a response submitted by Abengoa Water USA, an Affiliate of the Project Company; and

WHEREAS, on March 8, 2013, SAWS issued Addendum #1 to the solicitation and received revised proposals in response to Addendum #1; and

WHEREAS, SAWS engaged in a comprehensive evaluation of the competing proposals in accordance with the criteria of the solicitation; and

WHEREAS, at its July 1, 2014 meeting, the Board of Trustees accepted the proposal by the Project Company in response to the solicitation on the basis that it was the most advantageous to SAWS and the City considering the evaluation factors set forth in the solicitation, subject to the negotiation of an acceptable contract and receipt of required support from the City Council; and

WHEREAS, in July, 2014 negotiations were initiated with the Project Company, which negotiations have concluded with this Water Transmission and Purchase Agreement; and

WHEREAS, on September 29, 2014 and October 15, 2014, the Board of Trustees adopted Resolution Number 14-269 and 14-274, respectively, authorizing the execution and

delivery of this Water Transmission and Purchase Agreement and requesting its approval by the San Antonio City Council; and

WHEREAS, on October 30, 2014, by Ordinance, the San Antonio City Council approved this Water Transmission and Purchase Agreement; and

WHEREAS, SAWS desires to purchase and take delivery of, and the Project Company desires to produce, transport, make available and sell potable water in accordance with this Water Transmission and Purchase Agreement; and

WHEREAS, the Project Company intends to cause a Texas non-profit water supply corporation to be formed in a manner consistent with Texas Water Code 49.222(a) for the purpose of acquiring easements, rights of way and other interests necessary to construct and own a transmission line for the transportation of potable water to SAWS for the public use of the citizens of San Antonio and regional communities; and

WHEREAS, payment of the monthly water purchase payments and all other amounts payable hereunder by SAWS to the Project Company will be made solely from revenues of SAWS available thereto under City Ordinance No. 75686, and shall not be an obligation of the City's general fund, any other City enterprise fund or any other asset or revenue of the City; and

WHEREAS, this Water Transmission and Purchase Agreement was amended on June 10, 2016, in connection with the acquisition by Garney P3 LLC of a majority interest in the Project Company and SAWS consent thereto;

WHEREAS, this Water Transmission and Purchase Agreement was further amended on November 2, 2016, in connection with the Project Company's financing of the water supply project; and

WHEREAS, this Water Transmission and Purchase Agreement was further amended on April 5, 2017, in connection with the conveyance by the Project Company to SAWS of certain interests in the Transmission Pipeline Terminus Site.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto, intending to be legally bound, covenant and agree as follows:



ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Water Transmission and Purchase Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Water Transmission and Purchase Agreement whether or not this Article contains a cross-reference to such definitions.

**“Abeinsa”** means Abeinsa Abeima Teyma General Partnership, a general partnership organized and existing under the laws of the State of Delaware.

**“Abengoa”** means Abengoa S.A., a company organized and existing under the laws of the Kingdom of Spain.

**“Abengoa Water USA”** means Abengoa Water USA LLC, a limited liability company organized and existing under the laws of the State of Texas.

**“Acceptable Disposal Site”** has the meaning set forth in Section 10.14(B) (Acceptable Disposal Site).

**“Acceptance”** means satisfaction of the Acceptance Conditions.

**“Acceptance Conditions”** has the meaning set forth in Section 8.5(A) (Conditions).

**“Acre Foot”** means 43,560 cubic feet, which is equal to 325,851.42 U.S. gallons.

**“Actual Annual Electricity Costs”** means the sum of all actual annual electricity costs resulting from the Project Company’s performance of this Water Transmission and Purchase Agreement as reflected in the electricity bills paid by SAWS pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period), excluding any fines, charges and penalties imposed by the electricity provider which are required to be reimbursed by the Project Company to SAWS on a monthly basis as provided in such Section.

**“Actual Compensable Costs”** has the meaning set forth in Section 17.3(G) (Actual Compensable Costs).

**“Additional Product Water Quality Standards”** has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

**“Advance Project Company Make-Up Units”** has the meaning specified in Section 10.4(D)(2) (Supply of Make-Up Units).

**“Affiliate”** means, in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee,

personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of trustees or similar body governing the affairs of such person.

**“Annual Settlement Statement”** has the meaning set forth in Section 17.11(A) (Annual Settlement Statement).

**“Appendix”** means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Water Transmission and Purchase Agreement and identified as such in the Table of Contents.

**“Applicable Law”** means:

- (1) Any federal, state or local law, statute, code or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and
- (3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project.

**“Asset Registry”** has the meaning set forth in Section 11.3(A) (Asset Registry).

**“Assumed Liabilities”** has the meaning set forth in Section 12.6 (Assumed Liabilities) of Appendix 12 (Project Assets and Liabilities).

**“Avoidable Costs”** means, when used in relation to an event or circumstance, all costs and expenditures which:

- (1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) If the Project Company did not act reasonably and in accordance with this Water Transmission and Purchase Agreement (including Section 26.4(A) (Mitigation by the Project Company)), such additional costs and expenses that would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects if the Project Company had acted reasonably and in accordance herewith.

**“Bankruptcy Law”** means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

**“Baseline Annual Volume”** has the meaning specified in Section 10.3(A)(2) (Baseline Annual Volume).

**“Baseline Daily Volume”** has the meaning specified in Section 10.3(A)(3) (Baseline Daily Volume).

**“Billing Period”** means each month of a Contract Year, except that:

(1) The first Billing Period of the first Contract Year shall begin on the Commercial Operation Date and shall continue to the last day of the month in which the Commercial Operation Date occurs, and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

**“Blue Water Systems, LP”** means Blue Water Systems, LP, a limited partnership organized and existing under the laws of the State of Texas.

**“Blue Water Vista Ridge, LLC”** means Blue Water Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Texas.

**“Board of Trustees”** means the board of trustees of SAWS.

**“Bridge Loan”** has the meaning set forth in Appendix 22 (Project Company-Related Loans).

**“Bridge Loan Agreement”** means the Bridge Loan Agreement, dated July 20, 2015, between the Project Company and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Société Générale.

**“Budgeted Compensable Costs”** has the meaning set forth in Section 17.3(C) (Budgeted Annual Compensable Costs).

**“Business Day”** means a day other than a Saturday, Sunday or an official SAWS holiday.

**“Capital and Raw Groundwater Unit Price”** has the meaning specified in Section 17.2 (Capital and Raw Groundwater Unit Price).

**“Capital Expenditure”** means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

**“Capital Modification”** has the meaning set forth in Section 12.1 (Capital Modifications Generally).

**“Carrizo-Wilcox Aquifer”** means the Carrizo-Wilcox Aquifer, as delineated by the TWDB.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

**“CFS”** means cubic feet per second.

**“Change in Control”** has the meaning set forth in Section 24.2(A) (Change in Control Defined).

**“Chief Executive Officer”** means the President and Chief Executive Officer of SAWS.

**“Chief Operator”** has the meaning set forth in Section 9.2(A) (Project Company’s Chief Operator).

**“City”** means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

**“City Discriminatory Change in Law”** means the coming into effect of any ordinance, resolution or other Applicable Law of the City which materially impairs or prevents the Project Company (or any person performing work on behalf of the Project Company) from carrying out any Contract Obligation or materially increases the costs to the Project Company (or any person performing work on behalf of the Project Company) of carrying out any Contract Obligation and which specifically applies to discriminate against:

(1) the Project or the Project Company (or any person performing work on behalf of the Project Company);

(2) projects or entities (including the Project or the Project Company) involved with public works-type services or projects, utility-related services or projects, or projects or services delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;

(3) Persons (including the Project Company) that have contracted with SAWS or the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is described in clauses (2) or (3) above.

**“CMMS”** has the meaning set forth in Section 11.5 (Computerized Maintenance Management System).

**“Collection Pipelines”** means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project).

**“Collection Pipelines Rights-of-Way”** means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

**“Commercial Operation Date”** has the meaning set forth in Section 8.6(D) (Commercial Operation Date).

**“Commercial Operation Longstop Date”** has the meaning set forth in Section 8.6(B) (Commercial Operation Longstop Date Defined).

**“Commissioning Plan”** has the meaning set forth in Section 4.9.1 (General Commissioning Plan Requirements) of Appendix 4 (Design and Construction Review

Procedures, Commissioning and Substantial Completion) and in Section 8.1(B) (Commissioning Plan).

**“Compensable Costs”** has the meaning set forth in Section 17.3(A) (General Principles).

**“Compensation Adjustment Event”** has the meaning set forth in Section 17.8 (Form of Compensation Adjustments For Events Occurring After the Conforming Contract Amendment Date).

**“Confidential Project Company Information”** has the meaning set forth in Section 26.13 (SAWS’ Confidentiality Obligations).

**“Confidential SAWS Information”** has the meaning set forth in Section 26.12 (Project Company’s Confidentiality Obligations).

**“Conforming Contract Amendment”** means the amendment of this Water Transmission and Purchase Agreement to make conforming changes in connection with SAWS consent to the Change-in-Control effectuated by the Membership Interest and Purchase Agreement.

**“Conforming Contract Amendment Date”** means June 10, 2016, the date on which this Water Transmission and Purchase Agreement was amended by the Conforming Contract Amendment.

**“Construction Governmental Approvals”** means all Governmental Approvals required from time to time during the Construction Period for the commencement and continuance of the Construction Work, excluding the Project Company Public Water Supplier Designation.

**“Construction Period”** means the period from and including the Financial Closing Date through the Commercial Operation Date.

**“Construction Quality Management Plan”** means the Project Company’s plan for quality assurance and quality control in implementing the Construction Work to be developed in accordance with the requirements set forth in Section 4.7 (Quality Management) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Construction Superintendent”** means the executive in charge of construction of the Project designated by the Project Company for communications with SAWS during the Construction Period.

**“Construction Work”** means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement prior to the date of Final Completion.

**“Contract Administration Memorandum”** has the meaning set forth in Section 26.6(D) (Contract Administration Memoranda).

**“Contract Date”** means November 4, 2014, the date on which this Water Transmission and Purchase Agreement was executed and delivered by the parties following

authorization by the SAWS Board of Trustees pursuant to the Resolution Numbers 14-269 and 14-274 and approval by the San Antonio City Council by Ordinance.

**“Contract Date Financial Model”** means the financial model that was delivered on or about the Contract Date.

**“Contract Obligations”** means everything required to be furnished and done for and relating to the permitting, design, construction, financing, operation and maintenance of the Project and the production and delivery of Product Water by the Project Company to the Product Water Delivery Point pursuant to this Water Transmission and Purchase Agreement.

**“Contract Services”** means the Construction Work and Operating Work.

**“Contract Standards”** means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Design Requirements;
- (3) Good Engineering and Construction Practice;
- (4) The Major Repair and Replacement Plan;
- (5) The Maintenance Repair and Replacement Schedule;
- (6) The Performance Guarantees;
- (7) The Operating and Maintenance Standards;
- (8) Good Management Practice;
- (9) The Construction Quality Management Plan;
- (10) Applicable written equipment manufacturers’ specifications;
- (11) Applicable Insurance Requirements; and

(12) Any other standard, term, condition or requirement specifically provided in this Water Transmission and Purchase Agreement to be observed by the Project Company.

Section 1.2(X) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

**“Contract Year”** means each of:

- (1) The period from the Contract Date to the next December 31;
- (2) Each subsequent period of 12 calendar months commencing on January 1; and

(3) The period from January 1 in the year in which this Water Transmission and Purchase Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made or requirement established on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

**“Conveyance Litigation”** means litigation relating to the conveyance of the Project Assets, including any failure to convey the Project Assets to SAWS.

**“Cost Substantiation”** has the meaning described in Section 17.14 (Cost Substantiation).

**“Counties”** means each of the counties in which the Project Sites are located, including Burleson, Lee, Bastrop, Caldwell, Guadalupe, Comal and Bexar Counties.

**“Credit Agreement”** means the Credit Agreement among the Project Company, the Water Supply Corporation, the Lenders, and the DSRA L/C Issuing Banks party thereto from time to time, and Sumitomo Mitsui Banking Corporation, as administrative agent, executed and delivered by the parties thereto on the Financial Closing Date.

**“Creditors’ Remedies Agreement”** means the Creditors’ Remedies Agreement to be entered into on or before the Financial Closing Date among SAWS, the Senior Debt Creditors and the Project Company, the form of which is attached hereto as Transaction Form H (Creditors’ Remedies Agreement).

**“Cross County Water Supply Corporation”** means the Cross County Water Supply Corporation, a not-for-profit water supply corporation organized and existing under Chapter 67 of the Texas Water Code.

**“Daily Delivered Water Units”** has the meaning specified in Section 10.3(A)(4) (Daily Delivered Water Units).

**“Daily Maximum Volume”** has the meaning specified in Section 10.3(A)(5) (Daily Maximum Volume).

**“Deductions”** means those deductions from the otherwise applicable Monthly Water Purchase Payments that SAWS is permitted to take as offsets (1) on account of a failure by the Project Company to obtain an extension of the Groundwater Transportation Permit, pursuant to Section 9.8(G) (Deductions for Failure to Obtain a Groundwater Transportation Permit Extension); (2) on account of SAWS having taken delivery of Off-Specification Water, pursuant to Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water); and (3) on account of any electrical power consumption of the Project exceeding the Guaranteed Maximum Electricity Utilization and Guaranteed Maximum Electricity Demand pursuant to Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

**“Deductions Credit”** has the meaning set forth in Section 17.6 (Deductions Credit).

**“Delivery Tank”** has the meaning specified in Section 10.1(C) (Delivery Tank).

**“Demand Shortfall Units”** has the meaning specified in Section 10.3(A)(7) (Demand Shortfall Units).

**“Depository Agreement”** means the Collateral Agency and Depository Agreement among the Project Company, the Water Supply Corporation and various agents executed and delivered by the parties thereto on the Financial Closing Date.

**“Design Build Contract”** means the Design Build Contract between the Water Supply Corporation and the Design Build Contractor executed and delivered by the parties thereto on the Financial Closing Date.

**“Design Build Contractor”** means Garney Companies, Inc.

**“Design Documents”** means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Construction Work.

**“Design Requirements”** means the design requirements for the Project set forth in Appendix 3 (Technical Specifications) and Appendix 13 (SAWS Interconnection Improvements).

**“Design Requirements Change”** means a change in the Design Requirements made between the Financial Closing Date and the Commercial Operation Date (1) as a result of a Project Company request agreed to by SAWS pursuant to Section 5.7 (Project Company-Requested Design Requirements Changes), or (2) at the request of SAWS pursuant to Section 5.7 (SAWS-Requested Design Requirements Changes).

**“Development and Financing Period”** means the period from and including the Contract Date through the Financial Closing Date.

**“Development and Financing Work”** means everything required to be furnished and done by the Project Company for and relating to the development and financing of the Project prior to the Financial Closing Date.

**“Differing Site Conditions”** means concealed or latent subsurface conditions at the Project Sites that materially differ from any of the conditions that may have been assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.

**“Direct Payments”** has the meaning set forth in Section 17.8(C) (Direct Payments by the Parties).

**“Disclosed Data”** means any information, data and documents made available or issued to the Project Company or a Project Contractor or Subcontractor in connection with the Project by or on behalf of SAWS, including any information relating to the Project Sites or the requirements of any Governmental Body, whether before or after the execution of this Water Transmission and Purchase Agreement.

**“Discriminatory Change in Tax Law”** means the coming into effect of any Applicable Law which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

- (1) the Project or the Project Company with respect to the Project and not other projects or persons;



(2) other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;

(3) Persons (including the Project Company) that have contracted with SAWS, the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

No change in fees or other Taxes imposed by the POSGCD or by any other Governmental Body having regulatory jurisdiction over any Raw Groundwater pumping, production or transportation shall be considered to be a Discriminatory Change in Tax Law.

**“Draft Reinstatement Plan”** has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

**“Electronic Operation and Maintenance Manual”** means the electronic manual prepared by the Project Company as described in the Design Requirements.

**“Employee Payments”** means any liability that has been reasonably incurred by the Project Company arising as a result of termination of this Water Transmission and Purchase Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including severance (whether accrued or not) and vacation pay accrued.

**“Encumbrance”** means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

**“End of Term Performance Evaluation Period”** has the meaning set forth in Section 11.6(D) (Applicable End of Term Performance Evaluation Period).

**“End of Term Performance Evaluation Requirements”** has the meaning set forth in Section 11.5.2 (End of Term Performance Evaluation Requirements) of Appendix 11 (End of Term Project Condition Requirements).

**“Environmental Mitigation Measures”** means any environmental mitigation measures set forth in the Governmental Approvals required to be obtained by the Project Company.

**“EPA”** means the United States Environmental Protection Agency and any successor agency.

**“Equity Contribution Agreement”** means the Equity Contribution Agreement among the Project Company, the Shareholders, and the Senior Debt Creditors executed and delivered by the parties thereto on the Financial Closing Date.

**“Excess Product Water”** has the meaning set forth in Section 10.3(A)(8) (Excess Product Water).

**“Excluded Assets”** has the meaning set forth in Section 12.5 (Excluded Assets) of Appendix 12 (Project Assets and Liabilities).

**“Excluded Liabilities”** has the meaning set forth in Section 12.7 (Excluded Liabilities) of Appendix 12 (Project Assets and Liabilities).

**“Excused Supply Shortfall Units”** has the meaning specified in Section 10.3(A)(9) (Excused Supply Shortfall Units).

**“Exit Performance Test”** has the meaning set forth in Section 11.6(C) (Non-Compliance With End of Term Performance Evaluation Requirements).

**“Expiration Date”** means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.9 (Extension of Term).

**“Fees and Costs”** means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

**“Final Completion”** means completion of the Construction Work in compliance with the Design Requirements and the requirements of Section 8.8 (Final Completion).

**“Financial Close”** has the meaning set forth in Section 4.1(B)(19) (Financial Close).

**“Financial Close Contract Amendment”** means the amendment of this Water Transmission Purchase Agreement to make conforming changes in connection with the occurrence of Financial Close.

**“Financial Close Contract Amendment Date”** means November 2, 2016, the date in which this Water Transmission and Purchase Agreement was amended by the Financial Close Contract Amendment.

**“Financial Close Financial Model”** means the financial model delivered on or before the Financial Closing Date which meets the requirements set forth in Section 4.1(B)(19) (Financial Close).

**“Financial Closing Date”** has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date).

**“Financial Closing Date Conditions”** has the meaning set forth in Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Financial Closing Longstop Date”** has the meaning set forth in Section 4.3(B) (Financial Closing Longstop Date Defined).

**“Fitch”** means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“Fixed Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Flow Curtailment Tank Level”** has the meaning specified in Section 10.3(B) (Flow Curtailment Tank Level).

**“Flow Rate”** means the rate of flow of Product Water delivered to SAWS measured at the Project Flow Meter, and expressed in GPM.

**“Flow Shutdown Tank Level”** has the meaning specified in Section 10.3(C) (Flow Shutdown Tank Level).

**“Force Majeure Event”** has the meaning set forth in Section 5.2(D) (Force Majeure Events).

**“GAAP”** means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

**“Garney Change-in-Control”** has the meaning set forth in subsection 24.6(A) (Garney Change-in-Control Defined).

**“Garney Companies, Inc.”** means Garney Companies, Inc., a corporation organized and existing under the laws of the State of Missouri.

**“Garney Holding Company”** means Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri.

**“Garney P3 LLC”** means Garney P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri.

**“Good Engineering and Construction Practice”** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the design and construction of drinking water wells, treatment and pumping facilities and pipelines as observed in the State.

**“Good Management Practice”** means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices as observed for drinking water wells, treatment, storage and pumping facilities, and pipelines as observed in the State.

**“Governmental Approvals”** means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Obligations.

**“Governmental Body”** means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including SAWS, acting in its governmental capacity other than as a party to this Water Transmission and Purchase Agreement), or any official thereof,

having jurisdiction in any way over or in respect of any aspect of the performance of this Water Transmission and Purchase Agreement or the Project. A Governmental Body includes the POSGCD and any other Governmental Body with jurisdiction over Raw Groundwater or the Project Site Conveyance Instruments.

**“Groundwater Drilling and Operating Permit”** means the Amended and Restated Drilling and Operating Permit (Permit No. POS-D&O/A&M-0001), issued and effective on January 13, 2008, by Director of the Board of Trustees of the POSGCD to Blue Water Systems, LP, or a successor Drilling and Operating Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

**“Groundwater Lease Conveyance Agreement”** means the Groundwater Lease Conveyance Agreement, dated January 31, 2015, between the Project Company; Blue Water Vista Ridge, LLC; Blue Water Regional Supply Project LP; and the Master Lease Trust, attached hereto as Reference Document 2 (Groundwater Lease Conveyance Agreement).

**“Groundwater Leases”** means the leases listed in Exhibit A to Reference Document 2 (Groundwater Lease Conveyance Agreement).

**“Groundwater Lessee”** means Blue Water Vista Ridge, LLC or the Master Lease Trust, as assignee.

**“Groundwater Lessors”** means the owners of the fee interest in the Raw Groundwater and the lessors under the Groundwater Leases.

**“Groundwater Supply Agreement”** means the Groundwater Supply Agreement, dated November 4, 2014, between SAWS and Blue Water Vista Ridge, LLC, executed in substantially the form set forth as Transaction Form E (Groundwater Supply Agreement).

**“Groundwater Transportation Permit”** means the Amended Permit to Transport Groundwater from within the POSGCD (Permit No. POS-T-0001), issued by the Board of Trustees of the POSGCD to Blue Water Systems, LP on September 14, 2004 and amended effective September 14, 2010, or any new permit issued to the Project Company that allows the Project Company to transport Raw Groundwater from the POSGCD, or a successor Groundwater Transportation Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

**“Guaranteed Maximum Annual Electricity Costs”** means the Project Company’s guaranteed maximum annual electricity costs for the Project for which SAWS is responsible and which are calculated based on the applicable Guaranteed Maximum Electricity Utilization, the Guaranteed Maximum Electricity Demand, Product Water delivered, and the electricity provider’s applicable per unit electric rate, all as provided in Section 17.11(B) (Annual Settlement of Electricity Costs).

**“Guaranteed Maximum Electricity Demand”** has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

**“Guaranteed Maximum Electricity Utilization”** has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

**“Guaranty Agreement”** means the Guaranty Agreement executed and delivered by Garney Holding Company and SAWS on the Conforming Contract Amendment Date and as amended on the Financial Closing Date in the form set forth as Transaction Form A (Garney Guaranty Agreement).

**“Hazardous Substance”** means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

**“Hazardous Substance Management Program”** means the written Hazardous Substances management program developed by the Project Company during the Construction Period in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and updated during the Operating Period.

**“High Service Pump Station”** means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project).

**“High Service Pump Station Site”** means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

**“Income Tax”** means any tax imposed on the income of a person by any federal, State or local Governmental Body.

**“Independent Evaluator”** means a qualified independent evaluator or evaluation firm with demonstrated skill and experience of water utility property similar to the Project, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition of the Project pursuant to Section 11.3 (Project Evaluations) and Appendix 11 (End of Term Project Condition Requirements). The Independent Evaluator may be an engineer or other technical professional competent to perform such services.

**“Index Linked”** means, with respect to an amount at any time, that the amount is increased as of January 1 of each Contract Year (commencing on January 1 of the Contract Year ending on December 31, 2016) by adding to it (1) an amount equal to such amount, multiplied by (2) the percentage representing the increase in the Inflation Index from (a) the Inflation Index for the last six months of the Contract Year ending on December 31, 2014, to (b) the Inflation Index for the last six months of the Contract Year immediately preceding the Contract Year for which a determination is to be made.

**“Inflation Index”** means, with respect to items related to the Operating Work, the Consumer Price Index, All Urban Consumers (CPI-U) (1982-84 = 100) for the San Antonio MSA published by the Bureau of Labor Statistics of the United States Department of Labor; provided, however, that if such Consumer Price Index shall cease to exist or is changed, then the term “Inflation Index” shall mean such other or similar index or formula as the parties reasonably select.

**“Initial Senior Debt”** means the Senior Debt issued at Financial Close.

**“Insurance Proceeds”** means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement.

**“Insurance Receivables”** means Insurance Proceeds which a person is entitled to receive but which have not been received.

**“Insurance Requirement”** means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Water Transmission and Purchase Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

**“Intellectual Property”** means any trade secrets, proprietary rights, patents, copyrights, or trademarks recognized under Applicable Law.

**“Interim Operations Approval”** has the meaning set forth in Section 8.2(A) (Authorization of Operation and Water Introduction).

**“Joint Inspection and Survey”** has the meaning set forth in Section 11.7(C) (Transfer Condition Survey and Work Plan).

**“Key Individuals”** has the meaning set forth in Appendix 14 (Project Company and Project Contractors Information).

**“Legal Proceeding”** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Water Transmission and Purchase Agreement, and all appeals therefrom.

**“Lien”** means any and every lien against the Project, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

**“Loss-and-Expense”** means, and is limited to (in each case subject to Section 19.6 (No Special, Consequential or Punitive Damages)), any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify SAWS hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Water Transmission and Purchase Agreement.

**“Maintenance, Repair and Replacement Plan”** means the maintenance, repair and replacement plan prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

**“Maintenance, Repair and Replacement Schedule”** means the maintenance, repair and replacement schedule prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

**“Major Repair and Replacement Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Make-Up Units”** has the meaning specified in Section 10.3(A)(12) (Make-Up Units).

**“Master Lease Trust”** means the Burluson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act.

**“Mediator”** means any person serving as a mediator of disputes hereunder pursuant to Section 18.2 (Non-Binding Mediation).

**“Membership Interest and Purchase Agreement”** means the Membership Interest and Purchase Agreement, dated as of March 21, 2016, by and among Garney P3 LLC, Garney Companies, Inc., Garney Holding Company, Abengoa, Abengoa Water USA and the Project Company, attached hereto as Reference Document 4 (Membership Interest and Purchase Agreement).

**“mg”** or **“MG”** means millions of gallons.

**“mgd”** or **“MGD”** means millions of gallons per day.

**“mg/L”** means milligrams per liter.

**“Midrange Partial Flow”** has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards).

**“Minimum Performance Criteria”** has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards).

**“Monthly Delivered Water Units”** means, for any Billing Period and subject to Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water), the number of Units actually made available by the Project Company and received and taken by SAWS.

**“Monthly Water Purchase Payment”** means the monthly amount to be paid by SAWS for the purchase of Product Water, calculated as provided in Section 17.5 (Monthly Water Purchase Payments).

**“Moody’s”** means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“Non-Binding Mediation”** means the voluntary system of dispute resolution established by Section 18.2 (Non-Binding Mediation) for addressing disputes arising under this Water Transmission and Purchase Agreement.

**“Notice of Acceptance”** has the meaning set forth in Section 8.5(B) (Notice and Report of Acceptance).

**“Notice of Acceptance Date”** has the meaning set forth in Section 8.5(B) (Notice and Report of Acceptance).

**“Notice of Final Completion”** has the meaning set forth in Section 8.8(B) (Notice and Report of Final Completion).

**“NPDES Project Permit”** means any National Pollutant Discharge Elimination System (NPDES) Permit for the Project required to be obtained by the Project Company from TCEQ, and all subsequent renewals.

**“NTU”** means nephelometric turbidity unit.

**“O & M Budget Panel”** has the meaning set forth in Section 17.3(A) (General Principles).

**“Off-Specification Product Water”** means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

**“Operating and Maintenance Standards”** means the standards for the operation, maintenance and management of the Project as set forth in Appendix 6 (Operating and Maintenance Standards).

**“Operating Notice”** means a written notice given by one party to the other hereunder relating to routine operational matters arising under this Water Transmission and Purchase Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

**“Operating Period”** means the period between the Commercial Operation Date and the Termination Date.

**“Operating Protocol”** means the protocol governing operation of the Project, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols to be established, adopted and revised in accordance with Article 9 (Operation and Management of the Project) and Appendix 6 (Operating and Maintenance Standards).

**“Operating Service Agreement”** means the Operating Service Agreement to be entered into between the Water Supply Corporation and the Operating Service Provider subsequent to the Financial Closing Date pursuant to Section 13.1(F) (Operating Service Provider).

**“Operating Service Provider”** means the person designated by the Project Company and approved by SAWS as the Operating Service Provider in the manner provided in subsection 13.1(F) (Operating Service Provider), or any assignee or replacement entity permitted under this Water Transmission and Purchase Agreement.

**“Operating Service Provider Breakage Costs”** means the amount payable by the Water Supply Corporation to the Operating Service Provider under the Operating Service Agreement as a direct result of the exercise by SAWS of an option to purchase the Project Assets pursuant to Section 23.1(A) (Option) and the resulting termination of this Water Transmission and Purchase Agreement, which shall be reasonable as compared to an amount that would be agreed to between comparable, independent persons in comparable transactions and comparable circumstances, as such amount shall be approved by SAWS when the Operating Service Agreement is negotiated pursuant to Section 13.1(F) (Operating Service Provider).

**“Operating Work”** means everything required to be furnished and done relating to the operation, maintenance and management of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement during the Operating Period.

**“OSHA”** means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

**“Other Project Assets”** has the meaning set forth in Section 12.4 (Other Project Assets) of Appendix 12 (Project Assets and Liabilities).



**“Overdue Rate”** means the maximum rate of interest permitted by the laws of the State, if applicable, or 7.5 percent annually, whichever is lower.

**“Performance Guarantees”** means the guarantees of performance made by the Project Company specifically set forth in Section 10.2 (Product Water Quality Guarantee); Section 10.14 (Project Company Disposal of Residuals); Section 10.15 (Project Company Disposal of Wastewater); and Appendix 8 (Performance Guarantee Requirements).

**“Performance Test”** means the performance test to be conducted pursuant to Appendix 5 (Performance Test Procedures and Standards) for the achievement of Acceptance of the Project.

**“Performance Test Protocol”** has the meaning set forth in Section 8.3(A) (Performance Test Protocol).

**“Permitted Debt”** has the meaning set forth in Section 7.1(C) (Limitations on Project-Secured Debt).

**“Permitted Debt Issuance Date”** has the meaning specified in Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

**“Permitted Encumbrances”** means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves in accordance with GAAP;

(2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or Water Supply Corporation to construct the Project or operate the Project;

(3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(4) Those items which are (i) servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements, (ii) any other Encumbrance other than liens arising (a) in the ordinary course of business during construction, or (b) in connection with worker’s compensation or unemployment insurance or social security or pension obligations, (iii) the

Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) liens or other encumbrances subordinate to this Water Transmission and Purchase Agreement, (vi) any statutory landlord's liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or Water Supply Corporation;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(6) Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;

(7) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or Water Supply Corporation established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(10) Exceptions to title, of record, listed in a Title Insurance Policy or title commitment, being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(11) Encumbrances granted under any Senior Debt Financing Agreements, including the rights of the Senior Debt Creditors or to secure obligations owed by the Water Supply Corporation to the Project Company;

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness; and

(13) Encumbrances created as a result of a Change-in-Law.

**“Personal Information”** means information about a person, the disclosure of which would constitute an unwarranted invasion of privacy.

**“Plan of Development and Financing”** means the plan set forth in Appendix 16 (Plan of Development and Financing).

**“POSGCD”** means the Post Oak Savannah Groundwater Conservation District, located in Milam and Burleson Counties, Texas, Ground Water Management Area 12.

**“POSGCD Rules and Regulations”** means the Rules and Management Plan of the POSGCD, established by POSGCD pursuant to Chapter 36 of the Texas Water Code.

**“Product Water”** means Raw Groundwater which has been treated at the Project in accordance with the Contract Standards. Product Water includes Off-Specification Product Water, but does not include Unacceptable Product Water.

**“Product Water Delivery Point”** means the point in the pipe between the Project Flow Meter and the Project Company Storage Tank proximate to the property line separating Terminus Site Lot 1 and Terminus Site Lot 2 designated by the parties pursuant to a Contract Administration Memorandum for determining the point of transfer of ownership of Product Water from the Project Company to SAWS and, in the event SAWS exercises its right to sell Product Water to any person pursuant to Section 26.5 (Opportunities), the delivery points established pursuant to such subsection.

**“Product Water Quality Guarantee”** has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

**“Product Water Quality Sampling Location”** means the location at which the quality of Product Water is sampled and measured for purposes of determining compliance with the Performance Guarantees, which shall be proximate to the Product Water Delivery Point or at another location approved by the parties.

**“Project”** means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System, including the SAWS Interconnection Improvements. On and after the Notice of Acceptance Date, the Project shall not include the Project Company Storage Tank and the Project Real Property shall not include Terminus Site Lot 2, and the Project

Company Storage Tank and Terminus Site Lot 2 shall be part of the SAWS Distribution System.

**“Project Assets”** means the Project Real Property and the Other Project Assets.

**“Project Assets Purchase Date”** has the meaning set forth in Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option).

**“Project Assets Purchase Price”** means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options).

**“Project Assets Transfer Date”** means the earlier of the Project Assets Purchase Date and the Expiration Date.

**“Project By-Products”** means Residuals and Wastewater requiring disposal by the Project Company in accordance with Section 9.1(A) (Operation and Management Responsibility for the Project) and Article 10 (Performance).

**“Project Company”** means Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC), a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

**“Project Company Bankruptcy-Related Event”** has the meaning set forth in Section 20.1(C) (Project Company Bankruptcy-Related Event Defined).

**“Project Company Event of Default”** has the meaning set forth in Section 20.1(A) (Project Company Events of Default Defined).

**“Project Company Make-Up Units”** has the meaning specified in Section 10.6(A) (Project Company Make-Up Units).

**“Project Company Person”** means:

(1) Any owner, shareholder, or member holding 5% or more of the equity ownership interests of Garney Holding Company, Abengoa or the Project Company, or a director, officer, employee or agent of Garney Holding Company, Abengoa or the Project Company in each case acting as such; or

(2) A Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such Person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

**“Project Company Portion of the Transmission Pipeline Terminus Site”** has the meaning set forth in Section 26.1(E)(1) (Conveyance to SAWS of Terminus Site Lot 3).

**“Project Company Public Water Supplier Designation”** means the public water supplier designation required to be issued by TCEQ to the Project Company and authorizing the use of Product Water as a source of potable water for public consumption through the SAWS Distribution System.

**“Project Company Reimbursable Costs”** has the meaning set forth in Section 4.6(A) (Project Company Reimbursable Costs Defined).

**“Project Company-Related Loans”** means the loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date, as further described in Appendix 22 (Project Company-Related Loans).

**“Project Company Remediable Breach”** has the meaning set forth in Section 20.1(B) (Project Company Remediable Breach Defined).

**“Project Company Representative”** means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Water Transmission and Purchase Agreement.

**“Project Company-Requested Capital Modification”** means a Project Company-Requested Capital Modification made pursuant to Section 12.2 (Capital Modifications at Project Company Request).

**“Project Company-Requested Capital Modification Financing”** means a financing by the Project Company of permitting, design and construction costs resulting from a Project Company-Requested Capital Modification effected pursuant to Section 7.3 (Financing the Capital Costs of Project Company-Requested Capital Modifications).

**“Project Company Storage Tank”** means the Product Water holding structure, to be designed, constructed and tested by the Project Company on Terminus Site Lot 2 for the storage of Product Water, and all related valves, piping, structures, facilities, equipment and improvements, as more particularly described in Appendix 13 (SAWS Interconnection Improvements).

**“Project Company Storage Tank Defect”** has the meaning set forth in Section 5.15(B) (Warranty Inspection).

**“Project Company Storage Tank Warranties”** has the meaning set forth in Section 5.15(A) (Project Company Storage Tank Warranties Defined).

**“Project Company Storage Tank Warranties Term”** has the meaning set forth in Section 5.15(C) (Project Company Storage Tank Warranties Term).

**“Project Company Storage Tank Warranty Inspection”** has the meaning set forth in Section 5.15(B) (Warranty Inspection).

**“Project Contractor”** means the Design Build Contractor, the Operating Service Provider, the Water Supply Corporation and the parties to the Groundwater Lease Conveyance Agreement, and “Project Contractors” means any two or all of them.

**“Project Contracts”** means the Public-Private Partnership Framework Agreement, the Design Build Contract, the Water Transportation Agreement, and the Operating Service Agreement, and the Groundwater Lease Conveyance Agreement.

**“Project Costs”** means, without duplication, costs and expenses incurred by the Project Company on or prior to the date on which Final Completion has occurred in connection with the development, design, engineering, permitting, construction, financing, installation, equipping, assembly, inspection, start-up, testing and initial operations of the Project; the leasing and preparation of the Project Sites; together with an adequate contingency, which costs and expenses shall include: (1) all amounts payable under the Design Build Contract and the other agreements relating to any of the foregoing activities, any state sales taxes on equipment or other goods or services, amounts payable for power and other

utilities relating to construction, start-up and testing, and all project development expenses and fees incurred by the Project Company or any of its Affiliates; (2) interest incurred on or in respect of the Permitted Debt and any other amounts required to be paid by the Project Company under the agreements with respect to the Permitted Debt, including fiduciary fees; (3) bond insurer payments and payments contemplated by any bond insurance policy, and the fees and expenses and other reimbursement of the issuer, and any agent or trustee party to the agreements with respect to the Permitted Debt; (4) legal, accounting, consulting, financial advisory and other transaction fees and expenses incurred by the Project Company and its Affiliates prior to Final Completion; (5) operating and maintenance costs incurred on or prior to Final Completion; (6) the costs of obtaining surety bonds, letters of credit or other security required to be delivered under an agreement or Governmental Approval on or prior to Final Completion (including any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties); and (7) costs incurred in compliance with Governmental Approvals.

**“Project Equipment”** means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, including tanks (other than concrete tanks), basins (other than concrete basins), process and treatment, mechanical, piping (with an original useful life of less than 20 years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Project.

**“Project Flow Meter”** means the flow meter built in conformance with the requirements of Appendix 3 (Technical Specifications) for measuring the volume of Product Water of which SAWS has taken delivery, and located upstream of the Product Water Delivery Point or at another location agreed to by the parties.

**“Project Improvements”** means the Well Field Facilities and the Transmission Pipeline System.

**“Project Real Property”** means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is ancillary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Project Real Property Conveyance Agreement”** means the Project Real Property Conveyance Agreement, dated June 10, 2016, between SAWS and the Water Supply Corporation, attached hereto as Reference Document 3 (Project Real Property Conveyance Agreement).

**“Project Schedule”** means the schedule set forth in Attachment 4A (Preliminary Project Schedule) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) and updated in accordance with Section 4.2.3 (Project Schedule Updates) of Appendix 4.

**“Project Site Conveyance Instruments”** means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

**“Project Site Leases”** means any lease of all or any portion of the Project Sites.

**“Project Site Lessors”** means the Groundwater Lessors and the Transmission Pipeline Easement Grantors.

**“Project Sites”** means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

**“Project Structures”** means all structures, buildings, concrete tanks and basins, appurtenances (including valves, gates and weirs), and piping (with an original useful life of equal to or greater than 20 years) constituting part of the Project, other than Project Equipment.

**“Projected Annual Supply Schedule”** has the meaning set forth in Section 10.7(A) (Projected Annual Supply Schedules).

**“Projected Monthly Supply”** has the meaning set forth in Section 10.7(C) (Projected Monthly Supply).

**“Proposed Financing”** has the meaning specified in Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

**“Public Information Act”** means the Texas Public Information Act, Chapter 552 of the Texas Government Code.

**“Public-Private Partnership Framework Agreement”** means the Amended and Restated Public-Private Partnership Framework Agreement among the Project Company; the Water Supply Corporation; Garney Companies, Inc.; VRRSP Consultants, LLC; Pape-Dawson Engineers, Inc.; Sumitomo Mitsui Banking Corporation, as administrative agent; and Sumitomo Mitsui Banking Corporation, as collateral agent, executed and delivered by the parties thereto on the Financial Closing Date.

**“Punch List”** means the list prepared at the time of Substantial Completion (and periodically revised as necessary), which list shall set forth (1) all items of Construction Work which remain to be performed or corrected in order to ensure that the Project fully complies with all of the standards and requirements set forth herein (and shall include those items of Construction Work damaged or destroyed by the Project Company during completion of the Performance Test) and which do not affect the performance or safe and continued operation of the Project, and (2) an assessed valuation of each such item of Construction Work that is equal to 150% of the estimated cost thereof. The final Punch List shall be provided to SAWS by the Commercial Operation Date. The Punch List shall not include any items of Construction Work, alone or in the aggregate, the non-completion of which (a) prevents the Project from being used for its purpose as described in this Water Transmission and Purchase Agreement in accordance with Applicable Law, (b) prevents the Project from operation and maintenance on a legal, safe, environmentally sound and reliable basis, or (c) could have a materially adverse effect on the operation, maintenance, performance, warranties, efficiency, safety or reliability of the Project or the environment.

**“Qualified Commercial Bank”** means a reputable domestic or foreign commercial bank:

- (1) Whose long term and short term debt is rated “A3” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch (the lower of the three applying if there is a split rating); and

(2) Which maintains a banking office, branch or agency in San Antonio or Houston, Texas.

**“Qualified Insurer”** means a reputable insurer authorized to conduct business in the State and having a credit rating of:

- (1) A-VIII or better with A.M. Best; or
- (2) The equivalent thereof by any other recognized insurance rating agency.

**“Rating Service”** means Moody’s, Standard & Poor’s or Fitch.

**“Raw Groundwater”** means groundwater drawn from the Carrizo-Wilcox Aquifer or the Simsboro Aquifer for treatment and conveyance to SAWS by the Project Company in accordance with the Contract Standards.

**“Raw Groundwater Permits”** means the permits listed in Reference Document 1 (Blue Water Systems Raw Groundwater Permits) issued by the POSGCD permitting Blue Water Systems to produce and transport Raw Groundwater.

**“RCRA”** means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

**“Refinancing”** means any refinancing of the Senior Debt and any subsequent refinancings.

**“Refinancing Gain”** means the nominal cash flow savings on debt service payable with respect to the Senior Debt in each Contract Year over the remaining Term resulting from a Refinancing.

**“Regulated Site Condition”** means:

- (1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;
- (2) Any habitat of an endangered or protected species as provided in Applicable Law;
- (3) The presence anywhere in, on or under the Project Sites of wells or underground storage tanks for the storage of chemicals or petroleum products;
- (4) The presence of Hazardous Substances in, on or under the Project Sites (including presence in surface water, groundwater, soils or subsurface strata; and
- (5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment.



**“Regulated Substance”** means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances and contaminated soils requiring special handling or disposal.

**“Reinstatement Plan”** has the meaning set forth in Section 15.2(C) (Reinstatement Plan).

**“Reinstatement Works”** has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

**“Required Insurance”** means the insurance specified in Appendix 7 (Insurance Requirements).

**“Residuals”** means any semi-solid or solid material resulting from the treatment of Raw Groundwater which requires disposal as waste material.

**“Response Plan”** means a Hazardous Substance emergency/spill response plan developed by the Project Company in accordance with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) during the Construction Period, and updated during the Operating Period.

**“Restricted Person”** means any person who (or any member of a group of persons acting together, any one of which):

(1) Is disbarred, suspended, or otherwise disqualified from federal, State, SAWS, Counties or City contracting for any services similar in nature to the Contract Obligations;

(2) Was or is subject to any material claim of the United States, State, SAWS, Counties or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the Board of Trustees or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Is any other person whose work on or association with the Project would be detrimental to the reputation of SAWS, as formally determined by SAWS in its discretion.

**“Right-Of-Way Easement Form”** means the form set forth in Transaction Form D (Right-Of-Way Easement Form).

**“SAWS”** means the San Antonio Water System, established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

**“SAWS Distribution System”** means the water transmission and distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project, except that, on and after the Notice of Acceptance Date, the SAWS Distribution System shall include the Project Company Storage Tank and Terminus Site Lot 2.

**“SAWS Engineer”** has the meaning set forth in Section 5.4(I) (SAWS Engineer).

**“SAWS Event of Default”** has the meaning set forth in Section 21.1 (SAWS Events of Default).

**“SAWS Fault”** means:

- (1) A breach by SAWS of any of its obligations under this Water Transmission and Purchase Agreement; or
- (2) A breach of any representation or warranty by SAWS under this Water Transmission and Purchase Agreement; or
- (3) Willful misconduct of SAWS or a SAWS Indemnitee; or
- (4) A negligent act or omission of SAWS or a SAWS Indemnitee; or
- (5) A City Discriminatory Change in Law.

**“SAWS Indemnitee”** has the meaning set forth in Section 25.1 (Project Company’s Obligation to Indemnify).

**“SAWS Interconnection Improvements”** means the SAWS Storage Tank and the other improvements required to be constructed by SAWS pursuant to Section 6.2 (SAWS Interconnection Improvements), as generally described in Appendix 13 (SAWS Interconnection Improvements) and, after the Notice of Acceptance Date, the Project Company Storage Tank.

**“SAWS Interface Cabinet”** means the antenna or other device or equipment serving as an interface for electronic communications and security information between SAWS and the Project Company and constituting the operating interface between the SAWS Distribution System and the Project to be installed by SAWS at the Transmission Pipeline Terminus Site.

**“SAWS Make-Up Units”** has the meaning specified in Section 10.6(B) (SAWS Make-Up Units).

**“SAWS Portion of the Transmission Pipeline Terminus Site”** means that portion of the Transmission Pipeline Terminus Site designated as “Lot 3” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements). On and after the Notice of Acceptance Date, the SAWS Portion of the Transmission Pipeline Terminus Site shall also include Terminus Site Lot 2.

**“SAWS Public Water Supplier Designation”** means SAWS’ existing public water supplier designation issued by TCEQ authorizing the use of the SAWS Distribution System to supply potable water for public consumption.

**“SAWS Reimbursable Costs”** has the meaning set forth in Section 4.7(A) (SAWS Reimbursable Costs Defined).

**“SAWS Representative”** or **“SAWS Administrator”** means the individual SAWS employee specified in writing by SAWS as the representative of SAWS from time to time for all purposes of this Water Transmission and Purchase Agreement.

**“SAWS-Requested Capital Modification”** means a SAWS-Requested Capital Modification made pursuant to Section 12.3 (Capital Modifications at SAWS Request).

**“SAWS-Requested Capital Modification Financing”** means a financing by the Project Company of permitting, design and construction costs resulting from a SAWS-Requested Capital Modification effected pursuant to Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs).

**“SAWS-Requested Design Requirement Change”** has the meaning set forth in Section 5.8 (SAWS-Requested Design Requirements Changes).

**“SAWS Storage Tank”** means the storage tank(s) to be constructed by SAWS on Terminus Site Lot 3 as part of the SAWS Interconnection Improvements, as generally described in Appendix 13 (SAWS Interconnection Improvements).

**“SCADA”** means supervisory control and data acquisition.

**“Scheduled Company Shutdown Hours”** has the meaning set forth in Section 10.7(B)(1) (Project Company Scheduled Maintenance).

**“Scheduled Connection Availability Date”** shall mean February 2, 2019, the date by which the Project Company shall make the flange connection available to SAWS for connecting the Project Company Storage Tank to the SAWS Distribution System.

**“Scheduled Grading Completion Date”** shall mean February 27, 2018, the date by which the Project Company shall complete grading Terminus Site Lot 2 as required under Appendix 13 (SAWS Interconnection Improvements).

**“Scheduled SAWS Interconnection Improvements Completion Date”** has the meaning set forth in Section 6.2(B)(Scheduled SAWS Interconnection Improvements Completion Date).

**“Scheduled SAWS Shutdown Hours”** has the meaning set forth in Section 10.7(B)(2) (SAWS Scheduled Maintenance).

**“Scheduled Utility Shutdown Hours”** has the meaning set forth in Section 10.7(B)(3) (Electric Utility Maintenance).

**“Security Plan”** has the meaning set forth in Section 9.7 (Security).

**“Senior Debt”** means debt or other obligations issued or incurred by the Project Company under the Senior Debt Financing Agreements (including debt or other obligations issued or incurred in connection with a Refinancing) secured by a first lien on all or substantially all of the revenues and assets of the Project Company, including the Initial Senior Debt.

**“Senior Debt Creditors”** means the lenders, bondholders or other parties (including any hedge or swap providers), as the case may be, and their respective agents and trustees holding Senior Debt under the Senior Debt Financing Agreements.

**“Senior Debt Discharge Date”** means the date on which the Obligations (as defined in the Credit Agreement) have been paid in full in accordance with the terms of the Credit Agreement and the Secured Parties (as defined in the Credit Agreement) have released the Liens granted pursuant to the Security Documents (as defined in the Credit Agreement), in each case other than in connection with a Refinancing thereof and, if all or any portion of the Senior Debt has been Refinanced, all obligations and liabilities arising under or in connection with such Refinanced Senior Debt have been paid in full (including any hedge or swap termination fees, make-whole or call premiums, and all other amounts owing to any Senior Debt Creditor) and the Senior Debt Creditors thereof shall have released all Liens granted in connection thereof.

**“Senior Debt Financing Agreements”** means the following as and to the extent that the same may be in effect to document the issuance or incurrence of Senior Debt that may be outstanding from time to time: (1) the Credit Agreement and any other loan or credit agreement and any notes issued pursuant thereto; (2) any bond indenture and the bonds issued pursuant thereto; (3) any security agreement relating to collateral pledged to secure Senior Debt, which may include all assets and contract rights of the Project Company and the Water Supply Corporation with respect to the Project; (4) any trust or collateral agency agreement relating to the administration of such collateral on behalf of the Senior Debt Creditors; (5) any interest rate hedge agreement entered into by the Project Company for the purpose of fixing or capping interest rates that might otherwise be floating rates; (6) the Creditors’ Remedies Agreement and other consents to assignment or direct agreements between the Senior Debt Creditors and SAWS relating to the assignment of this Water Transmission and Purchase Agreement by the Project Company and the rights of the Senior Debt Creditors thereunder; and (7) any guaranties, letters of credit and other third party assurances provided to the Senior Debt Creditors by third parties as additional security.

**“Senior Secured Credit Facility”** means the Credit Agreement.

**“Service Area”** means all territory in which customers are served by SAWS Distribution System during the Term hereof.

**“Shareholder”** means any holder or owner of Shares.

**“Shares”** means shares or other equity interests of any class in the capital of the Project Company.

**“Simsboro Aquifer”** means the Simsboro aquifer, as delineated by the TWDB.

**“SMWB”** has the meaning set forth in Section 5.13(B) (Small, Minority and Women-Owned Business Opportunities).

**“Specified Change in Tax Law”** means the coming into effect of any Applicable Law which results in a new Tax imposed by the United States, the State or the City and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Obligations, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

**“Standard & Poor’s”** means Standard & Poor’s Financial Services LLC, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“Standby Deed of Trust”** has the meaning set forth in Section 19.7 (Standby Deed of Trust), as further described in Reference Document 3 (Project Real Property Conveyance Agreement).

**“State”** means the State of Texas.

**“Subcontract”** means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Water Transmission and Purchase Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

**“Subcontractor”** means any person that enters into a Subcontract.

**“Substantial Completion”** has the meaning set forth in Section 8.1(D) (Conditions to Substantial Completion).

**“Substantial Completion List”** has the meaning set forth in Section 8.1(F) (Achievement of Substantial Completion).

**“Substantial Completion Procedures”** means the procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) for determining when the Project Company has achieved Substantial Completion.

**“Substantial Completion Procedures Report”** has the meaning set forth in Section 4.12 (Substantial Completion Procedures Report) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Substantial Completion Protocol”** has the meaning set forth in Section 4.10.9 (Substantial Completion Protocol) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Supply Shortfall Units”** has the meaning specified in Section 10.3(A)(13) (Supply Shortfall Units).

**“Tank Structural Failure Units”** has the meaning specified in Section 10.3(A)(14) (Tank Structural Failure Units).

**“Target Equity Return Amount”** has the meaning set forth in Section 23.1(B)(3) (Project Assets Purchase Price).

**“Tax”** means, from time to time, all taxes, surtaxes, fees, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection.

**“TCEQ”** means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

**“Term”** has the meaning set forth in Section 3.1 (Effective Date and Term).

**“Termination Date”** means the earlier of the Expiration Date or the date of termination of this Water Transmission and Purchase Agreement provided in Section 22.1(D) (Termination Date).

**“Terminus Site Lot 1”** means that portion of the Transmission Pipeline Terminus Site consisting of approximately 1.5 acres and designated as “Lot 1” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

**“Terminus Site Lot 2”** means that portion of the Transmission Pipeline Terminus Site consisting of approximately 5.9 acres and designated as “Lot 2” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

**“Terminus Site Lot 3”** means that portion of the Transmission Pipeline Terminus Site consisting of approximately 17.9 acres and designated as “Lot 3” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

**“Terminus Site Lot 1 Improvements”** means the piping, Project Flow Meter, Product Water quality sampling facilities, and other structures, facilities, equipment and improvements to be designed and built by the Project Company on Terminus Site Lot 1, as further described in Appendix 13 (SAWS Interconnection Improvements).

**“Third Contract Amendment”** means the third amendment to the Water Transmission and Purchase Agreement to make changes in connection with the Transmission Pipeline Terminus Site.

**“Third Contract Amendment Date”** means April 5, 2017, the date on which this Water Transmission and Purchase Agreement was amended by the Third Contract Amendment.

**“Title Insurance Policy”** means all title insurance policies with respect to the Project Sites issued to the Project Company.

**“Transaction Form”** means any of the Transaction Forms appended to this Water Transmission and Purchase Agreement and identified as such in the Table of Contents.

**“Transfer Condition Plan Completion Certificate”** has the meaning set forth in Section 11.7(G) (Final SAWS Condition Assessment).

**“Transfer Condition Requirements”** has the meaning set forth in Section 11.7(B) (Required Project Condition).

**“Transfer Condition Retainage”** has the meaning set forth in Section 11.7(D) (Determination of Transfer Condition Retainage).

**“Transfer Restriction Date”** has the meaning set forth in Section 24.1 (Limitation on Assignment by Project Company).

**“Transmission Pipeline”** means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Product Water Delivery Point, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications). The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

**“Transmission Pipeline Alignment”** means the real property over or within which the Transmission Pipeline is to be constructed.

**“Transmission Pipeline Easement Grantors”** means the grantors of the Transmission Pipeline Easements.

**“Transmission Pipeline Easements”** means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

**“Transmission Pipeline Pumping Stations”** means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project), which include the High Service Pump Station, Intermediate Pump Station #1 and Intermediate Pump Station #2.

**“Transmission Pipeline System”** means the Transmission Pipeline and, prior to the Notice of Acceptance Date, the Project Company Storage Tank.

**“Transmission Pipeline System Real Property Interests”** means (1) a fee simple absolute in the Project Company Portion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

**“Transmission Pipeline Terminus Site”** means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline designated as the “Transmission Pipeline Terminus Site” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

**“TWDB”** means the Texas Water Development Board, or any predecessor or successor agency.

**“Unacceptable Product Water”** means water produced by the Project Company and made available to SAWS that does not comply with the Product Water Quality Guarantee to such an extent that it (1) does not meet primary and secondary drinking water standards under Applicable Law; (2) presents a risk to public health or safety; or (3) has the potential to materially damage or destroy SAWS or private property or create an imminent need to clean, repair, replace or restore any such property.

**“Uncontrollable Circumstances”** means any act, event or circumstance that (a) is beyond the reasonable control of the Project Company in relying on it as a justification for performance or schedule relief as provided hereunder, and (b) materially expands the scope, interferes with, delays or prevents the performance by the Project Company of the Contract Obligations, to the extent that such act, event or circumstance is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this

Water Transmission and Purchase Agreement by the Project Company. Subject to the forgoing, Uncontrollable Circumstances include the following acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risk):

- (1) Section 5.2(B) (Change in Law Events) – paragraphs (1), (2), (3), (4), (5) and (6) only;
- (2) Section 5.2(C) (Raw Groundwater Events) – all paragraphs;
- (3) Section 5.2(D) (Force Majeure Events) – all paragraphs;
- (4) Section 5.2(E) (Project Site and Project Site Lessor Risks) – paragraph (4); and
- (5) Section 5.2(F) (Other Circumstances) – paragraphs (1), (2), (3) (but solely to the extent that such act, circumstance or event would constitute an Uncontrollable Circumstance if applicable to the Project Company), (4), (5), (6), (7) and (8).

An Uncontrollable Circumstance also includes a SAWS Fault (without, however, limiting the Project Company's right to bring an action for breach on account of a SAWS Fault or the obligations of SAWS to make any payments provided under Section 16.3 (Project Company Relief Due to a SAWS Fault)). The acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risk) that are not specifically referred to above in items (1), (2), (3), (4) and (5) of this definition shall not constitute Uncontrollable Circumstances.

**“Unexcused Supply Shortfall Units”** has the meaning specified in Section 10.3(A)(15) (Unexcused Supply Shortfall Units).

**“Unit”** means an Acre Foot of Product Water, or the equivalent in gallons or cubic feet, as applicable in the circumstances.

**“Unit Price”** has the meaning set forth in Section 17.4 (Unit Price).

**“Unit Price Adjustments”** has the meaning set forth in Section 17.8(B) (Adjustments to the Unit Price).

**“Utilities”** means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

**“Variable Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Variable Compensable Costs Unit Price”** has the meaning set forth in Section 17.3(E) (Budgeted Variable Compensable Costs Unit Price).

**“Variance”** has the meaning set forth in Section 26.1(A) (Acquisition by the Project Company of Well Field Facilities Site Real Property Interests and Transmission Pipeline Easements).



**“Wastewater”** means (1) any process wastewater produced at the Project, and (2) any Product Water produced at the Well Field Facilities that requires discharge from the Transmission Pipeline before reaching the Product Water Delivery Point for any reason, including flushing requirements or any failure to meet disinfection standards under the Product Water Quality Guarantee.

**“Water Supply Corporation”** means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and authorized to exercise the power of eminent domain under Section 49.222(a) of the Texas Water Code, and its permitted successors and assigns.

**“Water Transmission and Purchase Agreement”** means this Water Transmission and Purchase Agreement; all Water Transmission and Purchase Agreement Amendments, including the Conforming Contract Amendment, the Financial Close Contract Amendment and the Third Contract Amendment; and the Appendices.

**“Water Transmission and Purchase Agreement Amendment”** has the meaning set forth in Section 26.7 (Water Transmission and Purchase Agreement Amendments).

**“Water Transportation Agreement”** means the Amended and Restated Water Transportation Agreement between the Project Company and the Water Supply Corporation executed and delivered by the parties thereto on the Financial Closing Date.

**“Well Field Facilities”** means the facilities and roads to be constructed on the Well Field Facilities Site for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Wells and the Collection Pipelines.

**“Well Field Facilities Site”** means the land upon which the Well Field Facilities are to be constructed, including approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project).

**“Well Field Facilities Site Real Property Interests”** means (1) a fee simple absolute interest in the Well Sites, and (2) permanent easements for the Collection Pipelines Rights-of-Way.

**“Well Field Meters”** has the meaning set forth in Section 10.12(C) (Well Field Meters).

**“Wells”** means wells, casings, related pumping equipment and appurtenant facilities to be constructed on the Well Field Facilities Site for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project).

**“Well Sites”** means each of the sites of approximately two-acres upon which the Wells are to be constructed.

SECTION 1.2. INTERPRETATION.

This Water Transmission and Purchase Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Water Transmission and Purchase Agreement otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Water Transmission and Purchase Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Water Transmission and Purchase Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(F) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to SAWS, Governmental Bodies and Private Persons. Each reference to SAWS or a Governmental Body is deemed to include a reference to any successor to SAWS or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of SAWS or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) References to Treatment. The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Groundwater, shall mean and refer to the operation of the Project by the Project Company to clarify, filter, disinfect and treat Raw Groundwater and make available Product Water to SAWS, all in accordance with this Water Transmission and Purchase Agreement.

(M) References to “Making Available Product Water”. The expressions “making available,” “make available,” “made available” and any similar expressions, when used with respect to Product Water, shall mean and refer to conditions described in Section 10.4(C) (Determination of Water Made Available).

(N) References to “Take Delivery Of”. The expression “take delivery of”, and any similar expressions, when used with respect to Product Water, shall mean and refer to the movement of Product Water from the Project to the SAWS Distribution System through the Product Water Delivery Point. The number of Units that SAWS takes delivery of on any day shall be measured by the totalizer attached to the Project Flow Meter.

(O) References to “Mortgage”. The term “mortgage” shall mean and include “deed of trust”, and the granting of a deed of trust.

(P) Entire Agreement. This Water Transmission and Purchase Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, this Water Transmission and Purchase Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(Q) Counterparts. This Water Transmission and Purchase Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Water Transmission and Purchase Agreement.

(R) Governing Law. This Water Transmission and Purchase Agreement shall be governed by and construed in accordance with the applicable laws of the State.

(S) Severability. Each provision of this Water Transmission and Purchase Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Water Transmission and Purchase Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Water Transmission and Purchase Agreement as nearly as possible to its original intent and effect.

(T) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Water Transmission and Purchase Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(U) Rounding of Acre Foot Calculations. All calculations hereunder involving Acre Feet shall be rounded to the nearest one-tenth of an Acre-Foot.

(V) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(W) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(X) Applicability, Stringency and Consistency of Contract Standards. The parties understand that one or more of the Contract Standards applicable to a performance obligation of the Project Company may include a range of applicable criteria; in such circumstances, performance by the Project Company shall be deemed to have satisfied such Contract Standard so long as it is within such range. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Water Transmission and Purchase Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Water Transmission and Purchase Agreement.

(Y) Delivery of Documents in Digital Format. In this Water Transmission and Purchase Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS' request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(Z) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(AA) Third-Party Rights. This Water Transmission and Purchase Agreement is exclusively for the benefit of SAWS and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party SAWS Indemnitees as provided in Section 25.1 (Project Company's Obligation to Indemnify) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(BB) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Water Transmission and Purchase Agreement. When a party does not have “discretion” it means that the party shall act reasonably. A party may exercise any termination right hereunder in its discretion.

(CC) Convenience Termination. The exercise by SAWS or the Project Company of its right of convenience termination under any provision of this Water Transmission and Purchase Agreement shall not be deemed a breach of any implied duty of good faith dealing or a SAWS Event of Default or a Project Company Event of Default, nor shall any damages be payable by SAWS or the Project Company on account thereof. The only compensation payable by SAWS or the Project Company upon the exercise of their respective convenience termination options shall be the amounts specified herein in connection therewith.

(DD) References to Acquire. The terms “acquire,” “acquiring,” “acquired,” “acquisition” and any similar terms, when used with respect to a recordable real estate interest, shall mean that the real estate interests have been obtained in the name of the acquirer and such interests have been recorded in the appropriate land records, or that an eminent domain proceeding to condemn the real estate interest has been initiated by the acquirer.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF SAWS.

SAWS represents and warrants, as of the Conforming Contract Amendment Date, that:

(A) Existence and Powers. SAWS is an agency of the City created by City Ordinance 75686 as a public utility, validly existing and in good standing under the laws of the State, and has the authority to do business in the State and in any other state in which it conducts its activities with full legal right, power and authority to execute, deliver and perform its obligations under this Water Transmission and Purchase Agreement.

(B) Validity and Enforceability. This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by SAWS, and constitutes a legal, valid and binding special obligation of SAWS, enforceable against SAWS in accordance with its terms, except to the extent that its enforceability may be limited by the law of sovereign or governmental immunity (except as provided in Section 17.19 (Goods and Services)), bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect, and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by SAWS of this Water Transmission and Purchase Agreement nor the performance by SAWS of its obligations in connection with the transactions contemplated hereby or the fulfillment by SAWS of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to SAWS; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which SAWS is a party or by which SAWS or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) All Required Approvals Obtained. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or prior approval of voters is required for the valid execution and delivery by SAWS of this Water Transmission and Purchase Agreement or the performance by SAWS of its payment or other obligations hereunder other than those which have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Project Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against SAWS, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by SAWS or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against SAWS, or any other agreement or instrument entered into by SAWS in connection with the transactions contemplated hereby or on the ability of SAWS to perform its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Conforming Contract Amendment Date, that:

(A) Existence and Powers and Ownership. The Project Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Water Transmission and Purchase Agreement.

(B) Validity and Enforceability. This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Project Company of this Water Transmission and Purchase Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) All Required Approvals Obtained. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Water Transmission and Purchase Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. Except as provided in Appendix 21 (Certain Litigation Matters), to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by the Project Company or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. To the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or

Governmental Body pending, overtly threatened or publicly announced against a Project Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of a Project Contractor to perform its obligations under its respective Project Contract.

(G) Groundwater Leases. Groundwater leases listed in Reference Document 2 are in force and effect sufficient to provide groundwater, in aggregate, in a volume at least equal to the Baseline Annual Volume, subject to the authority for such groundwater to be pumped, withdrawn, and transported under the terms of the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit.

(H) Sufficiency of Groundwater Permitting Arrangements. The existing Groundwater Drilling and Operating Permit and the existing Groundwater Transportation Permit constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual Volume, subject only to the terms and conditions of such permits.

(I) Intellectual Property. The Project Company owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(J) Plan of Development and Financing. The statements made by Garney Holding Company in the Plan of Development and Financing are an expression of Garney Holding Company's good faith intention as to the manner in which Garney Holding Company intends to proceed to develop and finance the Project in order to reach the Financial Closing Date.

(K) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services.

(L) No Public Utility Regulation. The Project Company is not and will not by reason of this Water Transmission and Purchase Agreement or otherwise be a "retail public utility" within the meaning of Chapter 13 of the Texas Water Code, and is not and will not be subject to the jurisdiction over utility rates of the TCEQ or Public Utility Commission of Texas.

(M) Practicability of Performance. Subject to, and in accordance with, the terms of this Water Transmission and Purchase Agreement, the Project Company assumes the risk of the practicability and possibility of performance of the Project and the Contract Obligations on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Monthly Water Purchase Payments.

(N) No Restricted Persons. Neither Abengoa, Garney Holding Company, nor any of their Affiliates is a Restricted Person.

(O) Project Company Related Loans. The Project Company-Related Loans constitute the only loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date.



(P) No Events of Default. No Project Company Event of Default exists under this Water Transmission and Purchase Agreement nor has any event occurred which, with the giving of notice or passage of time, would constitute a Project Company Event of Default under this Water Transmission and Purchase Agreement, except that no representation is made with respect to the use of funds under the Bridge Loan Agreement.

(Q) Project Company Ownership. Abengoa owns indirectly 20% of the Shares of the Project Company and Garney P3 LLC owns 80% of the Shares of the Project Company. Garney P3 LLC is wholly owned by Garney Holding Company.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Water Transmission and Purchase Agreement shall become effective, and the term hereof (the “**Term**”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Water Transmission and Purchase Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Water Transmission and Purchase Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. ASSIGNMENT AND CONVEYANCE OF THE PROJECT ASSETS EFFECTIVE ON THE EXPIRATION DATE.

(A) Obligation to Assign and Convey. Not later than 60 days prior to the Expiration Date, unless this Water Transmission and Purchase Agreement has been terminated earlier, the Project Company, at its sole cost and expense, shall assign and convey, or cause to be assigned and conveyed, to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance. Such assignment, conveyance, acceptance and assumption shall be effective on the Expiration Date.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 3.2(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other person. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall, effective on the Expiration Date, (1) convey to SAWS Project Real Property which is owned by the Project Company and (2) cause the Water Supply Corporation to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS all other Project Real Property. Such conveyance shall convey good and indefeasible title and interest in the Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real

property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including particularly those set forth in Article 4) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for in Section 3.2(A) (Obligation to Assign and Convey), including executing and delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Applicability of Related Provisions. The provisions of Sections 23.4 (Conveyance), 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) shall apply to a conveyance and assignment made pursuant to Section 3.2(A) (Obligation to Assign and Convey), as if written to apply to such a conveyance rather than to a conveyance made pursuant to a purchase option occurring upon the termination of this Water Purchase and Transmission Agreement prior to the Expiration Date.

### SECTION 3.3. SURVIVAL.

Notwithstanding any other provision of this Water Transmission and Purchase Agreement, this Section and the following provisions hereof will survive the expiration or any earlier termination of this Water Transmission and Purchase Agreement:

- (1) Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date);
- (2) Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period);
- (3) Section 5.11 (Financial Books and Records);
- (4) Section 5.15 (Project Company Storage Tank Warranties);
- (5) Section 11.7 (Project Assets Transfer Condition);
- (6) Article 18 (Dispute Resolution);
- (7) Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;
- (8) Article 23 (SAWS Project Assets Purchase Options);
- (9) Article 25 (Indemnification), including all of the indemnities referred to therein;
- (10) Section 26.10 (Intellectual Property Rights);
- (11) Section 26.12 (Project Company's Confidentiality Obligations);
- (12) Section 26.13 (SAWS' Confidentiality Obligations);

(13) Section 26.14 (Personal Information);

(14) All provisions of this Water Transmission and Purchase Agreement with respect to payment obligations of the Project Company or SAWS accrued prior to the Termination Date; and

(15) Any other provision of this Water Transmission and Purchase Agreement providing for survival by its express terms;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

DEVELOPMENT AND FINANCING PERIOD

SECTION 4.1. FINANCIAL CLOSING DATE CONDITIONS.

(A) Documents Delivered Prior to the Conforming Contract Amendment Date. The parties acknowledge that, on or before the Conforming Contract Amendment Date, the following documents were executed and delivered in connection with the execution and delivery of this Water Transmission and Purchase Agreement:

- (1) The Guaranty Agreement;
- (2) The Groundwater Lease Conveyance Agreement; and
- (3) The Groundwater Supply Agreement.

(B) Financial Closing Date Conditions Defined. The obligations of the Project Company and SAWS to proceed with their respective obligations hereunder during the Construction Period and the Operating Period shall not commence unless and until all of the following conditions (the “**Financial Closing Date Conditions**”) are satisfied or have been waived by SAWS:

(1) Transmission Pipeline System Real Property Interests. The Water Supply Corporation shall have acquired (i) at a minimum, 184,000 linear feet of the Transmission Pipeline Easements, and (ii) all of the Transmission Pipeline System Real Property Interests other than the Transmission Pipeline Easements. In acquiring easements, the Project Company shall comply with Section 26.1(G) (Right-of-Way Easements). Notwithstanding anything in Section 1.2(DD) (References to Acquire) to the contrary, the Project Company shall not be required to have recorded the Transmission Pipeline Easements until June 10, 2017.

(2) Transmission Pipeline Terminus Site Acquisition and Preliminary Site Plan; SAWS Right of Entry. The Project Company shall have acquired fee simple absolute title to the Transmission Pipeline Terminus Site, and shall have delivered to SAWS a preliminary site plan of the Transmission Pipeline Terminus Site acceptable to SAWS in its discretion. The preliminary site plan shall indicate the anticipated division of the Transmission Pipeline Terminus Site into the Project Company Portion of the Transmission Pipeline Terminus Site and the anticipated SAWS Portion of the Transmission Pipeline Terminus Site. The Project Company also shall have granted, or caused the Water Supply Corporation to grant, SAWS a right of entry to the Transmission Pipeline Terminus Site, effective from the Financial Closing Date through the date of conveyance of title to the SAWS Portion of the Transmission Pipeline Terminus Site pursuant to Section 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations), sufficient for all purposes of the SAWS Interconnection Improvements, including performing engineering, analysis and such additional surface, subsurface and geotechnical studies or tests as deemed necessary by SAWS prior to the commencement of construction of the SAWS Interconnection Improvements.

(3) Transmission Pipeline Terminus Site Survey, Environmental Site Assessment and Title Commitment. The Project Company shall provide, with respect to the Transmission Pipeline Terminus Site, (a) a survey prepared by a

registered professional land surveyor licensed in the State satisfying the requirements of a Category 1A, Condition II Survey, sufficient for a title company to issue all requested survey endorsements, certified to SAWS, the title company and the Project Company; (b) a Phase I Environmental Site Assessment (i) dated no more than 180 days prior to the Financial Closing Date, (ii) made in accordance with then-current ASTM standards, (iii) naming SAWS as a “user”, and (iv) unless recommending further action, sufficient to satisfy the “all appropriate inquiries” necessary for SAWS to be an “innocent landowner” or “bona fide prospective purchaser”, together with any other follow-up reports obtained by the Project Company or Water Supply Corporation; and (c) a title commitment from Chicago Title Insurance Company or such other reputable title company to issue an owner policy of title insurance to the Water Supply Corporation for the Transmission Pipeline Terminus Site.

(4) Groundwater Leases and Permits. Groundwater Leases sufficient for the production of the Baseline Annual Volume shall be in full force and effect, and there shall be no material breach or event of default existing under such Groundwater Leases sufficient for the production of the Baseline Annual Volume by any party thereto. The Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit shall constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual Volume and to continue such pumping, withdrawal and transportation, subject only to the terms and conditions of such permits, for a term extending to or beyond September 11, 2044 (in the case of the Groundwater Drilling and Operating Permit) and to or beyond September 15, 2034 (in the case of the Groundwater Transportation Permit). No other legal authority shall be required for such pumping, withdrawal and transportation from the POSGCD or any other Governmental Body.

(5) Groundwater Lease Conveyance Agreement. The Groundwater Lease Conveyance Agreement shall be in full force and effect, and there shall be no material breach or event of default existing thereunder by either party thereto.

(6) Raw Groundwater Parameters. The Project Company shall have drilled additional test wells and tested all additional samples of Raw Groundwater in the Well Field to the extent reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(7) Project Site Conditions. The Project Company shall have made all soil test borings in the Project Sites and made all Project Site inspections and reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(8) Land Use Proceedings and Government Approvals. The Project Company shall have conducted and completed all zoning, planning and land use proceedings, and shall have submitted applications for and obtained all

Governmental Approvals required to be obtained, for the commencement of construction of the Project.

(9) Public-Private Partnership Framework Agreement and Water Transportation Agreement. The Public-Private Partnership Framework Agreement and the Water Transportation Agreement shall have been duly authorized, executed and delivered by the parties thereto.

(10) Design Build Contract and Design Build Contractor Substitution Agreement. The Design Build Contract shall have been duly authorized, executed and delivered by the Water Supply Corporation and the Design Build Contractor, and the Design Build Contractor Substitution Agreement (in the form set forth as Transaction Form B) shall have been duly authorized, executed and delivered by the Water Supply Corporation, the Design Build Contractor and SAWS.

(11) Required Construction Period Insurance. The Project Company shall have submitted to SAWS certificates of insurance for all Required Construction Period Insurance.

(12) Representations. The Project Company shall have delivered to SAWS a certificate of an authorized officer to the effect that the representations of the Project Company set forth in Section 2.2 (Representations and Warranties of the Project Company) hereof are true and correct in all material respects as of the Financial Closing Date as if made on and as of the Financial Closing Date (except to the extent such representations expressly refer to an earlier or other date, in which case they shall be true and correct as of such earlier or other date).

(13) Legal Proceedings. There shall be no Legal Proceeding, at law or in equity, pending before or by any court or Governmental Body, which seeks to enjoin or restrict the construction or operation of the Project in the manner or for the purposes contemplated by this Water Transmission and Purchase Agreement that would substantially impair the Project Company's ability to perform the Contract Obligations. In addition, without limiting any of the foregoing, the Project Company shall have provided confirmation satisfactory to SAWS in its discretion that the litigation involving Blue Water Systems, LP, as described in Appendix 21 (Certain Litigation Matters), shall have been resolved to the satisfaction of SAWS in its discretion, including, at a minimum, a copy of the final unappealable judgment dismissing such litigation with prejudice.

(14) Financial Condition. The Project Company shall provide financial statements of the Project Company and Garney Holding Company, audited if available, for the most recently completed fiscal year and quarterly period. There shall not have occurred any change, financial or otherwise, in the condition of the Project Company since the Contract Date, or in the condition of Garney Holding Company since the Conforming Contract Amendment Date, that would materially and adversely affect the ability of the Project Company or Garney Holding Company to perform their respective obligations under this Water Transmission and Purchase Agreement, the Guaranty Agreement, the Groundwater Lease Conveyance Agreement or any other Transaction Agreement.

(15) Project Company Counsel Opinion. The Project Company shall deliver to SAWS such favorable opinions of counsel for the Project Company, in customary form for project financing transactions, as to this Water

Transmission and Purchase Agreement, any agreements made pursuant hereto, matters of law covered by the representations of the Project Company set forth in Section 2.2(A), (B), (C), (D) and (E) (Representations and Warranties of the Project Company), and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates. Such opinions shall further state in substance that the Project Company owns the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and has the right under the leasehold estate granted by the Groundwater Lease Conveyance Agreement to produce Raw Groundwater from the Well Field Facilities Site and transport such Raw Groundwater through the Transmission Pipeline to the Project Company Storage Tank.

(16) Blue Water Vista Ridge, LLC Counsel Opinion. The Project Company shall deliver to SAWS such favorable opinions of counsel for Blue Water Vista Ridge, LLC, in customary form for project financing transactions, as to the Groundwater Lease Conveyance Agreement and the Groundwater Supply Agreement, any agreements made pursuant thereto, matters of law covered by the legal representations of Blue Water Vista Ridge, LLC set forth therein, and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates.

(17) Water Supply Corporation Counsel Opinion. The Project Company shall deliver to SAWS a letter from counsel for the Water Supply Corporation substantially in the form attached as Transaction Form F (Opinion of Counsel to the Water Supply Corporation).

(18) Project Real Property Ownership. The Project Company shall have delivered a certificate to SAWS, as of the Financial Closing Date, as to which elements of the Project Real Property are owned by the Project Company and which elements are owned by the Water Supply Corporation, together with appropriate evidence thereof.

(19) Financial Close. Financial Close shall have occurred. In connection therewith:

(a) Financial Close Defined. Financial Close shall be deemed to have occurred when (1) the Senior Secured Credit Facility has been duly authorized, executed and delivered by the parties thereto, (2) the "Initial Funding Date" has occurred under the Senior Secured Credit Facility, (3) the Equity Contribution Agreement has been duly authorized, executed and delivered by the parties thereto, and (4) the other requirements of this Section 4.1(B) (Financial Closing Date Conditions Defined) have been met.

(b) SAWS Review. The Project Company shall provide to SAWS for its review, reasonably in advance of Financial Close, copies of the draft Senior Debt Financing Agreements.

(c) Financial Model. The Project Company shall have submitted to SAWS a financial model (the "**Financial Close Financial Model**") meeting the requirements of this Section 4.1(B)(19)(c) (Financial Model). The Financial Close Financial Model:

(1) Shall be prepared by or on behalf of the Project Company in good faith and in accordance with generally accepted standards prevailing for



the preparation of similar models in connection with the project financing of major public works projects of a similar size;

(2) Shall be audited and verified by an independent recognized model auditor;

(3) Shall fairly disclose all material cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Water Transmission and Purchase Agreement and by shareholders in purchasing Shares;

(4) Shall be the financial model that was used as the basis for the decision by the Senior Debt Creditors to enter into the Senior Debt Financing Agreements; and

(5) Shall be prepared in a format and using a methodology consistent with the Contract Date Financial Model so as to enable the proper determination of the Target Equity Return Amount.

SAWS shall have the right to review and comment on the Financial Close Financial Model to ensure that it was prepared in a manner consistent with the Contract Date Financial Model. This Financial Closing Date Condition shall not be deemed to have been satisfied until the parties execute a Contract Administration Memorandum which reflects the discount rate and the pre-tax internal rate of return generated by the Financial Close Financial Model and refers to the appropriate Financial Close Financial Model tabs and rows, as further described in Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) and Section 23.1(B) (Project Assets Purchase Price). Upon the execution of the Contract Administration Memorandum, this Water Transmission and Purchase Agreement shall be deemed to be amended to reflect such references, rate of return and discount rate. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Close Financial Model, and shall not be entitled to any compensation from or other redress against SAWS in relation to any loss or damage that it suffers in consequence of such error or omission. In no event shall the agreement of the parties to establish the Financial Close Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(d) Creditors' Remedies Agreement, Credit Agreement, Equity Contribution Agreement and Depositary Agreement. The Creditors' Remedies Agreement, the Credit Agreement, Equity Contribution Agreement and the Depositary Agreement shall have been duly authorized, executed and delivered by the parties thereto.

(e) All Conditions. The parties acknowledge and agree that the conditions itemized in Section 4.1(B) (Financial Closing Date Conditions Defined), other than Section 4.1(B)(19) (Financial Close), are independent of the Financial Close, and must be satisfied in order for the Financial Closing Date to be established, irrespective of whether such conditions are or are not prerequisites of Financial Close.

(f) Financial Close Contract Administration Memorandum. On or promptly following the Financial Closing Date, the parties shall execute a

Contract Administration Memorandum which confirms that all of the Financial Closing Date Conditions were satisfied, specifies the Financial Closing Date and reflects the parties' acknowledgement and agreement that Financial Close has been deemed to have occurred.

(20) Amended Guaranty Agreement. The amendment to the Guaranty Agreement in the form set forth in Transaction Form A (Garney Guaranty Agreement) shall have been duly authorized, executed and delivered by the parties thereto.

(21) Acceptability and Effectiveness of Documents. Each of the agreements, documents and instruments identified in Section 4.1(B) (Financial Closing Date Conditions Defined) shall have terms and conditions that are materially consistent with this Water Transmission and Purchase Agreement; shall not materially and adversely affect the rights and obligations of SAWS hereunder; and shall be valid, in full force and effect and enforceable against each party thereto on the Financial Closing Date. No such agreement, document or instrument shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Financial Closing Date, no party to any such document, instrument or agreement shall be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(C) Official Certificate as to Certain Matters. The conditions specified in subsections (1), (4), (6), (7), (8), (12), (13) and (14) of Section 4.1(B) (Financial Closing Date Conditions Defined) shall be deemed to have been satisfied upon the delivery of a certificate of a duly authorized officer of the Project Company confirming the matters set forth in such certificates, absent manifest error or credible evidence of fraud.

(D) Expenses. All costs and expenses incurred by the Project Company in performing the Development and Financing Work shall be for the account of the Project Company and shall not be reimbursable by SAWS, except as and to the extent provided in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) in the event SAWS exercises its right to terminate this Water Transmission and Purchase Agreement during the Development and Financing Period.

SECTION 4.2. SAWS DEVELOPMENT AND FINANCING PERIOD RESPONSIBILITIES AND RIGHTS.

(A) Initial Senior Debt. In connection with the Initial Senior Debt, SAWS at its own cost and expense shall:

(1) SAWS Information. Cooperate with and assist the Project Company in connection with the issuance of the Initial Senior Debt by providing any information, certifications or documents that are in SAWS possession and that are reasonably required in connection with the issuance by the Project Company of the Initial Senior Debt.

(2) Representations. Deliver to the Project Company a certificate of an authorized officer to the effect that the representations of SAWS set forth in Section 2.1 (Representations and Warranties of SAWS) hereof are true and correct in all material respects as if made on and as of the Financial Closing Date.

(3) SAWS Counsel Opinion. Deliver to the Project Company and to the Senior Debt Creditors the opinion of counsel for SAWS, in the form set forth in Transaction Form K (Opinion of Counsel to SAWS), together with appropriate certified authorizing resolutions and incumbency certificates.

(4) Modifications to this Water Transmission and Purchase Agreement. Make such modifications, corrections and clarifications to this Water Transmission and Purchase Agreement, the Project Real Property Conveyance Agreement, the Groundwater Supply Agreement or any other agreement directly related thereto to which SAWS is a party as may reasonably be requested by the Project Company to facilitate the issuance of the Initial Senior Debt, except that no such modification, correction or clarification shall increase or potentially increase the cost of Product Water to SAWS, reduce the economic benefit of the Project to SAWS, or materially and adversely affect the rights and obligations of SAWS hereunder.

(B) Failure of Compliance by SAWS. No failure by SAWS for any reason to comply with its obligations under Section 4.2(A) (Initial Senior Debt) shall constitute a breach by SAWS of this Water Transmission and Purchase Agreement or an Event of Default by SAWS hereunder. If, however, (1) SAWS fails for any reason to comply with such obligations within 30 days following receipt of a written request for the items specified in Section 4.2(A) (Initial Senior Debt), and (2) the Project Company shall have satisfied the Financial Closing Date Conditions (other than Section 4.1(B)(19) (Financial Close)), SAWS shall be deemed to have exercised its right to terminate this Water Transmission and Purchase Agreement for convenience as provided in Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period), and shall pay the Project Company the termination payment specified in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) (as applicable to the date of termination) within 60 days following receipt of such written request.

### SECTION 4.3. CLOSING THE DEVELOPMENT AND FINANCING PERIOD.

(A) Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date. The Project Company shall provide SAWS with periodic reports regarding the satisfaction of the Financial Closing Date Conditions, and shall give SAWS prompt written notice when all of the Financial Closing Date Conditions have been achieved. Upon the satisfaction or waiver by SAWS of the Financial Closing Date Conditions, the parties shall hold a formal closing at a location reasonably determined by SAWS acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Financial Closing Date has occurred. The Construction Period shall thereupon commence. The date of such closing shall be the “**Financial Closing Date**” hereunder. On or promptly following the Financial Closing Date, the Project Company shall deliver to SAWS copies of the executed Senior Debt Financing Agreements (in the case of the Senior Secured Credit Facility, to the extent not already delivered to SAWS in final form as of the Financial Closing Date in accordance with Section 4.1(B) (Financial Closing Date Conditions Defined)) and all related closing documents provided in connection with Financial Close.

(B) Financial Closing Longstop Date Defined. The “**Financial Closing Longstop Date**” shall mean the date that is 910 days following the Contract Date. The Financial Closing Longstop Date is not subject to extension for any reason.

(C) Failure by the Project Company to Satisfy the Financial Closing Date Conditions. If, by the Financial Closing Longstop Date, the Project Company fails to satisfy all of the Financial Closing Date Conditions, and any such failure has not been waived by SAWS, SAWS may terminate this Water Transmission and Purchase Agreement pursuant to Section

4.4(D) (SAWS Termination After the Financial Closing Longstop Date). No such failure shall constitute a breach by the Project Company of this Water Transmission and Purchase Agreement or a Project Company Event of Default. SAWS shall not have any payment, compensation, reimbursement or other obligation to the Project Company on account of any such failure.

SECTION 4.4. SAWS CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.

(A) SAWS Convenience Termination Option Generally. At any time from the Contract Date until the Financial Closing Date, SAWS shall have the right, exercisable in its discretion for any reason by written notice to the Project Company, to terminate this Water Transmission and Purchase Agreement; provided, however, that, SAWS shall not exercise such termination option during the period between the issuance of any preliminary official statement or offering or placement memorandum relating to the Initial Senior Debt through the Financial Closing Date. The date of delivery of any such written termination notice shall be the Termination Date hereunder. The execution of the Senior Secured Credit Facility shall not limit the rights of SAWS under this Section 4.4 in any manner.

(B) SAWS Termination On or Before the Financial Closing Longstop Date. If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4 (A) (SAWS Convenience Termination Option Generally) on or before the Financial Closing Longstop Date, SAWS shall pay the Project Company, within 60 days following the Termination Date, an amount equal to Project Company Reimbursable Costs. Concurrently with payment by SAWS to the Project Company of the termination payment due upon any convenience termination of this Water Transmission and Purchase Agreement under this Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) and subject to Section 26.13 (SAWS' Confidentiality Obligations), the Project Company shall deliver to SAWS copies of, and transfer title to, all of the property developed or acquired during the period commencing on the Contract Date and ending on the Termination Date that was funded by the Project Company Reimbursable Costs, including designs, studies, surveys, professional work product, contract rights, and interests of any kind in real property. Such property may be used by SAWS thereafter for any purpose, but without liability of the Project Company with respect thereto. All such property (1) shall be delivered without any representation or warranty as to its content or conclusions, including title or the practicability or feasibility of the completion or operation of the Project, and (2) shall exclude any property or contract rights to Raw Groundwater that was not funded by the Project Company Reimbursable Costs.

(C) Project Assumption Fee. If, at any time within five years following termination of this Water Transmission and Purchase Agreement pursuant to Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date), SAWS undertakes a project substantially similar to the Project, SAWS shall give prompt notice thereof to Garney Holding Company and shall promptly pay the Project Company a project assumption fee of \$10,000,000. SAWS shall be deemed to have undertaken a project substantially similar to the Project only if (1) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement with Blue Water Vista Ridge, LLC or any Affiliate (or an intermediary acting on behalf of Blue Water Vista Ridge, LLC or any Affiliate, or a successor to all or substantially all of the business or assets of Blue Water Vista Ridge, LLC) for the purchase of Raw Groundwater and an assignment of permits under an arrangement similar in substance to that contemplated by the Groundwater Lease Conveyance Agreement, and (2) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement for the construction of a transmission pipeline system similar to the Transmission Pipeline System to transport such Raw Groundwater (treated or untreated) to the SAWS Distribution System.

(D) SAWS Termination After the Financial Closing Longstop Date. If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally) after the Financial Closing Longstop Date, (1) SAWS shall have no payment, compensation, reimbursement or other obligation to the Project Company, and (2) the Project Company shall pay SAWS an amount equal to SAWS Reimbursable Costs.

SECTION 4.5. PROJECT COMPANY CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.

At any time from the Conforming Contract Amendment Date until the Financial Closing Date, the Project Company shall have the right, exercisable in its discretion for any reason by written notice to SAWS, to terminate this Water Transmission and Purchase Agreement. The date of delivery of any such written notice shall be the Termination Date hereunder. In the event the Project Company exercises its termination option pursuant to this Section, the Project Company shall pay the SAWS, within 60 days following the Termination Date, an amount equal to SAWS Reimbursable Costs.

SECTION 4.6. PROJECT COMPANY REIMBURSABLE COSTS.

(A) Project Company Reimbursable Costs Defined. “**Project Company Reimbursable Costs**” shall mean reasonable costs and expenses paid or incurred by the Project Company directly and solely in connection with the performance of the Development and Financing Work from the Contract Date through the Termination Date or the Financial Closing Longstop Date (whichever is earlier), as more particularly described in Appendix 18 (Reimbursable Costs Payable on Convenience Termination During the Development and Financing Period). The maximum amount of Project Company Reimbursable Costs is \$40,100,000.

(B) Cost Records and Reporting. During the Development and Financing Period, the Project Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the Development and Financing Work which the Project Company has performed since the Contract Date, the costs of which would constitute Project Company Reimbursable Costs if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period). All such financial records of the Project Company shall be maintained in accordance with generally accepted accounting principles and auditing standards. In addition, on or before the fifteenth day of each month following the end of each quarter after the Conforming Contract Amendment Date, the Project Company shall provide to SAWS a general summary of the Development and Financing Work undertaken in the prior quarter and a reasonable estimate of its costs, a summary of the Development and Financing Work expected to be undertaken in the current quarter and the immediately following quarter, and an estimate of the percentage of the Development and Financing Work that has been completed.

SECTION 4.7. SAWS REIMBURSABLE COSTS.

(A) SAWS Reimbursable Costs Defined. “**SAWS Reimbursable Costs**” shall mean reasonable costs and expenses paid or incurred by SAWS directly and solely in connection with this Water Transmission and Purchase Agreement from the Contract Date through the Termination Date, as more particularly described in Appendix 18 (Reimbursable Costs Payable on Convenience Termination During the Development and Financing Period). The maximum amount of SAWS Reimbursable Costs is \$2,000,000.

(B) Cost Records and Reporting. During the Development and Financing Period, SAWS shall prepare and maintain proper, accurate and complete books and records of the cost and description of the work which SAWS has performed since the Contract Date, the costs of which would constitute SAWS Reimbursable Costs (1) if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4(D) (SAWS Termination After the Financial Closing Longstop Date), or (2) the Project Company were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period). All such financial records of SAWS shall be maintained in accordance with the accounting principles and auditing standards under which SAWS financial records are generally kept. In addition, on or before the fifteenth day of each month following the end of each quarter after the Contract Date, SAWS shall provide to the Project Company a general summary of all such work undertaken in the prior quarter, and a reasonable estimate of its costs, and a summary of all such work expected to be undertaken in the current and immediately following quarter.

SECTION 4.8. EARLY CONSTRUCTION.

Nothing in this Water Transmission and Purchase Agreement shall be construed to prohibit (1) the Project Company, at its risk, cost and expense, from beginning construction of the Project Improvements before the Financial Closing Date, or (2) SAWS, at its risk, cost and expense, from beginning construction of the SAWS Interconnection Improvements before the Financial Closing Date, but no such costs or expenses shall constitute Project Company Reimbursable Costs or SAWS Reimbursable Costs.

ARTICLE 5

CONTRACT OBLIGATIONS GENERALLY

SECTION 5.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Project Real Property Ownership. The Project Real Property shall be owned by the Project Company or the Water Supply Corporation, as the Project Company may determine.

(B) Project Company. The Project Company shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, including those relating to the Project Company Storage Tank, (1) obtain and maintain the rights to all groundwater and Governmental Approvals relating thereto required to meet the Performance Guarantees, (2) permit, design, construct, finance, operate, maintain, repair, replace and manage the Project, and (3) produce, supply, make available and sell Product Water to SAWS. The parties acknowledge that Project Company is not obligated under this Water Transmission and Purchase Agreement to construct the SAWS Interconnection Improvements.

(C) SAWS. SAWS shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, (1) construct the SAWS Interconnection Improvements, and (2) purchase and take delivery of Product Water.

(D) Product Water Ownership. SAWS shall become the owner of all Product Water at the Product Water Delivery Point. The Project Company shall have no rights with respect to any effluent resulting from the use of Product Water.

(E) Risk of Loss of Product Water. The Project Company shall bear the risk of loss of Product Water at all locations up to the Product Water Delivery Point, beyond which SAWS shall bear the risk of loss.

(F) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Unit Price or otherwise.

(G) Grants and Subsidies Benefit SAWS. All grants, subsidies or other payments in aid of construction or operation made by any Governmental Body with respect to the Project shall be for the exclusive account of SAWS, whether paid or made to the Project Company, SAWS or any other person. The Project Company shall cooperate with SAWS in obtaining all such grants, subsidies or other payments that are available during the Term. This Section does not apply to the proceeds of a Refinancing.

(H) Public Communications. Public communications concerning the Project shall be handled by the parties in accordance with the principles set forth in Appendix 15 (Public Communications).

SECTION 5.2. PROJECT COMPANY ASSUMPTION OF RISK.

(A) General Risk Assumption. Except as provided in Section 5.3 (Exceptions to Project Company Assumption of Risk), Article 16 (Uncontrollable Circumstances), and any provision of this Water Transmission and Purchase Agreement specifically relating to Uncontrollable Circumstances, all risks, costs and expenses in relation to the performance by

the Project Company of its obligations under this Water Transmission and Purchase Agreement wherever occurring (whether in or outside the United States) are allocated to, and accepted by, the Project Company as its entire and exclusive responsibility. Without limiting the generality of the foregoing, the risks allocated to and accepted by the Project Company include all of the risks described or referred to in Sections 5.2(B), (C), (D), (E), (F) and (G), except as provided in the immediately preceding sentence.

including: (B) Change in Law Events. The occurrence of any change in Applicable Law,

(1) The coming into effect of any Applicable Law, whether enacted before or after the Contract Date;

(2) Any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date;

(3) Any non-issuance or delay of the TCEQ or any other Governmental Body in the issuance of any Governmental Approval required for or relating to the Project or the Contract Obligations;

(4) The imposition of any term, condition or requirement by any Governmental Body in connection with any Governmental Approval required for or relating to the Project or the Contract Obligations;

(5) The enactment or adoption of any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;

(6) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law;

(7) Changes in or denials of Governmental Approvals in consequence of the enforcement, lapse or invalidation of an existing Governmental Approval resulting from any action or inaction of the Project Company;

(8) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date; and

(9) Any change in Tax Law (except as provided in Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law).

(C) Raw Groundwater Events. Any act, event or circumstance pertaining to Raw Groundwater or the quantity or quality thereof available for pumping, treatment and conveyance to SAWS as Product Water hereunder, including:

(1) Quantity Events:

(a) The unavailability of Raw Groundwater in the quantities required to meet the Performance Guarantees due to any cause, including the absence of legal authority as described in item (3) of this subsection or the pumping and withdrawal of groundwater by any person from any aquifer in volumes that reduce the volume available to the Project Company; or



(b) The cost or difficulty of drilling for, pumping or withdrawing Raw Groundwater in the quantities required to meet the Performance Guarantees; or

(c) The capacity of, or the insufficiency of the number of, Wells initially built with the proceeds of the Initial Senior Debt; or

(d) The quantity of Raw Groundwater available at each Well when the Well is actually drilled; or

(e) Mistakes, errors or inaccuracies for any reason in any pilot testing or other investigations performed by the Project Company to determine the quantity of Raw Groundwater available for pumping and withdrawal at the Well Field.

(2) Quality Events:

(a) The contamination of Raw Groundwater due to any cause; or

(b) Any parameters or characteristics of Raw Groundwater, whether known or unknown or anticipated or unanticipated on the Conforming Contract Amendment Date.

(3) Regulatory Events. In connection with the Groundwater Drilling and Operating Permit, the Groundwater Transportation Permit, or any other permit, license or other Governmental Approval required to perform the Contract Services or meet the Performance Guarantees:

(a) Loss of Authority. The non-issuance, revocation, suspension, withdrawal or expiration for any reason of legal authority to act;

(b) Reduction in Capacity. The reduction for any reason in permitted water drilling, operating or transportation capacity by the POSGCD or any other Governmental Body;

(c) Stringency of Water Quality Standards. The establishment of new or more stringent standards for public drinking water;

(d) New Terms. The establishment of new or changed terms in permitted authority to act;

(e) Taxes. The imposition of new or changed Taxes; or

(f) Procedures. The establishment of new or more burdensome procedural requirements, such as testing, reporting and inspections.

(D) Force Majeure Events. Any force majeure event ("**Force Majeure Event**"), including the following:

(1) naturally occurring events, including any weather or climate event or circumstance, underground movement, earthquakes or earth movement, lightning, fires, tornados, hurricanes, floods, epidemics and other acts of God;

- (2) explosion, sabotage, acts of a declared public enemy, extortion, insurrection, riot or civil disturbance;
- (3) war, civil war or armed conflict and related causes;
- (4) terrorism arising from nuclear, biological or chemical materials;
- (5) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)); or
- (6) nuclear explosion or nuclear, radioactive, chemical or biological contamination.

(E) Project Site and Project Site Lessor Risks. Any act, event or circumstance relating to any Project Site, Project Site Lease or Project Site Lessor, including:

- (1) The failure or impairment of title to or any other interest in any Project Site, or the foreclosure of any mortgage on or security interest in any Project Site;
- (2) The sale, bankruptcy, reorganization, merger or insolvency of any Project Site Lessor;
- (3) A breach or default by any party under any Project Site Lease or under any other agreement between any Project Site Lessor and the Project Company or any Project Company Affiliate; or
- (4) The denial, modification or change in a term or condition of any Applicable Law, Governmental Approval or any other law, regulation license, permit or approval affecting any of the Project Sites or any Raw Groundwater.

(F) Other Circumstances. Any other act, event or circumstance that is or may be within the control or management of the Project Company or that is or may be outside the control or management of the Project Company, including:

- (1) A third party Legal Proceeding, or an injunction or similar order issued by a Governmental Body;
- (2) the failure of any appropriate Governmental Body or utility having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project which are required for the performance of this Water Transmission and Purchase Agreement;
- (3) the failure of a Project Contractor or Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to;
- (4) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;
- (5) a violation of Applicable Law by a person other than SAWS, the Project Company or a Project Company Person;

- (6) the existence of a Regulated Site Condition affecting the Project or the Project Sites;
- (7) the existence of a Differing Site Condition affecting the Project or the Project Sites;
- (8) contamination of the Project Sites from groundwater, soil or airborne Regulated Substances migrating from any source in or outside of the Project Sites;
- (9) any act, event or circumstance that would not have occurred but for the Project Company's failure to comply with its obligations hereunder;
- (10) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions;
- (11) any changes in the financial condition of the Project Company, its Affiliates or Subcontractors affecting the ability to perform their respective obligations;
- (12) the consequences of error, willful misconduct, neglect or omissions by the Project Company, a Project Contractor, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;
- (13) strikes, work stoppages or labor disputes;
- (14) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Project Company of performing the Contract Services;
- (15) mechanical failure of equipment; and
- (16) failure of the Project Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Contract Services.

Nothing in this Section 5.2(F) (Other Circumstances) shall be construed to limit the Project Company's right to compensation for operating, maintenance, repair and replacement costs as and to the extent provided in Section 17.3 (Operating and Maintenance Costs) and Appendix 19 (Compensable Costs and O & M Budget Panel).

(G) Risks Expressly Allocated to the Project Company Hereunder. Any act, event or circumstance as to which the Project Company assumes and is expressly allocated the risk under any other provision of this Water Transmission and Purchase Agreement, including (subject to Section 5.2(A) (General Risk Assumption)) those risks expressly allocated to the Project Company under:

- (1) Section 2.2(M) (Practicability of Performance)
- (2) Section 5.1(E) (Risk of Loss of Product Water)

- (3) Section 5.4(M) (Hazardous Substances Management)
- (4) Section 5.5(F) (Project Company Assumption of Permitting Risk for Construction Work Generally)
- (5) Section 5.6(B) (Sampling, Testing and Laboratory Work)
- (6) Section 7.1(A) (Project Company Financing)
- (7) Section 8.2(C) (Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation)
- (8) Section 9.14 (Hazardous Substance Management During the Operating Period)
- (9) Section 14.1(A) (Required Insurance)
- (10) Section 15.4 (Unavailability of Required Insurance)
- (11) Section 17.13 (Risk of Adverse Tax or Accounting Treatment)

(H) Additional Risks Expressly Assumed by Project Company. The Project Company expressly assumes the risk of any now pending or hereafter filed Legal Proceeding, at law or in equity, before or by any court or Governmental Body, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the Project or the Project Company, including, without limitation, those matters set forth in Appendix 21 (Certain Litigation Matters). Accordingly, the Project Company acknowledges and agrees that, notwithstanding the fact that the Project Company may incur any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, charge or expense resulting from or relating to any such matter, any adverse effect resulting from or relating to any such matter shall not constitute an Uncontrollable Circumstance, and there shall be no extension of Term or adjustment to the Unit Price or any other compensation obligation of SAWS hereunder.

SECTION 5.3. EXCEPTIONS TO PROJECT COMPANY ASSUMPTION OF RISK.

(A) SAWS Fault. The Project Company does not assume the risk of any SAWS Fault. If a SAWS Fault occurs, the Project Company shall be entitled to relief as and to the extent provided in Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Uncontrollable Circumstances Affecting Performance and Schedule. The Project Company does not assume the risk of Uncontrollable Circumstances as they may affect its performance and schedule obligations hereunder, and shall be entitled to relief upon the occurrence of an Uncontrollable Circumstance as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances), Section 10.9(A)(1) (Excused Supply Shortfall Units), Section 16.4(A) (Performance and Schedule Relief), and Section 17.3 (Operating and Maintenance Costs). Without limiting the Project Company's rights under Section 10.9 (Extension of Term), no Uncontrollable Circumstance shall entitle the Project Company to any compensation relief, except to the extent Compensable Costs payable under Appendix 19 (Compensable Costs and O & M Budget Panel) may include compensation for costs resulting from Uncontrollable Circumstances.

SECTION 5.4. CONSTRUCTION OF THE PROJECT.

(A) Commencement and Prosecution of Construction Work Generally. On the Financial Closing Date, the Project Company shall promptly proceed to undertake, perform and complete the Construction Work in accordance with the requirements of the Design Requirements and the Contract Standards.

(B) Payment of Costs. Except as otherwise specifically provided in this Water Transmission and Purchase Agreement, the Project Company shall pay directly, and SAWS shall have no responsibility for, all costs and expenses of the Construction Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Project Company; obtaining and maintaining the Required Insurance; Utility costs, financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Project Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Project Company of all Construction Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Substantial Completion, Acceptance and Final Completion.

(C) Protection of the Project Against Any Effect of SAWS Distribution System Operations; No SAWS Liability. As between SAWS and the Project Company, the Project Company shall design, construct, operate and maintain the Project in a manner such that the Project cannot be damaged or destroyed by any actions that SAWS may take, whether intentionally or unintentionally, or not take with respect to the operation or maintenance of the SAWS Distribution System, including the operation and maintenance of the SAWS Interconnection Improvements, the SAWS Interface Cabinet, or any other electrical, digital or mechanical operating interface between the SAWS Distribution System and the Project. SAWS shall have no liability to the Project Company for any damage to or destruction of the Project or otherwise resulting from or alleged to result from any SAWS actions or inactions with respect to the SAWS Distribution System.

(D) Project Company Control of the Construction Work; No SAWS Responsibility. The Project Company shall have total control of the Construction Work and shall effectively direct and supervise the Construction Work so that it is undertaken safely and in compliance with the terms of this Water Transmission and Purchase Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the Contract Standards or the fact that in negotiating this Water Transmission and Purchase Agreement SAWS participated in certain design review activities. Nothing in this Water Transmission and Purchase Agreement shall be interpreted as giving any responsibility for the Construction Work to SAWS, any SAWS Indemnitee, or the SAWS Engineer. Any SAWS rights of review and comment provided in this Water Transmission and Purchase Agreement with respect to any aspect of the Construction Work shall be for SAWS' benefit only, and no review or comment by the SAWS Representative shall in any way relieve the Project Company of its obligation for all aspects of the Project. The Project Company shall have no obligation to accept any SAWS comments or to propose any changes to the SAWS Representative.

(E) Electrical Power Required During Construction. The Project Company acknowledges that as of the Contract Date, there may be insufficient utility facilities available to supply the electrical power required for the construction of the Project. Accordingly, the Project Company shall be responsible for assuring the availability of all utilities (including on-site power generators) required for the performance of the Construction Work. All costs related to the supply of electrical power incurred in the performance of the Construction Work prior to the Commercial Operation Date shall be borne by the Project Company; provided, however,

that SAWS will be responsible for ensuring that electrical service is constructed and adequate to allow the Performance Tests to be performed in accordance with the Performance Test Protocol.

(F) Construction Work Reviews. During the Construction Period, SAWS shall have the right, but not the obligation, to: (1) attend design progress meetings; (2) attend preconstruction conferences; (3) attend construction progress meetings described in Section 4.6 (Construction Meetings and Reports) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (4) review the Construction Work for compliance with Appendix 3 (Technical Specifications). The Project Company shall consider and address in good faith any comments or concerns raised by SAWS in connection with such matters in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(G) Project Schedule. The Project Company shall deliver and update the Project Schedule in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion). Any failure to do so shall constitute a Project Company Remediable Breach.

(H) Construction of Tie-Ins and Connection to SAWS Interconnection Improvements. In performing the Construction Work and in preparing and updating the Project Schedule, the Project Company shall take into account the time and work necessary for both parties relating to connections and tie-ins with the SAWS Interconnection Improvements required to achieve Substantial Completion of the Project, and required to conduct the Performance Test.

(I) SAWS Engineer. SAWS may employ or engage the services of an independent engineering firm (the employee or firm being referred to herein as the “**SAWS Engineer**”) to act as its agent and to assist SAWS and its staff in connection with this Water Transmission and Purchase Agreement. Subject to the SAWS Engineer entering into a confidentiality agreement reasonably acceptable to the Project Company for the protection of Confidential Project Company Information, the Project Company shall cooperate with the SAWS Engineer in performing its duties, and provide the SAWS Engineer all information required hereunder or otherwise reasonably requested in such connection. The obligation of the Project Company to cooperate with the SAWS Engineer as provided in this Section shall not (a) be construed to create any SAWS rights or obligation in addition to those specifically provided herein, or (b) obligate the Project Company to accept any comments from or propose any changes to the SAWS Engineer. The services of the SAWS Engineer may include:

- (1) reviewing and monitoring the progress of design and construction;
- (2) reviewing a proposed Design Requirements Change;
- (3) reviewing plans, drawings and specifications for compliance with the Design Requirements;
- (4) reviewing the Performance Test Protocol, the performance of the Performance Tests, and the reports prepared with respect thereto;
- (5) reviewing Uncontrollable Circumstance claims and relief requests by the Project Company; and
- (6) reviewing matters related to proposed Capital Modifications.

(J) Fees. The fees and expenses of the SAWS Engineer shall be borne by SAWS.

(K) Operating Protocol. The Project Company shall deliver an initial draft of the Operating Protocol to SAWS at least 30 days prior to Substantial Completion.

(L) SAWS Administrative Space During the Construction Period. The Project Company shall provide construction office space adjacent to the principal construction offices of the Project Company for the exclusive use of SAWS' compliance personnel and advisors and the SAWS Engineer. The cost related to SAWS' use of such office space (including janitorial services to be provided by the Project Company) has been priced into the Monthly Water Purchase Payments.

(M) Hazardous Substances Management. As between the parties, the Project Company shall be responsible for, and bear the risk, cost and expense of, managing and disposing of Hazardous Substances arising in connection with the Project after the Contract Date; provided, however that nothing herein shall excuse SAWS from responsibility for any Hazardous Substances released by, or attributable to, actions of SAWS. The Project Company shall develop and maintain (1) a Hazardous Substance Management Program; and (2) a Response Plan.

#### SECTION 5.5. CONSTRUCTION GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Construction Governmental Approvals, and shall pay all fees, costs and charges due in connection therewith.

(B) Copies. The Project Company shall make available for review and copying by SAWS, upon request, copies of all the Construction Governmental Approvals and related applications.

(C) Review and Comment. The Project Company shall manage the process of obtaining the Construction Governmental Approvals in a manner which affords SAWS a reasonable opportunity, in advance of submittal, to review and comment upon all material documentation submitted to and issued by the Governmental Body in connection therewith.

(D) SAWS Interests. The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Construction Governmental Approvals or the terms and conditions thereof that would impose any cost or material burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. The Project Company shall notify SAWS of any action which would have the effect described in the preceding sentence promptly upon having knowledge thereof, and SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have any such effect.

(E) Limited Construction Governmental Approval Assistance by SAWS. SAWS shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Construction Governmental Approvals required under this Section, including attending public hearings and meetings of the Governmental Bodies charged with issuing the Construction Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within SAWS' custody or control or are reasonably obtainable by SAWS and which are reasonably

required for such purpose; provided, however, that SAWS' obligation to provide such reasonable assistance shall be limited, in light of the Project Company's role as the exclusive developer of the Project, only to those actions which are legally required to be taken by SAWS as permittee or which involve providing information which is in the possession of or reasonably obtainable by SAWS. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to SAWS, and SAWS shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate SAWS to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Construction Governmental Approvals. SAWS shall not take any action, however, which seeks to cause the denial or delay of any application for any Construction Governmental Approval.

(F) Project Company Assumption of Permitting Risk for Construction Work Generally. The Project Company explicitly assumes the risk of obtaining and maintaining the Construction Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body. In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Construction Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Obligations, all of which costs or risks shall be for the account of and borne by the Project Company.

(G) Permits and Approvals Required Upon Completion. Section 8.2 (Interim Operations Approval and Project Company Public Water Supplier Designation) shall apply with respect to Construction Governmental Approvals required upon Substantial Completion and as conditions to the introduction of Product Water into the SAWS Distribution System.

#### SECTION 5.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Obligations in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including all registration, licensing and certification requirements imposed by any Governmental Body. The Project Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Project, Raw Groundwater, Product Water, Project By-Products, air emissions, noise, light, emissions and odor. The Project Company shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. At the request of SAWS, the Project Company shall participate in general regional facility evaluation and water quality surveys conducted by the TCEQ or the EPA.

(B) Sampling, Testing and Laboratory Work. The Project Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be TCEQ, State and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Management Practice. All sampling and test data shall be available for review by, and reported to, SAWS in accordance with Section 9.8(D) (Reports to Governmental Bodies). The Project Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Project Company shall permit SAWS, at SAWS' expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Project, laboratory services available to the Project Company, or otherwise.



(C) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Obligations, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Obligations, the Project Company shall, in addition to any other duties which Applicable Law may impose:

- (1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;
- (2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;
- (3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to SAWS; and
- (4) Promptly upon receipt thereof, provide SAWS with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish SAWS with a prompt written notice describing the occurrence of any event or the existence of any circumstance which results, or could reasonably be expected to result, in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. The Project Company shall provide SAWS a reasonable opportunity to review and comment on any proposed Project Company response to any material non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. In the event that the Project Company, Project Contractor or any Subcontractor fails at any time to materially comply with Applicable Law with respect to the Contract Obligations, the Project Company shall:

- (1) Correct such failure and resume compliance with Applicable Law as soon as practicable;
- (2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) Indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) Make all commercially reasonable changes in performing the Contract Obligations which are necessary to assure that the failure of compliance with Applicable Law will not recur; and

(5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, Project Contractor or any Subcontractor to comply with Applicable Law.

(F) No Nuisance Covenant. The Project Company shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur, the Project Company shall, as soon as practicable remedy the condition, pay any fines or penalties relating thereto, make all commercially reasonable capital investments, improvements or modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless SAWS and SAWS Indemnitees from any Loss-and-Expense relating thereto in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify).

SECTION 5.7. PROJECT COMPANY-REQUESTED DESIGN REQUIREMENTS CHANGES.

The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Design Requirements Changes proposed to be made at the Project Company's request. The notice shall contain sufficient information for SAWS to determine that the Project Company-Requested Design Requirement Change: (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Project; (3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Water Transmission and Purchase Agreement; and (4) is feasible. SAWS shall have the right in its discretion to accept, reject or modify any Design Requirement Change to the Design Requirements set forth in Appendix 3 (Technical Specifications) proposed by the Project Company. Any such Design Requirement Change accepted or modified by SAWS, and any related change in the terms and conditions of this Water Transmission and Purchase Agreement, shall be reflected in a Water Transmission and Purchase Agreement Amendment.

SECTION 5.8. SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES.

SAWS shall have the right to direct the Project Company to make Design Requirements Changes at any time prior to the Commercial Operation Date in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Water Transmission and Purchase Agreement ("**SAWS-Requested Design Requirement Change**"), subject to the terms of Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs resulting from any such SAWS-Requested Design Requirement Change under this Section, shall at the discretion of SAWS be financed by the Project Company as and to the extent provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications) or shall be paid by SAWS as a Direct Payment. Any such Design Requirement Change and any related change in the terms and conditions of this Water Transmission and Purchase Agreement shall be reflected in a Water Transmission and Purchase Agreement Amendment. SAWS shall have no obligation to initiate any SAWS-Requested Design Requirement Change under this Section.

SECTION 5.9. RESTRICTIONS ON SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES AND SAWS-REQUESTED CAPITAL MODIFICATIONS.

SAWS shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and the Project Company may refuse to implement, a SAWS-Requested Design Requirements Change or a SAWS-Requested Capital Modification which:

- (1) Would be contrary to Applicable Law, Good Engineering and Construction Practice, or Good Management Practice;
- (2) Would render any policy of Required Insurance void or voidable unless SAWS agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;
- (4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Water Transmission and Purchase Agreement which Governmental Approval would not, using reasonable efforts, be obtainable; or
- (5) Would materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Water Transmission and Purchase Agreement with respect to the Contract Obligations, unless the material and adverse effects of such requirement are remedied by SAWS to the Project Company's reasonable satisfaction.

SAWS shall enter into any agreement reasonably requested by the Project Company to protect its rights under this Section in connection with a proposed SAWS-Requested Design Requirement Change or SAWS-Requested Capital Modification.

SECTION 5.10. GOOD MANAGEMENT PRACTICE AND GOOD ENGINEERING AND CONSTRUCTION PRACTICE.

Good Management Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Management Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Management Practice and Good Engineering and Construction Practice (but not Good Management Practice and Good Engineering and Construction Practice as of the Conforming Contract Amendment Date) unless SAWS agrees to adjust the Unit Price (subject to Cost Substantiation) to account for such additional costs.

SECTION 5.11. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Obligations, including, to the extent available to the Project Company, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Obligations, this Water Transmission and Purchase Agreement, the Project Contracts, any Subcontract or any transactions in which SAWS has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirements Changes, SAWS Fault costs, or other adjustments to the Unit Price or other payments based on costs for which SAWS is responsible under this Water Transmission and Purchase Agreement. The Project Company shall produce

such financial books and records for examination and copying for all such purposes promptly upon request by SAWS. All such information upon delivery to SAWS shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP, to the extent applicable. The Project Company shall not be required to provide SAWS any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the tenth anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending for which such financial books and records are relevant. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Water Transmission and Purchase Agreement.

(B) Inspection, Audit and Adjustment. SAWS shall have the right, at its cost and expense, to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, and shall provide the results of such inspection or audit to the Project Company. If an inspection or audit reveals that the Project Company has overstated any component of the Monthly Water Purchase Payments, then the Project Company shall, at the election of SAWS, either immediately reimburse SAWS or adjust the Monthly Water Purchase Payments based on the overstated amount, plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to SAWS. If the overpayment exceeds 1% of the total amount that should have been properly paid by SAWS during the period audited, then the Project Company shall, in addition, reimburse SAWS for any and all fees and costs reasonably incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies SAWS may have hereunder, including remedies for a Project Company Event of Default. If an inspection or audit reveals that the Project Company has understated any component of the Monthly Water Purchase Payments, then the Project Company shall include the amount of the understated payment in the next Billing Period invoice for payment in the regular course under Section 17.9 (Billing and Payment).

#### SECTION 5.12. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Water Transmission and Purchase Agreement, the Project Company is obligated, subject to the terms and conditions hereof, to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. Except for document submittal governed by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), the Project Company agrees that all such documents shall be submitted to SAWS in digital form, unless copies are specifically required to be delivered under this Water Transmission and Purchase Agreement. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) SAWS. SAWS shall provide to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

SECTION 5.13. COMPLIANCE WITH SAWS POLICIES.

(A) Non-Discrimination. The Project Company, the Project Contractors and the Subcontractors (1) understand and agree to comply with the “Non-Discrimination Policy” of the City contained in Chapter 2, Article X of the City Code, and (2) agree not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this paragraph occurs, the Project Company, upon written notification by SAWS, shall commence compliance procedures within 30 days.

(B) Small, Minority and Women-Owned Business Opportunities. The Project Company acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman-owned Businesses (“**SMWB**”) to afford greater opportunity for such groups to obtain and participate in SAWS contracts. The Project Company agrees to establish SMWB outreach and goals for the Project similar to those employed by the SAWS SMWB Program. Facilitation of reasonable outreach to SMWB firms shall be accomplished by the following:

(1) Diversity Coordinator. Appointment by the Project Company of a diversity coordinator, who, along with his or her other duties at the Project Company, will work with the SAWS SMWB program manager to monitor and facilitate the Project Company’s progress in meeting its SMWB goals and compliance reporting requirements. The name, telephone number, and email address of the diversity coordinator shall be provided to SAWS. In the event that the diversity coordinator is no longer able to fulfill his or her duties, the Project Company shall appoint a new diversity coordinator as soon as possible, and supply the new diversity coordinator’s contact information to SAWS. This procedure shall remain in effect for the duration of the Term.

(2) Database and Sponsorship. Obtaining direct access to the South Central Texas Regional Certification Agency’s database, for the purposes of conducting reasonable means of outreach to SMWB firms, shall be accomplished through a corporate sponsorship agreement between Project Company and the South Central Texas Regional Certification Agency. The Project Company’s membership shall be renewed annually for the duration of the Term, until further notice, and proof of corporate membership shall be reported on an annual basis to the SAWS SMWB program manager.

(3) SMWB Participation Goals. The Project Company shall take reasonable steps to achieve 15% SMWB participation on the design component of the Construction Work; 15% SMWB participation on the construction phase of the Construction Work; and 15% SMWB participation in the Operating Work for the duration of the Term. The SMWB goal is expressed as a percentage of the total dollar amount involved in each of the three such categories of work.

(4) Compliance. SMWB firms must be certified through the South Central Texas Regional Certification Agency. Actual SMWB participation is the percent of SMWB participation that is actually awarded to the Project Contractors and Subcontractors that are awarded contracts in the three work categories. Within five days of a contract award, the Project Company shall report relevant SMWB information to SAWS.

(5) Reporting. On a bi-annual basis, the Project Company will provide SAWS with a SMWB plan showing how the SMWB goals are intended to be achieved for the appropriate ongoing phase of the project (design, construction, operating). Each bi-annual report will document how the SMWB plan goals were achieved through certification, contracts and actual payment evidence.

(6) Information. Electronic submittal of payment information will be accessed through a link on SAWS' "Business Center" web page. The Project Company and all Project Contractors and Subcontractors will be provided a unique log-in credential and password to access the SAWS S.P.U.R. System. The link may also be accessed through the following internet address: <https://saws.smwbe.com>. The Project Company and its Project Contractors and Subcontractors may contact the SMWB program manager at 210-233-3420 for assistance or clarification with issues specifically related to the SMWB Program and S.P.U.R. System reporting.

(C) Ethics. The Project Company shall comply with the following ethics obligations:

(1) Project Company's Warranty. Except to the extent permitted by Applicable Law, the Project Company warrants that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has employed or retained any company or person other than a bona fide employee working solely for the Project Company, to solicit or secure this Water Transmission and Purchase Agreement, and that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has for the purpose of soliciting or securing this Water Transmission and Purchase Agreement, paid or agreed to pay any company or person, other than a bona fide employee working solely for the Project Company or any of its Affiliates, any fee, commission, percentage, brokerage fee, gift, or any other consideration", contingent upon or resulting from the award or making of this Water Transmission and Purchase Agreement.

(2) Interest in SAWS Agreements Prohibited. No member of the Board of Trustees of SAWS, nor any officer, agent or employee of the Board of Trustees of SAWS, nor any officer or employee of the City, shall have a financial interest, direct or indirect, in any contract or agreement with SAWS, or shall be financially interested, directly or indirectly, in the sale to SAWS of any land, materials, supplies or service, except on behalf of the City or SAWS as an officer or employee. The Project Company shall cause any of its Affiliates that enter into a contract in connection with the Project to include a similar provision in each such contract.

(3) Gift Policy. SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of SAWS' Policy 2-17 "Procedures for Gift and Meal Policy" is available upon request.

(4) Ethics Hotline. SAWS Ethic Hotline for reporting suspected ethics violations is 1-800-687-1918.

SECTION 5.14. PROJECT COMPANY STORAGE TANK.

(A) Construction and Conveyance of Project Company Storage Tank. The Project Company Storage Tank initially constitutes part of the Project. Accordingly, the Project

Company shall design, construct and commission the Project Company Storage Tank in accordance with all provisions of this Water Transmission and Purchase Agreement applicable to the Project, and SAWS shall have all review, comment and other rights with respect thereto, including those set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), as it has with respect to the Project generally. The provisions of this Water Transmission and Purchase Agreement relating to acceptance, performance testing and final completion of the Project, including those provided in Appendix 5 (Performance Test Procedures and Standards), apply fully to the Project Company Storage Tank. On the Notice of Acceptance Date, the Project Company shall convey the Project Company Storage Tank and Terminus Site Lot 2 to SAWS.

(B) Operation, Maintenance and Insurance of the Project Company Storage Tank. The Project Company shall have full responsibility for the operation, maintenance and insurance of the Project Company Storage Tank and Terminus Site Lot 2 prior to the Notice of Acceptance Date. The Project Company hereby grants SAWS a license to access the Project Company Storage Tank and Terminus Site Lot 2 for purposes of inspection, coordination, testing, flushing and similar purposes in connection with SAWS rights and responsibilities with respect to the SAWS Interconnection Improvements and in anticipation of SAWS' assumption of operational responsibility for the Project Company Storage Tank following the Notice of Acceptance Date. On and after the Notice of Acceptance Date, SAWS shall have exclusive responsibility for operating, maintaining and insuring the Project Company Storage Tank.

SECTION 5.15. PROJECT COMPANY STORAGE TANK WARRANTIES.

(A) Project Company Storage Tank Warranties Defined. The Project Company warrants that: (i) all design work performed for the Project Company Storage Tank pursuant to this Water Transmission and Purchase Agreement shall conform to the requirements of this Water Transmission and Purchase Agreement, Good Industry Practice and all professional engineering principles generally accepted as standards of the industry in the State; (ii) the Project Company Storage Tank shall be free of defects, including design defects, errors and omissions; (iii) the Project Company Storage Tank shall be fit for use for the intended function; (iv) materials and equipment furnished for the Project Company Storage Tank under this Water Transmission and Purchase Agreement shall be of good quality and new; and (v) the Project Company Storage Tank shall meet all of the requirements of this Water Transmission and Purchase Agreement (the "**Project Company Storage Tank Warranties**").

(B) Warranty Inspection. At least three months prior to the expiration of the Project Company Storage Tank Warranties Term, SAWS shall notify the Project Company of a date or series of dates to occur no earlier than during the last two months prior to the expiration of the Project Company Storage Tank Warranties Term on which SAWS (and representatives of SAWS) and the Project Company shall conduct a joint inspection of the Project Company Storage Tank (the "**Project Company Storage Tank Warranty Inspection**"). If the Project Company fails to participate in such inspection SAWS shall proceed with the inspection without the presence of the Project Company who shall be deemed to have accepted the findings of the inspection. Any deficiency, defect, error, inaccuracy, shortcoming or noncompliance with the requirements of this Water Transmission and Purchase Agreement in the Project Company Storage Tank (fair wear and tear excepted) discovered prior to the expiration of the Project Company Storage Tank Warranty Period whether during such inspection or otherwise shall be a "**Project Company Storage Tank Defect**".

(C) Project Company Storage Tank Warranties Term. The Project Company Storage Tank Warranties shall expire one year following the Commercial Operation Date (the "**Project Company Storage Tank Warranties Term**"). If any part or component of the Project Company Storage Tank is replaced or repaired during the Project Company Storage Tank Warranties Term, then the Project Company Storage Tank Warranties Term in respect of such

part or component of the Project Company Storage Tank shall be extended for an additional 12 months from the date of replacement or repair.

(D) Correction of Non-Conforming Work.

(1) Within seven days of receipt by the Project Company of notice from SAWS specifying a Project Company Storage Tank Defect, the Project Company and SAWS shall agree when and how the Project Company shall remedy such violation in such manner and at such times as to minimize disruption to the operation of the Project; provided, however, that in case of an emergency requiring immediate corrective action, the Project Company shall forthwith implement such action as is prudent and shall immediately provide to SAWS details as to the nature of the emergency and the actions being taken. If the Project Company does not promptly and diligently effectuate such remedy within the agreed time, or should the Project Company and SAWS fail to reach such an agreement within such seven day period (or should SAWS disapprove of the actions being taken, in the case of emergency conditions), SAWS, after notice to Project Company, shall have the right to perform or have performed by third parties the necessary remedy, and the reasonable costs thereof shall be borne by the Project Company. In the event that SAWS expressly, in writing, waives the obligations of the Project Company to rectify a defect or deficiency in the Project Company Storage Tank, SAWS shall be entitled to an equitable and reasonable Direct Payment with respect to such waiver as a Compensation Adjustment Event.

(2) The Project Company shall be responsible for obtaining any required encroachment permit from SAWS and required consent from any other Persons, in connection with corrective work required to be performed pursuant to this Section. Project Company shall bear all costs of such corrective work, including additional testing and inspections, and shall reimburse SAWS or pay SAWS's expenses made necessary thereby.

(E) Subcontractor Warranties.

(1) Without in any way derogating from the Project Company's own representations and warranties and other obligations with respect to the Project Company Storage Tank, the Project Company shall obtain from all Subcontractors for the Project Company Storage Tank and cause to be extended to SAWS appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors: (a) shall be written so as to survive all SAWS and the Project Company inspections, tests and approvals; and (b) shall run directly to, and be enforceable by, the Project Company, SAWS and their respective successors and assigns. The Project Company hereby assigns to SAWS all of the Project Company's rights and interest in all extended warranties for periods exceeding the applicable Project Company Storage Tank Warranties Term which are received by the Project Company from any of its Subcontractors and shall cause each Subcontract to include terms and provisions pursuant to which Subcontractor consents to such assignment.

(2) Upon receipt from SAWS prior to expiration of the Project Company Storage Tank Warranties Term of notice of a failure of any part of the Project Company Storage Tank to satisfy any Subcontractor warranty, representation, guarantee or obligation, the Project Company shall be



responsible for enforcing or performing any such representation, warranty, guaranty or obligation, in addition to the Project Company's other obligations, including its direct Project Company Storage Tank Warranties, hereunder. The cost of any equipment, material, labor (including reengineering) or shipping shall be for the account of the Project Company and the Project Company shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

ARTICLE 6

SAWS OBLIGATIONS GENERALLY

SECTION 6.1. SAWS OBLIGATIONS GENERALLY.

SAWS, subject to and in accordance with the terms and conditions hereof and in addition to the obligations it has accepted elsewhere in this Water Transmission and Purchase Agreement, shall:

(1) Except with respect to the mitigation and other measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements), construct the SAWS Interconnection Improvements (excluding the Project Company Storage Tank and related improvements which are to be constructed by the Project Company), as provided in Section 6.2 (SAWS Interconnection Improvements), including obtaining all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained for such construction;

(2) Take delivery of and purchase the Product Water pursuant to Section 10.5 (SAWS Obligation to Take Delivery of and Purchase Product Water) in the applicable Billing Period if and to the extent Product Water is produced and available for delivery by the Project Company in such volume;

(3) Maintain and repair in good working order SAWS Interconnection Improvements that are material to the Project Company's performance of the Operating Work;

(4) In accordance with Section 9.4 (Utilities), secure and maintain throughout the Operating Period all electricity needed for the operation of the Project, it being understood that a failure in the supply of electricity provided to the Project shall constitute for all purposes under this Water Transmission and Purchase Agreement an Uncontrollable Circumstance;

(5) Pay the Monthly Water Purchase Payments and any other amounts due the Project Company; and

(6) Make available to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder.

SECTION 6.2. SAWS INTERCONNECTION IMPROVEMENTS.

(A) Design and Construction. In order to allow for Product Water to be taken delivery of by SAWS and introduced in the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement, SAWS, at its cost and expense, shall design and construct the SAWS Interconnection Improvements (excluding the Project Company Storage Tank, which is to be designed and constructed by the Project Company as part of the Project at the Project Company's cost and expense and conveyed to SAWS on the Notice of Acceptance Date, all as provided in Section 5.14 (Project Company Storage Tank). Appendix 13 (SAWS Interconnection Improvements) sets forth the general nature, capacity and functionality of SAWS Interconnection Improvements intended as of the Third Contract Amendment Date to be

constructed by SAWS. SAWS shall have complete discretion to design and construct the SAWS Interconnection Improvements in any manner it chooses, whether consistent or inconsistent with Appendix 13, so long as the SAWS Interconnection Improvements have the capacity to take delivery of Product Water in volumes and in a manner consistent with SAWS' Product Water purchase obligations under this Water Transmission and Purchase Agreement.

(B) Scheduled SAWS Interconnection Improvements Completion Date. SAWS shall cause construction of the SAWS Interconnection Improvements to be substantially complete, and capable of taking delivery of Product Water for purposes of commencing the Performance Test as described in Appendix 5 (Performance Test Procedures and Standards), by January 16, 2020 (the "**Scheduled SAWS Interconnection Improvements Completion Date**"). SAWS shall regularly apprise the Project Company as to the progress of construction.

(C) Completion Delay. A delay or failure by SAWS for any reason to complete construction of the SAWS Interconnection Improvements, to any extent or by any date, shall not be a breach of this Water Transmission and Purchase Agreement or a SAWS Event of Default. The parties acknowledge and agree, however, that a delay or failure by SAWS to complete the SAWS Interconnection Improvements may impede the ability of the Project Company on a timely basis to commence and complete the Performance Test or to achieve the Commercial Operation Date. Accordingly, subject to subsection (D) of this Section (Project Company Mitigation Measures) and to Section 26.4(A)(Mitigation by the Project Company):

(1) For each day during the period (a) commencing on the Scheduled SAWS Interconnection Improvements Completion Date and (b) ending on the day that the SAWS Interconnection Improvements are completed to the level required to allow the Project Company to begin, continue and complete the Performance Test, and on which the Project Company has achieved Substantial Completion and is prepared to commence the Performance Test, SAWS shall pay the Project Company, as a Direct Payment, an amount equal to the daily general conditions costs reasonably incurred by the Design Build Contractor attributable to the delay in beginning, continuing and completing the Performance Test; and

(2) For each day during the period (a) commencing on the day that the Project Company would have achieved the Commercial Operation Date and been able to make available Product Water but for the failure of SAWS for any reason to have completed construction of the SAWS Interconnection Improvements by the Scheduled SAWS Interconnection Improvements Completion Date to the level required to allow the Project Company to begin, continue and complete the Performance Test (but not earlier than April 15, 2020), and (b) ending on the Commercial Operation Date, Product Water in a volume up to the Baseline Daily Volume shall be deemed to have been made available, and SAWS shall pay the Project Company (1) the Capital and Raw Groundwater Unit Price, multiplied by (2) the Baseline Daily Volume (or, in the event restrictions are imposed on the production or transportation of Raw Groundwater or Product Water by any Governmental Body or under any Governmental Approval, such lesser number of Units as the Project Company has lawful authority to produce, transport and make available to SAWS).

(D) Project Company Mitigation and Other Measures. In the event the Project Company fails to complete the mitigation, site preparation and other measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements) in a timely manner as provided therein, including acquisition of other land that may be required to satisfy endangered species or other mitigation requirements, SAWS shall be relieved of its payment obligations under subsection (C) of this Section to the extent that any

delay in, stoppage of, or failure to complete construction of the SAWS Interconnection Improvements in the time required is reasonably attributable to such failure. Notwithstanding any provision to the contrary, in no event shall an Uncontrollable Circumstance extend the Scheduled Grading Completion Date and the Scheduled Connection Availability Date.

(E) Operation, Maintenance, Repair and Replacement. SAWS shall use reasonable efforts to operate, maintain, repair and replace the SAWS Interconnection Improvements during the Term so as to permit the delivery of Product Water to the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement.

SECTION 6.3. SAWS INTERFACE CABINET.

The parties shall cooperate to assure the timely installation and testing by SAWS of the SAWS Interface Cabinet at the Project.

SECTION 6.4. NOTICE OF SHUTDOWNS AND CLOSURES.

(A) Notice. SAWS shall give notice as soon as practicable of any shutdown or closure of the SAWS Distribution System that may prevent or limit SAWS from receiving Product Water. SAWS' notice shall include a written report:

- (1) Describing the shutdown or closure;
- (2) Stating the date on which the shutdown or closure began and its estimated duration, to the extent known; and
- (3) Summarizing the likely consequences of the shutdown or closure of SAWS' ability to take delivery of Product Water under this Water Transmission and Purchase Agreement.

(B) Updates. SAWS shall provide the Project Company with weekly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the shutdown or closure. In particular, SAWS shall notify the Project Company as soon as the shutdown or closure has ceased and of the time when it reasonably expects to be again capable of receiving Product Water.

ARTICLE 7

PROJECT FINANCING AND REFINANCING

SECTION 7.1. PROJECT FINANCING.

(A) Project Company Financing. The Project Company is solely responsible, subject to SAWS obligations under Article 4 (Development and Financing Period), for obtaining and repaying all financing necessary for the design, permitting and construction of the Project at its own cost and risk and without recourse to SAWS, both initially, as may be required to complete the Project and for any Project purpose during the Term. SAWS shall have the right to review and comment on any Senior Debt Financing Agreements, including all agreements pertaining to the Senior Secured Credit Facility. The Project Company, subject to SAWS obligations under Article 4 (Development and Financing Period), exclusively bears the risk of (1) the availability or unavailability at any time and for any reason of tax-exempt private activity bond financing for the Project, and (2) any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings. SAWS shall have no obligation to provide financing for the Project or for any Project Company-Requested Capital Modifications (other than Project Company-Requested Capital Modifications pursuant to Section 12.3(B) (Inability of Project Company to Obtain Financing)), or for any other purpose; provided, however, that this provision is not intended to relieve SAWS of its obligations related to SAWS Fault, including under Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Adequacy of Initial Senior Debt Proceeds to Pay Project Costs. The proceeds of the Initial Senior Debt shall be applied to the payment of Project Costs in the manner provided by the Senior Debt Financing Agreements. In the event the proceeds of the Equity Contribution Agreement and the Initial Senior Debt are insufficient to pay all Project Costs necessary to achieve Substantial Completion and Acceptance, the Project Company shall provide any additional financing required to pay the balance of such Project Costs.

(C) Limitations on Project-Secured Debt. The Project Company shall not issue any debt secured by the Project or its revenues other than the following (any such debt constituting “**Permitted Debt**” hereunder): (1) Senior Debt; (2) debt for Project Costs; (3) debt for Final Completion; (4) debt issued for Refinancing purposes; (5) debt to finance short-term Project cash flow requirements; (6) debt to finance Capital Modifications; (7) debt to finance letters of credit to secure the Project Company’s obligations under agreements and Governmental Approvals with respect to the Project; (8) debt to finance the costs of compliance with Governmental Approvals; (9) debt in connection with interest rate or other hedging arrangements related to the financing of the Project; and (10) subordinated debt issued for Project purposes. The term of any Permitted Debt issued by the Project Company shall not extend beyond the Expiration Date then in effect, except as provided in Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(D) Permitted Debt Other than Senior Debt. SAWS, notwithstanding any other provision of this Water Transmission and Purchase Agreement, shall have no obligation under this Water Transmission and Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt (except as provided with respect to Senior Debt in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) or in connection with SAWS exercise of its purchase options in Article 23 (SAWS Project Assets Purchase Options)), nor shall the issuance of any Permitted Debt result in an adjustment of the Unit Price except as provided in Section 7.6 (Refinancing and Refinancing Gain).

(E) Permitted Debt Non-Recourse to SAWS. All Permitted Debt or other obligations issued or incurred by the Project Company in connection with this Water

Transmission and Purchase Agreement or the Project shall be issued or incurred only in the name of the Project Company (or, in the case of tax-exempt private activity bonds, in the name of the conduit bond issuer, secured by a loan, lease or installment sale agreement in the name of the Project Company). SAWS shall have no obligation to pay debt service on any Permitted Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company.

(F) Project Company Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Debt Financing Agreement, the Project Company shall remain liable to SAWS for the payment of all sums owing to SAWS under this Water Transmission and Purchase Agreement and the performance and observance of all of the Project Company's covenants and obligations under this Water Transmission and Purchase Agreement.

(G) SAWS Interconnection Improvements. The Project Company shall have no obligation to finance any of the SAWS Interconnection Improvements, except that the Project Company Storage Tank shall be financed, designed, built, commissioned and tested for Acceptance by the Project Company as part of the Project prior to the Notice of Acceptance Date.

(H) SAWS' Option to Purchase Senior Debt at Issuance. As an option reserved exclusively thereto, and in no way to be determined or deemed an obligation to do the same, SAWS hereby reserves to itself, and the Project Company hereby grants to SAWS, the right (but not the duty or obligation) to purchase, in whole or in part and prior to all other potential initial purchasers, the Initial Senior Debt and any additional Senior Debt (including any additional Senior Debt issued as provided in Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) from time to time thereafter issued, upon the terms and conditions at such time determined by such parties. Not later than 30 days prior to the anticipated date of sale of the Initial Senior Debt, and not later than 90 days prior to the anticipated date of sale with respect to any subsequent issuance of Senior Debt (or, with respect to any subsequent issuance of Senior Debt that must be issued on an expedited basis in extraordinary circumstances, no less than 30 days prior to such anticipated date of sale), the Project Company shall provide written notice of its intention to issue such Initial Senior Debt or Senior Debt, from which date SAWS shall, within 15 days for issuances of the Initial Senior Debt and within 30 days for issuances of all subsequent Senior Debt, deliver to the Project Company written notice of its intention to exercise or not exercise its right to purchase any such indebtedness. SAWS intends that any purchased debt, if issued on a tax-exempt private activity bond basis, will have and maintain any and all commercially-reasonable features inherent in a publicly marketed and sold, project-finance debt offering (including, but not limited to, an investment-grade credit rating, qualification for tax-exempt treatment under federal income tax law (except as such tax-exemption may be affected by SAWS' purchase), receipt of any and all necessary approval from governmental authorities whose approval serves as a prerequisite to delivery of such indebtedness, and ability to negotiate the Senior Debt Financing Agreement, along with evidence of the foregoing and delivery of usual and customary legal opinions).

(I) Other Project Company-Related Loans. The Project Company acknowledges and agrees that no Project Company-Related Loan constitutes Senior Debt for any purpose hereunder, including particularly the determination of Senior Debt on the basis of which such termination payments are required to be calculated pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default), except to the extent that consideration of the Bridge Loan has been taken into account in establishing the amount of the Senior Secured Credit Facility.

SECTION 7.2. FINANCING THE CAPITAL COSTS OF SAWS-REQUESTED CAPITAL MODIFICATIONS.

(A) Financing SAWS-Requested Capital Modification Capital Costs. In the event SAWS requests the Project Company to make Capital Modifications pursuant to Section 12.3 (Capital Modifications at SAWS Request), the Project Company shall use all reasonable efforts to finance the design and construction costs of such SAWS-Requested Capital Modifications to the extent permitted under the Senior Debt Financing Agreements. The parties acknowledge that (1) the resulting increase in the Capital and Raw Groundwater Unit Price will be based on the actual debt service payable by the Project Company on the Permitted Debt issued for such purposes (and any other reasonable costs and expenses incurred by the Project Company in connection with such Permitted Debt), and an equitable adjustment to the Project Company's equity return to reflect the terms of any SAWS-Requested Capital Modification Financing, and (2) such Permitted Debt shall have a final maturity concurrent with the Expiration Date; provided, however, that in no event shall any such Permitted Debt adversely affect any credit rating of any Senior Debt.

(B) SAWS Rights With Respect to SAWS-Requested Capital Modification Financings. The Project Company acknowledges that SAWS has a direct interest in the terms under which the Permitted Debt is issued and new equity is raised for a SAWS-Requested Capital Modification Financing. Accordingly, the Project Company shall assure that SAWS and its financial advisors are substantially involved in all matters pertaining to the development and execution of the plan of financing for any such Permitted Debt, including direct participation in and review of the structuring, maturities, interest rates and pricing of any such Permitted Debt. Permitted Debt issued for such purposes shall not be sold or issued without the approval of SAWS, acting reasonably.

(C) SAWS Right to Finance SAWS-Requested Capital Modification Capital Costs. SAWS shall have the right but not the obligation, in its discretion and in lieu of any Project Company-Requested Capital Modification Financing by the Project Company, to finance any SAWS-Requested Capital Modification Capital Costs itself. In such event, SAWS shall pay the Project Company for such costs from the proceeds of a SAWS direct recourse financing or from SAWS internally-generated funds, and there shall be no adjustment to the Unit Price on account of such SAWS-Requested Capital Modification Capital Costs.

(D) Financing Unavailability for SAWS-Requested Capital Modifications. If the Project Company is unable to obtain financing for any SAWS-Requested Capital Modification or SAWS does not approve the proposed financing therefor pursuant to this Section, the Project Company shall have no further obligations with respect to the financing of the SAWS-Requested Capital Modification, and Section 12.3 (Capital Modifications at SAWS Request) shall apply to the implementation of the SAWS-Requested Capital Modification.

SECTION 7.3. FINANCING THE CAPITAL COSTS OF PROJECT COMPANY-REQUESTED CAPITAL MODIFICATIONS.

The Project Company shall finance the cost of Capital Modifications requested by the Project Company pursuant to Section 12.2 (Capital Modifications at Project Company Request). There shall be no adjustment to the Unit Price or any other compensation payable to the Project Company on account of any such Capital Modifications.

SECTION 7.4. COMPLIANCE WITH SENIOR DEBT FINANCING AGREEMENTS; DELIVERY OF REPORTS TO SAWS.

(A) Compliance. The Project Company shall comply with the Senior Debt Financing Agreements to the extent necessary to perform its obligations under this Water

Transmission and Purchase Agreement. If at any time the Project Company receives a notice that an “event of default”, any event entitling the Senior Debt Creditors to enforce any security or any other similar event has occurred under the Senior Debt Financing Agreement, the Project Company shall forthwith deliver to SAWS a copy of such notice.

(B) Delivery of Financing-Related Reports to SAWS. The Project Company shall deliver to SAWS from the period beginning on the Financial Closing Date (or, if executed, the effective date of the Senior Secured Credit Facility) and continuing throughout the Term copies of all material reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Senior Debt Creditors under or in connection with the Senior Debt Financing Agreements, including reports prepared by the consulting engineer in connection with the Senior Debt and any continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Project Company’s possession.

SECTION 7.5. CHANGES TO SENIOR DEBT FINANCING AGREEMENTS.

(A) SAWS Consent Required. The Project Company shall not without the written consent of SAWS (which shall not be unreasonably withheld or delayed) terminate, amend or otherwise modify the Senior Debt Financing Agreements, or waive or exercise any of its rights under the Senior Debt Financing Agreements, if such action would materially and adversely affect the Project Company’s ability to perform its obligations under this Water Transmission and Purchase Agreement or have the effect of materially increasing any liability or potential liability of SAWS. In the event the Project Company delivers to SAWS a request for its consent to any such proposed termination action, amendment, modification, waiver or exercise of rights, together with the definitive text pertaining to such action or document, and SAWS has not responded to the Project Company’s request within 45 days of receipt (whether through rejecting the request or seeking clarification or information), SAWS’ consent shall be deemed to have been given. If at any time any material amendment is made to any Senior Debt Financing Agreement or the Project Company enters into any replacement Senior Debt Financing Agreement (or any agreement which affects the interpretation or application of any Senior Debt Financing Agreement), the Project Company shall deliver to SAWS a copy of each such material amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company. With respect to the Credit Agreement and the Depositary Agreement, a matter affecting SAWS as set forth above shall be deemed material if, in an adverse way with respect to SAWS, it: (1) amends the definition of Operating and Maintenance Expenses in the Credit Agreement, if such proposed amendment would affect clause (k) of such definition; (2) modifies the inclusion of amounts payable as Operating and Maintenance Expenses in clause (B) of Section 3.03(a)(iii) and in clause (B) of Section 3.03(b)(i) of the Depositary Agreement; (3) increases the aggregate principal amount of Senior Debt (other than (i) treating overdue amounts as principal and (ii) capitalizing interest during the construction period by increasing the principal amount on each interest payment date by the amount of the applicable interest payment) including, without limitation, the advancing of funds pursuant to the Credit Agreement in excess of the principal amount of the Initial Senior Debt and the re-lending of principal that has been repaid, or (4) restructures the principal amortization of the Initial Senior Debt (including by use of hedging arrangements), in either case which proposed increase or restructuring would have the effect of increasing the portion of the Project Assets Purchase Price attributable to the Senior Debt; or (5) such amendment, modification or action otherwise has the effect of increasing the portion of the Project Assets Purchase Price attributable to Senior Debt.

(B) SAWS’ Expenses. The Project Company shall pay SAWS’ reasonable and properly incurred third party professional services costs in connection with any significant proposed changes to the Senior Debt Financing Agreements referred to in (A) (SAWS Consent



Required), such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount.

SECTION 7.6. REFINANCING AND REFINANCING GAIN.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing without the prior written consent of SAWS. Such consent will not be unreasonably withheld or delayed if the Refinancing has no material and adverse effect on the Project Company's ability to perform its obligations under this Water Transmission and Purchase Agreement, and does not increase any liability or potential liability of SAWS (unless SAWS is specifically compensated for such liability or potential liability).

(B) SAWS' Share of Refinancing Gain. SAWS shall be entitled to receive a 25 percent share of any Refinancing Gain arising from a Refinancing.

(C) Project Company Proposal to Refinance. The Project Company shall promptly provide SAWS with full details of any proposed Refinancing, including:

(1) All proposed revisions to the Senior Debt Financing Agreements;  
and

(2) SAWS' estimated share of the Refinancing Gain, expressed in terms of the reduction of the Capital and Raw Groundwater Unit Price described in (D) (Reduction in the Capital and Raw Groundwater Unit Price).

SAWS shall (before, during and within two years after any Refinancing) have unrestricted rights of audit over any books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing; provided, however, that the Project Company shall not be required to provide SAWS any income statement showing profit or loss (provided that the Project Company recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof.

(D) Reduction in the Capital and Raw Groundwater Unit Price. SAWS shall receive its share of any Refinancing Gain as a reduction in the Capital and Raw Groundwater Unit Price, in accordance with Section 17.8(B) (Adjustments to the Unit Price), over the period ending on the Expiration Date. Any such reduction in the Capital and Raw Groundwater Unit Price shall reflect the savings in actual debt service payable with respect to the Senior Debt.

(E) Calculation of Refinancing Gain. SAWS and the Project Company shall negotiate in good faith the basis and method of calculation of the Refinancing Gain and the reduction in the Capital and Raw Groundwater Unit Price resulting from SAWS' share of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that the Project Company directly incurs in relation to the Refinancing and SAWS' costs that the Project Company pays pursuant to Section 7.6(G) (SAWS' Expenses). If SAWS and the Project Company are unable to agree on the basis and method of calculation of the Refinancing Gain or the reduction in the Capital and Raw Groundwater Unit Price, the dispute may be referred to Non-Binding Mediation.

(F) SAWS Information. SAWS shall cooperate with and assist the Project Company in connection with any Refinancing by providing any information, certification or documents that are in SAWS possession and that are reasonably required in connection with the Refinancing.

(G) SAWS' Expenses. The Project Company shall pay SAWS' reasonable and properly incurred third party professional services costs in connection with a Refinancing, such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount following the close of the Refinancing.

ARTICLE 8

COMPLETION AND ACCEPTANCE OF THE PROJECT

SECTION 8.1. SUBSTANTIAL COMPLETION.

(A) Substantial Completion Procedures. Substantial Completion shall be determined on the basis of the Substantial Completion Procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(B) Commissioning Plan. The Project Company shall prepare and submit to SAWS for its approval (the “**Commissioning Plan**”) no later than 60 days prior to the anticipated commencement of commissioning of the Project for review and comment by SAWS. Within 30 days after SAWS’ receipt of the Commissioning Plan, SAWS shall provide written notice to the Project Company either acknowledging that the Commissioning Plan is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Commissioning Plan to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld). The Commissioning Plan shall also provide for the coordination of any necessary testing of: (1) the Project with SAWS’ SCADA system in order to confirm the operability of the communications system prior to the Performance Test; (2) any tuning and calibration of the chemical feed systems of the SAWS Interconnection Improvements, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (3) calibration and tuning of the instrumentation and control signals from the flow control facility which constitutes a portion of the SAWS Interconnection Improvements to SAWS, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(C) Substantial Completion Procedures Report. The Project Company shall prepare and submit to SAWS for its approval a Substantial Completion Procedures Report for review and comment by SAWS. Within 15 days after SAWS’ receipt of the Substantial Completion Procedures Report, SAWS shall provide written notice to the Project Company either acknowledging that the Substantial Completion Procedures Report is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Substantial Completion Procedures Report to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(D) Conditions to Substantial Completion. “**Substantial Completion**” shall occur only when the Project Company has satisfied, except for Punch List items that do not affect the performance, safety or operation of the Project and except to the extent waived in writing by SAWS, the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures, including:

(1) Physical Completion. All pipelines, facilities, materials and equipment for the Project have been installed in accordance with the requirements of this Water Transmission and Purchase Agreement and inspected and approved for alignment, lubrication, rotation, vibration, leakage, noise, and hydrostatic and pneumatic pressure integrity; all systems required to be installed by the Project Company have been installed and tested; and the Project has been flushed and cleaned out as necessary and required by the TCEQ;

(2) Project Equipment. The Project Equipment is installed in a manner that does not void any Subcontractor or vendor warranties and such that the Project Equipment can be operated in a safe and prudent manner;

(3) Pre-Commissioning and Certificates of Proper Installation. The Project Company has properly installed, tested and calibrated each specific Project system and subsystem in accordance with the manufacturers' recommendations and requirements, and delivered to SAWS certificates of proper installation for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(4) Design and Process Verification. The Project Company has completed the Construction Work in accordance with the Design Requirements, and delivered to SAWS design and process verification checklists for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(5) Dry Commissioning. The Project Company has performed all the dry commissioning activities identified in the Commissioning Plan, and necessary for the Project Equipment to be ready to conduct wet commissioning set forth in Section 8.1(D)(6) (Wet Commissioning);

(6) Wet Commissioning. The Project Company has performed all the wet commissioning activities identified in the Commissioning Plan, and necessary for the verification of operational preparedness set forth in Section 8.1(D)(8) (Verification of Operational Preparedness);

(7) Equipment, Instrumentation and Controls Readiness Verification. The Project Company has delivered to SAWS certificates of system readiness that certify that all the identified Project systems, subsystems, equipment, instrument, or control systems have been reviewed by the Project Company and are ready and able to undergo sustained continuous operation as required for its intended purpose in the Project;

(8) Verification of Operational Preparedness. The Project is ready to physically commence Performance Testing and operations in accordance with the Contract Standards;

(9) Verification of Governmental Approval Compliance. The Project Company shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals;

(10) Commissioning Plan. The requirements of Section 8.1(B) (Commissioning Plan) have been met;

(11) Instrument Calibration. The Project Company has demonstrated that all instrument calibration activities that are required to assure all Project instrumentation provide reading accurate within manufacturer's tolerance;

(12) SCADA. The Project SCADA system is operational and provides the input and output to and from SAWS' SCADA system, permitting SAWS read-only access to all Project operations data and information;

(13) Operating and Maintenance Staff Training. The Project Company has completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers

sufficient to start-up the Project in accordance with Good Management Practices;

(14) Electronic Operation and Maintenance Manual. The Project Company has delivered to SAWS a draft copy of the Electronic Operation and Maintenance Manual as required under Section 9.5 (Electronic Operation and Maintenance Manual);

(15) Operating Protocol. The Project Company has delivered to SAWS a final copy of the Operating Protocol and obtained SAWS' approval for the Operating Protocol, which approval shall not unreasonably be withheld or delayed;

(16) Governmental Approvals. The Project Company has obtained all necessary Governmental Approvals required to commence Performance Testing;

(17) Sanitary Control Easements. The Project Company has obtained all sanitary control easements required by TCEQ for the Project, and such easements have been executed and recorded in appropriate land records;

(18) Substantial Completion Procedures Report. The Project Company has prepared and submitted in Adobe Acrobat electronic format, indexed and fully-searchable (with five copies, if provided on compact disc), of the Substantial Completion Procedures Report prepared in accordance with the requirements set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(19) Certificate of Occupancy. A temporary or final certificate of occupancy, if required, has been issued for any occupied portion of the Project; and

(20) Punch List. The Project Company has delivered a Punch List to SAWS.

(E) Notice of Substantial Completion. The Project Company shall give SAWS Representative at least 10 days' prior written notice of the expected date of Substantial Completion.

(F) Achievement of Substantial Completion. In order to accomplish Substantial Completion, the Project Company (1) shall satisfy the conditions to Substantial Completion set forth in Section 8.1(D) (Conditions to Substantial Completion), (2) shall comply with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), including those relating to Project commissioning, and (3) shall satisfy the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures. The Project Company shall submit the deliverables defined in the Substantial Completion Procedures (documents and other items) for review and SAWS shall review such deliverables within the times required under the Substantial Completion Protocol. If, pursuant to the Substantial Completion Protocol, SAWS does not approve an item, such item shall be added to a list prepared by the Project Company of items which remain to be performed in order to achieve Substantial Completion (the "**Substantial Completion List**"). The Project Company shall complete the items on the Substantial Completion List in accordance with the Substantial Completion Protocol and the other requirements of this Water Transmission and Purchase Agreement related to Substantial Completion prior to achieving Substantial Completion. Within five Business Days after receipt by SAWS of notice that Substantial

Completion has been achieved, SAWS shall (a) deliver its written acknowledgment that Substantial Completion has been achieved, or (b) notify the Project Company that Substantial Completion has not been achieved, stating in detail the reasons therefor. If SAWS notifies the Project Company that Substantial Completion has not been achieved, the Project Company shall take such steps as are necessary to achieve Substantial Completion, and shall resubmit to SAWS notice that Substantial Completion has been achieved. If SAWS does not provide timely notice of objection within 10 Business Days, Substantial Completion shall be conclusively deemed to have been achieved. The foregoing procedure shall be repeated until SAWS acknowledges that Substantial Completion has been achieved. Notwithstanding anything in this Section to the contrary, SAWS' approval of the individual items identified in the Substantial Completion Protocol shall not relieve the Project Company of its obligation to meet the requirements of Substantial Completion at the time that it provides SAWS notice that it has achieved Substantial Completion.

SECTION 8.2. INTERIM OPERATIONS APPROVAL AND PROJECT COMPANY PUBLIC WATER SUPPLIER DESIGNATION.

(A) Authorization of Operation and Water Introduction. The Project Company acknowledges that the operation of the Project and the introduction of Product Water into the SAWS Distribution System are prohibited by Applicable Law until an Interim Operations Approval, as defined below, and the Project Company Public Water Supplier Designation are issued by TCEQ. TCEQ may, but is not legally obligated to, issue a letter, permit with provisions, or other instrument authorizing temporary operation of the Project and introduction of Product Water into the SAWS Distribution System until such time as the conditions of such letter, permit with provisions, or other instrument have been satisfied and the Project Company Public Water Supplier Designation is issued (an **"Interim Operations Approval"**). The Project Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of TCEQ.

(B) Project Company Obligations Generally. The Project Company shall cooperate with TCEQ throughout the Construction Period; shall make all applications and take all other action necessary to obtain and maintain the Project Company Public Water Supplier Designation and any Interim Operations Approval; and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of SAWS, subject to SAWS' rights hereunder. The Project Company shall manage the process of obtaining the Project Company Public Water Supplier Designation and any Interim Operations Approval and shall provide SAWS at least 10 Business Days to review such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Governmental Approvals). The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Project Company Public Water Supplier Designation and any Interim Operations Approval or the terms and conditions thereof that would impose any material cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence. The Project Company also shall assist SAWS and provide any information concerning the Project in its possession that may reasonably be required to be furnished by SAWS to any Governmental Body relating to the effect of the delivery of Product Water to SAWS and the use of Product Water in the SAWS Distribution System.

(C) Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation. Except to the extent the Project Company is entitled to relief under Section 16.4 (Project Company Relief Due to Uncontrollable Circumstances), the Project Company explicitly assumes the risk of obtaining and maintaining the Project Company Public Water Supplier Designation and any Interim Operations Approval from TCEQ as contemplated in (B) (Project Company Obligations Generally), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith. In assuming this risk, the Project Company acknowledges in particular that (1) the delay or non-issuance of the Project Company Public Water Supplier Designation or an Interim Operations Approval may delay or prevent the delivery of Product Water to the SAWS Distribution System, the commencement of the Performance Test, or the occurrence of Acceptance, and thereby give SAWS the right to terminate this Water Transmission and Purchase Agreement, and (2) TCEQ may impose or enforce terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company. In particular, the exercise by TCEQ of any of its rights with respect to the Project Company Public Water Supplier Designation or an Interim Operations Approval shall constitute a Project Company risk. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Project Company assumes the risk.

SECTION 8.3. PERFORMANCE TESTING.

(A) Performance Test Protocol. At least 145 days prior to the commencement of the Performance Test, the Project Company shall submit a detailed plan to SAWS setting forth the Performance Test activities, monitoring, calculation methodologies, specific test instruments or equipment, and applicable calibration procedures proposed for demonstration of achievement of the Minimum Performance Criteria as set forth in Appendix 5 (Performance Test Procedures and Standards) (the "**Performance Test Protocol**"). The Performance Test Protocol shall also include a delivered Product Water schedule, which projects the proposed daily volume of Product Water the Project Company intends to make available during the Performance Test. Within 30 days after SAWS' receipt of the Performance Test Protocol, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test Protocol is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Performance Test Protocol to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(B) Performance Test. The Performance Test is to be conducted, and the results calculated, in accordance with the Contract Standards. The Project Company shall keep SAWS continuously apprised of the specific schedule, and changes therein, for the commencement and re-performance of the Performance Test.

(C) Notice of Commencement of the Performance Test. The Project Company shall notify SAWS and the SAWS Engineer that it wishes to perform a Performance Test complying with this Section 8.3. The Project Company shall provide the SAWS Engineer and SAWS with at least three Business Days' prior written notice of the expected initiation of the Performance Test. The Project Company shall not attempt to perform the Performance Test if SAWS gives notice to the Project Company of uncompleted Construction Work, the completion of which is required for the safe operation of all or any part of the Project during the Performance Test.

(D) Conditions to Commencement of the Performance Test. The Project Company shall not commence the Performance Test until the following events have occurred:

- (1) The requirements of Section 8.3(C) (Notice of Commencement of the Performance Test) have been met;
- (2) If required by Applicable Law, TCEQ has approved the Performance Test plan proposed by the Project Company;
- (3) Substantial Completion has occurred;
- (4) The Project Company Public Water Supplier Designation or an Interim Operations Approval has been issued by TCEQ, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith;
- (5) All Utilities specified or required under this Water Transmission and Purchase Agreement to be arranged for by the Project Company are connected and functioning properly;
- (6) The Project Company has met with SAWS at least 60 days prior to the scheduled Performance Test to provide a forecast of expected Product Water production and availability, described the intended management of Product Water and Off-Specification Product Water, and reviewed such forecast and intended management with SAWS staff responsible for the introduction of water into the SAWS Distribution System;
- (7) The requirements of Section 5.2 (Performance Testing Prerequisites) of Appendix 5 (Performance Test Procedures and Standards) have been met; and
- (8) The Project Company and SAWS have verified that the instrumentation and SCADA control systems on the Project Company Storage Tank are fully functional and can be observed by both the Project Company and SAWS.

(E) Conduct of the Performance Test. The Performance Test shall consist of the operation of the Project as a whole, as described in Appendix 5 (Performance Test Procedures and Standards), for the time period mentioned therein, in compliance with the Contract Standards. Achievement of Acceptance will be determined in accordance with the criteria set forth in Appendix 5 (Performance Test Procedures and Standards) and this Water Transmission and Purchase Agreement. SAWS shall designate and make available qualified and authorized representatives to observe the Performance Test and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with this Water Transmission and Purchase Agreement. The SAWS Engineer shall have the right to observe the Performance Test and the taking of measurements discussed in the preceding sentence. Neither SAWS nor the SAWS Engineer shall interfere with the conduct of the Performance Test. The Project Company's election and report of Performance Test results shall be made in accordance with the requirements defined in Appendix 5 (Performance Test Procedures and Standards).

(F) Test Report. Within 45 days following the last day of any Performance Test, the Project Company shall furnish the SAWS Engineer and SAWS with five copies of a written Performance Test report consistent with the requirements specified in Appendix 5



(Performance Test Procedures and Standards). The Performance Test results will be calculated in accordance with the Contract Standards. Within 20 days after SAWS' and SAWS Engineer's receipt of the Performance Test results, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test report is complete and correct or specifying the deficiencies of the Performance Test. In the latter instance the foregoing procedure will be repeated or the report withdrawn; provided, that if such notice specifying deficiencies is provided more than 10 Business Days after receipt of the Performance Test results, the Commercial Operation Longstop Date shall be extended for each day from the 10th Business Day from receipt of the Performance Test results until the day such notice is provided to the Project Company.

SECTION 8.4. PRODUCT WATER DELIVERIES PRIOR TO THE COMMERCIAL OPERATION DATE.

(A) Performance Tests. During any Performance Test, the Project Company shall notify SAWS of the volumes of Product Water to be made available to the Project Flow Meter at least one day in advance of such availability. The cost of all Performance Test activities, including any repetition of the Performance Tests, has been priced in the Monthly Water Purchase Payments. If repeated Performance Tests are required due to the failure of the Project Company to achieve Acceptance, the Project Company shall reimburse SAWS for reasonable costs and expenses incurred in monitoring and reviewing the results of any such repeated Performance Tests.

(B) Interim Operations. If TCEQ issues the Project Company Public Water Supplier Designation, or an Interim Operations Approval, prior to the Commercial Operation Date, SAWS shall take delivery of Product Water made available by the Project Company, subject to the following:

(1) SAWS shall have completed the SAWS Interconnection Improvements;

(2) SAWS and the Project Company, acting reasonably, shall have agreed on a schedule of Flow Rates for the delivery and receipt of such Product Water;

(3) The Product Water meets the Product Water Quality Guarantee;

(4) SAWS may, on reasonable notice to the Project Company, terminate its obligation to take delivery of such Product Water if the Project Company fails to make available Product Water substantially in accordance with the agreed-upon delivery schedule;

(5) SAWS' obligation to take delivery of Product Water under this Section shall terminate upon earlier of (a) the expiration or termination of any authority to operate the Project under an Interim Operations Approval, or (b) the termination of this Water Transmission and Purchase Agreement, whether under Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date) or otherwise hereunder.

SAWS shall have no obligation to compensate the Project Company for any Product Water delivered during interim operations or otherwise prior to the Commercial Operation Date.

(C) Other Obligations of the Parties During Interim Operations. During interim operations, the Operating Period shall not have commenced. The parties shall,

however, comply with all of their respective obligations hereunder during interim operations as if the Operating Period had commenced, except that: (1) the Project Company's right to make available Product Water shall be as described in Section 8.4(B) (Interim Operations); (2) SAWS shall have no obligation to pay the Monthly Water Purchase Payments; and (3) Product Water shall comply at all times with the requirements of Applicable Law. Nothing in this Section shall be construed to limit SAWS obligations under Section 6.2(C) (Completion Delay).

(D) Water Disposal and Disinfection Required by Curtailments. The Project Company shall be responsible for SAWS' actual costs of any required disposal of stagnant water in and disinfection of water at the SAWS Interconnection Improvements, resulting from the Project Company's curtailment of Performance Testing or interim operations for any reason other than SAWS Fault or at the direction of SAWS.

SECTION 8.5. ACCEPTANCE.

(A) Conditions. The following conditions shall constitute the "**Acceptance Conditions**," each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Acceptance and establish the Commercial Operation Date:

(1) Substantial Completion. Substantial Completion has been achieved (and all conditions of Substantial Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Project have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted;

(2) Achievement of the Minimum Performance Criteria. A Performance Test shall have been conducted demonstrating that the Project has achieved the Minimum Performance Criteria and complied with the Contract Standards, and a Performance Test report shall have been delivered to SAWS and the SAWS Engineer validating such achievement, certified as correct and complete by the Project Company;

(3) Design Build Contractor Letter of Confirmation. The Design Build Contractor shall have delivered a letter to SAWS and the SAWS Engineer confirming the matters stated in (2) (Achievement of Minimum Performance Criteria);

(4) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Project Company Public Water Supplier Designation, which are required to be obtained by the Project Company as of the Commercial Operation Date for the performance of the Operating Work shall have been duly obtained by the Project Company and shall be in full force and effect. True and correct copies of all such Governmental Approvals, to the extent not in SAWS' possession, shall have been delivered to SAWS to the extent required by Section 5.5(B) (Copies) and Section 9.8(E) (Copies of Operating Governmental Approvals);

(5) No Encumbrances. There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

(6) Governmental Body Readiness Confirmations. To the extent required under Applicable Law, all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or

other documents in respect thereof) that all buildings and structures comprising the Project on the Project Sites are ready for use and occupancy;

(7) Required Operating Period Insurance. The Project Company has obtained and submitted to SAWS endorsements and certificates of insurance for all Required Insurance specified in Section 7.2 (Insurance During the Operating Period) of Appendix 7 (Insurance Requirements); and

(8) Final Electronic Operation and Maintenance Manuals. The Project Company has delivered to SAWS the final Electronic Operation and Maintenance Manual, including a complete electronic operation and maintenance manual for the Project Company Storage Tank acceptable to SAWS acting reasonably.

(B) Notice and Report of Acceptance. When the Project Company believes that it has achieved Acceptance, it shall deliver to SAWS and the SAWS Engineer a notice thereof (the “**Notice of Acceptance**”). The Notice of Acceptance shall contain a report in a form acceptable to SAWS, and with sufficient detail to enable SAWS to determine that Acceptance has been achieved. The date upon which the Notice of Acceptance is delivered to SAWS and the SAWS Engineer shall be the “**Notice of Acceptance Date**.”

(C) Achievement of Acceptance. SAWS and the SAWS Engineer shall, within 30 days following receipt of the Notice of Acceptance, inspect the Project and all Construction Work and either (a) deliver a certificate to the Project Company certifying that the requirements under clauses (1) through (8) of Section 8.5(A) (Conditions) have been satisfied, or (b) notify the Project Company in writing that Acceptance has not been achieved, stating in detail the reasons therefor. In the event that Acceptance has not been achieved, the Project Company shall promptly take such action or perform such Construction Work to effect compliance with Acceptance, and shall issue to SAWS and the SAWS Engineer another Notice of Acceptance pursuant to Section 8.5(B) (Notice and Report of Acceptance). Such procedure shall be repeated as necessary until Acceptance has been achieved. Any expense incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as a Direct Payment.

SECTION 8.6. ACHIEVEMENT OF ACCEPTANCE AND COMMERCIAL OPERATION DATE.

(A) Acceptance. The Project Company shall achieve Acceptance by the Commercial Operation Longstop Date.

(B) Commercial Operation Longstop Date Defined. The “**Commercial Operation Longstop Date**” is April 10, 2021, as such Commercial Operation Longstop Date may be extended as provided in Section 8.6(C) (Extension for Uncontrollable Circumstances).

(C) Extension for Uncontrollable Circumstances. If an Uncontrollable Circumstance occurs between the Financial Closing Date and the Commercial Operation Longstop Date, the Commercial Operation Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the Uncontrollable Circumstance on any matter in the Project Schedule affected by the Uncontrollable Circumstance, but in no event later than October 2, 2022 (except that if the Uncontrollable Circumstance is a SAWS Fault, the Commercial Operation Longstop Date shall be so extended without limit).

(D) Commercial Operation Date. The “**Commercial Operation Date**” shall be the date by which the Notice of Acceptance is delivered to SAWS, if, subsequent to such

delivery, SAWS delivers a certificate to the Project Company certifying, in response to such Notice of Acceptance, that the Acceptance Conditions have been satisfied.

SECTION 8.7. FAILURE TO ACHIEVE THE COMMERCIAL OPERATION DATE BY THE COMMERCIAL OPERATION LONGSTOP DATE.

In the event the Project Company fails to achieve the Commercial Operation Date by the Commercial Operation Longstop Date (as extended pursuant to Section 8.6(C) (Extension for Uncontrollable Circumstances), a Project Company Event of Default shall be deemed to have occurred and SAWS, subject to the terms of the Creditors' Remedies Agreement, may pursue all remedies available under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default) and Article 22 (Termination).

SECTION 8.8. FINAL COMPLETION.

(A) Requirements. "**Final Completion**" shall occur when all of the following conditions have been satisfied:

(1) Acceptance. The Project Company has achieved Acceptance in accordance with Section 8.5 (Acceptance);

(2) Construction Work Completed. All Construction Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Water Transmission and Purchase Agreement;

(3) Equipment Warranties and Manuals. The Project Company shall have delivered to SAWS, copies of the warranties of equipment and fixtures constituting a part of the Project received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers;

(4) Record Drawings. The Project Company has delivered to SAWS a final and complete set of as-built construction record drawings, prepared in accordance with Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and signed and sealed by a Texas registered professional engineer;

(5) Acquisition of All Project Real Property. The Project Company has acquired all Project Real Property required for the Project and has delivered to SAWS copies of all easements and Project Site Conveyance Instruments acquired by the Water Supply Corporation or the Project Company or otherwise necessary in connection with the Project, together with copies of all title insurance policies with respect thereto, and all eminent domain proceedings have resulted in a recorded judgment granting the applicable Project Real Property interest; and

(6) Claims Statement. The Project Company has delivered to SAWS a claims statement setting forth in detail all claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Construction Work, and arising out of or based on events prior to the date when the Project Company gives such statement to SAWS.

(B) Notice and Report of Final Completion. When the Project Company believes that it has achieved Final Completion, it shall deliver to SAWS and the SAWS Engineer

a written notice thereof (the “**Notice of Final Completion**”). The Notice of Final Completion shall contain a report in a form acceptable to SAWS and the SAWS Engineer, and with sufficient detail to enable SAWS and the SAWS Engineer to determine the achievement by the Project Company of all Construction Work to be performed under this Water Transmission and Purchase Agreement, including completed Punch List items, and such other information that SAWS may require to determine whether Final Completion has been achieved.

(C) Achievement of Final Completion. SAWS and the SAWS Engineer, shall, within 20 days following receipt of the Notice of Final Completion, inspect the Project, review the report submitted by the Project Company and either (a) deliver a certificate to the Project Company stating that clauses (1) through (6) of Section 8.8(A) (Requirements) have been satisfied, or (b) notify the Project Company in writing that Final Completion has not been achieved, stating in detail the reasons therefor. In the event that SAWS or the SAWS Engineer determines that Final Completion has not been achieved, the Project Company shall promptly take such action or perform such Construction Work as will achieve Final Completion and shall issue to SAWS another Notice of Final Completion pursuant to Section 8.8(B) (Notice and Report of Final Completion). Such procedure shall be repeated as necessary until Final Completion is achieved. Any expenses incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as Direct Payment. Notwithstanding the prior conveyance of the Project Company Storage Tank on the Notice of Acceptance Date, the requirements for Final Completion shall apply to the Project Company Storage Tank and related Construction Work.

(D) Obligation to Achieve Final Completion; Punch List Items. The Project Company shall achieve Final Completion within 365 days after the Commercial Operation Date.

## ARTICLE 9

### OPERATION AND MANAGEMENT OF THE PROJECT

#### SECTION 9.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Operation and Management Responsibility for the Project. Commencing on the Commercial Operation Date, the Project Company shall operate and manage the Project; treat Raw Groundwater; produce, supply, make available and sell Product Water to SAWS; transport and dispose of Project By-Products; provide all information necessary to secure and maintain Governmental Approvals to the extent required under this Water Transmission and Purchase Agreement; and otherwise operate and manage the Project so as to comply with the Contract Standards applicable to such activities.

(B) Application of Industry Experience. The Project Company shall use all reasonable efforts to apply at the Project the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Project Company, the Operating Service Provider and their Affiliates through the operation of their water businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Project Company for carrying out the Operating Work in a manner which improves upon the Contract Standards.

(C) SAWS Administrative Space. The Project Company shall provide office space at or adjacent to the permanent offices of the Operating Service Provider (if located outside Bexar County) for the exclusive use of SAWS' compliance personnel and advisors in accordance with Appendix 6 (Operating and Maintenance Standards). The cost related to SAWS' use of such office space (including janitorial services to be provided by the Project Company) shall constitute a Compensable Cost.

#### SECTION 9.2. SERVICE COORDINATION.

(A) Project Company's Chief Operator. The Project Company shall appoint a full-time manager of the Project (the "**Chief Operator**"). The Chief Operator shall have a TCEQ Grade A operator's certification as of the date of the commencement of start-up and commissioning of the Project and shall be otherwise appropriately certified under Applicable Law. The sole employment responsibility of the Chief Operator shall be managing the operation of the Project. In the event SAWS determines that (1) the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, or (2) an unworkable relationship (as defined below) has developed between the Chief Operator and SAWS, SAWS shall provide the Project Company with written notice, describing such failure or development of an unworkable relationship (as defined below) and its duration in reasonable detail. An unworkable relationship shall be deemed to have developed if the Chief Operator, by his or her persistent conduct, is non-responsive or non-communicative with Governmental Bodies, Project Site Lessors, SAWS or the Project Company; makes misrepresentations; provides false or incomplete information; dishonors commitments; fails to make timely decisions; or fails to manage or control the employees under his or her managerial control. The parties shall thereupon schedule a meeting to discuss and seek to resolve SAWS' concerns, to be held not more than 30 days following delivery of such notice, which meeting shall be attended by senior executives of SAWS, the Project Company and the Operating Service Provider with authority to resolve the dispute. If, following such meeting, based on the persistent conduct that prompted SAWS' concern or conduct occurring following the meeting, SAWS, acting reasonably, still determines that an unworkable relationship exists or that the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, SAWS shall so notify the Project Company and the Project Company

shall remove such Chief Operator as soon as reasonably practicable, but in no event later than 60 days.

(B) Communications and Meetings. On or before the Commercial Operation Date, the Project Company shall provide SAWS with contact information for the Chief Operator and senior management representatives of the Project Company. SAWS shall furnish to the Project Company comparable communications information with respect to the Contract Administrator. The Project Company shall meet with SAWS each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 9.11 (Periodic Reports). The Chief Operator (or other senior representative of the Operating Services Provider acceptable to SAWS) and, if requested by SAWS, a senior management representative of the Project Company each shall personally attend the monthly operations meetings with SAWS, and all special meetings which SAWS may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Project and this Water Transmission and Purchase Agreement. The Project Company shall have the right to have a representative present at all such meetings. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation in accordance with Section 18.2 (Non-Binding Mediation), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable.

(C) Complaints and Communications. The Project Company shall respond in a timely and effective manner to all complaints and communications received by the Project Company or received by SAWS and forwarded to the Project Company regarding the treatment and distribution of water, odor and air emissions, noise, light emissions, construction or any other matter related to the Operating Work as to which there is a Contract Standard, to the extent required by the following sentence. The Project Company shall investigate each such complaint and communication and, if it has a valid basis, the Project Company shall promptly respond to or rectify the matter, as applicable; provided, however, that the Project Company shall have no obligation to respond to or rectify a matter raised in a complaint or communication if the Project Company is in compliance with the Contract Standards with respect to the matter. The Project Company shall respond to complaints and communications concerning (1) emergencies related to the Project within one hour; (2) material spillages, leaks, breaks, noise, light, and emissions relating to the Project as soon as reasonably possible; and (3) other material communications within two Business Days. All such complaints and communications shall be immediately logged and responded to in writing, faxed to SAWS on a daily basis, and reported to SAWS as part of the monthly operations reports delivered pursuant to Section 9.11 (Periodic Reports). The Project Company shall establish, maintain and make publicly known a telephone number, e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

### SECTION 9.3. STAFFING AND PERSONNEL.

(A) Staffing Generally. The Project Company shall staff (or cause the Operating Service Provider to staff) the Project during the Term in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of the State. The Project staff, taken as a whole, shall be trained, experienced and proficient in the management and operation of water treatment systems using treatment processes similar to the Project. The Project Company shall (or shall cause the applicable Project Contractor to) appropriately discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Project Company shall notify SAWS of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would

adversely materially and adversely affect the ability of the Project Company to provide the Operating Work in accordance with the Contract Standards.

(B) Key Operations Staff. Collectively, the Chief Operator and those reporting directly to the Chief Operator shall have experience with all of the technologies and practices utilized in the Project sufficient to operate and maintain the Project and perform the Contract Services in accordance with the Contract Standards.

(C) Training. The Project Company shall be responsible for training the Chief Operator, operations supervisors and other Project Company personnel. No later than the Commercial Operation Date, the Project Company shall prepare a personnel training program which the Project Company proposes to institute in order to ensure that the Project is managed and operated by qualified personnel throughout the Term and in accordance with this Water Transmission and Purchase Agreement. Such personnel training program shall include the personnel training guidelines, policies and procedures established (1) by the TCEQ and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

#### SECTION 9.4. UTILITIES.

(A) General. The Project Company shall arrange for and establish the supply of gas, water, sewer and other utility service required for the Project in accordance with the Design Requirements, except that electric service during the Operating Period shall be arranged for and established by SAWS as provided in Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period).

(B) SAWS Payment of Project Electricity Costs During the Operating Period. SAWS shall have the exclusive right and obligation during the Operating Period to enter into contracts or other arrangements for the supply of electricity to the Project (not later than such time as is necessary to enable the Performance Test to be performed in a timely manner in accordance with the Performance Test Protocol), to determine the electricity supplier, and to negotiate and establish electric rates with the electricity supplier, subject to the approval of the Project Company, acting reasonably, all as set forth in greater detail in Appendix 9 (Guaranteed Maximum Electrical Utilization and Demand); provided, however, that the Project Company shall cause all Well Field electric service easements that may be required by any electric utility that provides electric service to the Well Field Facilities to be provided and conveyed to the electric utility service provider. The Project Company shall cooperate with and assist SAWS in making such arrangements, and SAWS shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity supply. SAWS shall pay all electricity bills during or related to the Operating Period in a timely manner, subject to annual reimbursement by the Project Company as part of the Annual Settlement Statement process set forth in Section 17.11 (Annual Settlement) in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in Section 17.11(B) (Annual Settlement of Electricity Costs). Notwithstanding the preceding sentence, the Project Company shall reimburse SAWS on a monthly basis in an amount equal to all fines and penalties imposed by the electricity provider resulting from the Project Company's failure to operate in accordance with the Contract Standards. The Project Company shall operate the Project in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Operating Work, charges for electricity use, demand, transmission and distribution which are payable by SAWS hereunder.

(C) No SAWS Liability. In no event, notwithstanding SAWS role in the selection of any electricity supply, shall SAWS have any liability or responsibility for the performance or non-performance of any electricity supplier, including any failure to supply



electricity in a timely or reliable manner as required for the Project or any additional costs or delays in providing Product Water that may result therefrom.

SECTION 9.5. ELECTRONIC OPERATION AND MAINTENANCE MANUAL.

The Project Company shall deliver a preliminary draft Electronic Operation and Maintenance Manual to SAWS for review and comment at least 45 days prior to Substantial Completion, and a draft final Electronic Operation and Maintenance Manual at least 60 days following Acceptance. SAWS shall have the right to review and comment on such draft final Electronic Operation and Maintenance Manual within a 30-day period following its receipt, and the Project Company shall give reasonable consideration to such comments in finalizing the draft. The Operating Work shall be performed substantially in compliance with the Electronic Operation and Maintenance Manual, the Operating Protocol and the CMMS. The Project Company shall keep the Electronic Operation and Maintenance Manual current in accordance with the Contract Standards, including changes required to reflect updates to record documents made on account of Capital Modifications or made pursuant to Section 9.10(C) (Record Documents).

SECTION 9.6. SAFETY.

The Project Company shall maintain the safety of the Project at a level consistent with all federal, State and local safety and health rules and regulations, and the Contract Standards. Without limiting the foregoing, the Project Company shall:

- (1) take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Project to,
  - (a) all employees performing the Contract Obligations and other persons who may be directly affected thereby,
  - (b) all visitors to the Project,
  - (c) all materials and equipment under the care, custody or control of the Project Company on the Project Sites,
  - (d) other property constituting part of the Project, and
  - (e) SAWS Property affected by Project operations;
- (2) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;
- (3) designate a qualified and responsible employee at the Project whose duty shall be the development and implementation of safety and health requirements at the Project, the prevention of fires and accidents and the coordination of such activities, with federal, State, local and SAWS officials;
- (4) operate all equipment in a manner consistent with the manufacturer's safety requirements; and
- (5) develop and implement a health and safety program that includes a written site-specific health and safety plan designed to implement the

requirements of this Section. The Project Company shall make all modifications to the Project which are or may be required under OSHA.

SECTION 9.7. SECURITY.

The Project Company, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project. The Project Company shall prepare and keep current a security plan for the Project and conduct vulnerability assessments in accordance with the requirements of Section 6.5 (Security Plan) of Appendix 6 (Operating and Maintenance Standards) (the “**Security Plan**”), and shall comply with the requirements of the Security Plan. The Project Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Standards.

SECTION 9.8. OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Project Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Project Company under Applicable Law in order to operate the Project, including those set forth in Appendix 2 (Governmental Approvals). All permit and filing fees required in order to obtain and maintain Governmental Approvals that are material to the Operating Work shall be paid by the Project Company, regardless of the identity of the applicant.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Operating Work shall be supplied and taken on a timely basis by the Project Company considering the requirements of Applicable Law. The data and information supplied by the Project Company to SAWS and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Project Company shall provide all material documentation to be submitted to a Governmental Body in connection with the Operating Governmental Approvals for SAWS’ review and comment at least 14 days prior to submission to the applicable Governmental Body. The Project Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. Unless required under Applicable Law, the Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence, provided that any such action by SAWS shall not cause the Project Company to fail to comply with Applicable Law.

(C) Non-Compliance and Enforcement. The Project Company shall report to SAWS, immediately upon obtaining knowledge thereof, all notices or communications it receives with respect to violations of the terms and conditions of any Project Site Lease, Governmental Approval or Applicable Law pertaining to the Project. The failure of the Project Company to comply with any Governmental Approval in all material respects shall constitute a breach of this Water Transmission and Purchase Agreement.

(D) Reports to Governmental Bodies. The Project Company shall, in accordance with the Contract Standards, prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental

Approvals and under Applicable Law with respect to the Project, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for SAWS, if such are acceptable to the Governmental Body. The Project Company first shall provide SAWS with copies of such regulatory reports prior to their filing as and to the extent required pursuant to Section 9.8(B) (Data and Information).

(E) Copies of Operating Governmental Approvals. The Project Company shall make available for review and copying by SAWS, upon request, copies of the Operating Governmental Approvals and related applications.

(F) Potential Regulatory Change. The Project Company shall keep SAWS regularly advised as to potential material changes in regulatory requirements affecting the Project or the Raw Groundwater of which the Project Company becomes aware, together with anticipated responses to such potential changes (including potential Capital Modifications and the acquisition of additional water rights).

(G) Deductions For Failure to Obtain a Groundwater Transportation Permit Extension. If, following the later of (i) September 15, 2031, and (ii) the Senior Debt Discharge Date, the Groundwater Transportation Permit has not been extended to or beyond September 11, 2044, then, until such extension has occurred, Deductions shall be imposed against the entirety of SAWS' Monthly Water Purchase Payment obligations until such time as the total amount of such Deductions equals \$50,000,000.

#### SECTION 9.9. SAWS ACCESS TO PROJECT.

(A) General Access. Subject to (1) reasonable safety precautions and execution of waivers of liability on the part of SAWS visitors, (2) reasonable prior notice requirements required by the Project Company, and (3) reasonable limitations imposed by the Project Company for purposes of assuring minimum disruption to operations of the Project (in all cases to be established in the Operating Protocol), SAWS shall have the right at any time to visit and inspect the Project and related records and observe the Project Company's performance of the Operating Work in order to determine compliance with the Contract Standards, including the Project Company's obligations under Article 11 (Maintenance, Repair and Replacement); provided that unless a Project Company Event of Default shall have occurred and be continuing arising directly from an alleged failure of the Project Company to act within Contract Standards, or other exigent circumstances exist which, in SAWS reasonable opinion, creates an imminent risk to the health and safety of its customers, any such visitation rights shall be limited to normal business hours, except for visits in and around the Product Water Delivery Point. SAWS shall give reasonable prior notice to the Project Company of any visit outside the immediate vicinity of the Product Water Delivery Point and afford the Project Company a reasonable opportunity to enable a Project Company representative to accompany any visit by SAWS personnel. To the extent SAWS personnel visit or inspect the Project unaccompanied, such SAWS personnel (including agents and contractors) shall announce themselves to the staff and Project Company employees that may be present at or near each location visited. The Project Company shall permit and facilitate access to the Project for such purposes by SAWS personnel and by agents and contractors designated by SAWS. All visitors and on-site SAWS personnel shall comply with the Project Sites-specific health and safety plan and rules, and shall not interfere with the Project Company's operation of the Project.

(B) Tours. The Project Company shall conduct public tours of the Project during normal business hours, and take visitors through such portions of the Project as are suitable for public visitation, all during normal business hours and in a pre-arranged and

mutually agreed upon manner that does not interfere with the Project Company's performance of the Contract Obligations.

SECTION 9.10. ASSET RECORDS.

(A) Information Systems. The Project Company, on and after the Commercial Operation Date, shall establish and maintain computerized information systems with respect to the Project for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Water Transmission and Purchase Agreement and demonstrate compliance with the Contract Standards. The Project Company shall grant SAWS real time, continuous access to such computerized information systems through the SAWS Interface Cabinet.

(B) Availability of Project Records to SAWS. The Project Company shall make available for inspection and copying by SAWS, upon request, copies of all operations, maintenance, performance, Project By-Products management, process control and similar records and data kept by the Project Company in its performance of the Operating Work.

(C) Record Documents. The Project Company shall maintain at the Project and make available to SAWS upon request for review and copying: (1) all material Design Documents and record drawings and documents pertaining to the Project copies of which were delivered to SAWS by the Project Company pursuant to Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (2) similar documents relating to any Capital Modifications. The Project Company shall: (1) update annually all such records to show any material changes to the Project made by the Project Company in the performance of the Operating Work (which shall include any change that alters the functionality, performance or usability of any Project Equipment and Project Structures, or which could impact Product Water quality or SAWS aqueduct operations); and (2) provide advice and assistance to SAWS, based on such records, in establishing and maintaining any SAWS geographic mapping and information systems.

(D) Annual Update of Record Drawings and Documents. The Project Company, within 60 days following the end of each Contract Year, shall deliver to SAWS an electronic copy of an updated set of as-built drawings reflecting any material changes to the Project during such Contract Year, of any updates to record drawings and documents that were made during the previous Contract Year. The annual record drawings and documents update shall be prepared in accordance with the requirements of Section 9.12(D) (Drawing Requirements) and delivered separately from the annual operation and maintenance reports delivered pursuant to Section 9.11(B) (Annual Operation and Maintenance Reports).

SECTION 9.11. PERIODIC REPORTS.

(A) Monthly Operations. The Project Company shall provide SAWS with monthly operations reports no later than 15 days after the end of each Billing Period. In addition to the operating data specified in Appendix 6 (Operating and Maintenance Standards), the monthly operations reports shall include a report by the Project Company as to the following:

(1) A table or other information format acceptable to SAWS setting forth all results of operations pertaining to the availability or unavailability of Product Water, presented using each of the categories used for billing and tracking purposes under Article 17 (Monthly Water Purchase Payments);

(2) Summary of the quantities and characteristics of Raw Groundwater and Product Water produced during the prior month, in a manner

consistent with the listing of the characteristics set forth in Appendix 8 (Performance Guarantee Requirements);

(3) Summary of all sampling and test data required by this Water Transmission and Purchase Agreement;

(4) Quantities of electricity, natural gas, water and other Utility services used during such month;

(5) Summary of staffing levels, job positions and workforce turnover;

(6) Statement of any complaints or communications received by the Project Company in relation to the Operating Work as to which the Project Company is obligated to respond under Section 9.2(C) (Complaints and Communications), and how each such complaint and communication was addressed by the Project Company;

(7) Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;

(8) Description of maintenance backlog and status of work orders of preventative and unplanned maintenance;

(9) List of material machinery and equipment which was unavailable for service during the prior month, and a timetable for repair and replacement;

(10) Description of any asset abandoned in place pursuant to Section 6.2.14(b) of Appendix 6 (Operating and Maintenance Standards);

(11) Description of partial or total Project equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;

(12) Adverse conditions which may be expected to arise during the current month that may affect the ability of the Project Company to pump or treat Raw Groundwater and produce Product Water in accordance with the terms and conditions of this Water Transmission and Purchase Agreement;

(13) Results of any regulatory or insurance inspections conducted during the prior month;

(14) Information on any Utility outages occurring during the prior month;

(15) Descriptions of any failures to meet the Performance Guarantees and data required to determine performance liquidated damages under this Water Transmission and Purchase Agreement, if any;

(16) Listing and description of any reports or other submittals made to or received from any Governmental Body with respect to any environmental, health or safety tests or monitoring procedures conducted by the Governmental Body during the prior month;

- (17) Notices of material violations of any Governmental Approval received during the prior month;
- (18) Notices of any material breach or default under any Project Site Lease; and
- (19) List of visitors to the Project in the prior month.

The Project Company shall submit for SAWS' review and approval, acting reasonably, in accordance with Section 6.3.1 of Appendix 6 (Operating and Maintenance Standards), the proposed format of the monthly operations report required to be provided by the Project Company pursuant to this Section.

(B) Annual Operations and Maintenance Reports. The Project Company shall furnish SAWS, within 60 days after the end of each Contract Year following the Commercial Operation Date, an annual summary of the information contained in the monthly operations reports, including a report by the Project Company of any administrative fine, penalty or consent order against it or any of its Affiliates with respect to the performance of operation and maintenance services at other water projects located in the State. The Project Company shall also perform and report to SAWS, as part of its annual operations and maintenance report and in accordance with the Contract Standards, a review and analysis of the administrative, operational and maintenance practices employed in the management of the Project. The annual operations and maintenance report shall also include a summary of all replacements or retirement of material Project Equipment and Capital Modifications. The annual record drawing updates required by Section 9.10(D) (Annual Update of Record Drawings and Documents) shall be prepared as a separate submittal to SAWS.

(C) Default Reports. The Project Company shall provide to SAWS, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Project Contract entered into by the Project Company in connection with the Operating Work.

#### SECTION 9.12. MAINTENANCE OF RECORDS.

(A) Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) referred to in Section 9.12(E) (Records to Be Kept) in accordance with this Section and other applicable terms of this Water Transmission and Purchase Agreement, in chronological order, in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to SAWS for inspection during normal business hours upon reasonable notice.

(B) Maintenance of Records. Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in electronic form and, to the extent legally required, in hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

- (1) The Project Company shall retain and maintain all records referred to in Section 9.12(E) (Records to Be Kept) for a period of at least ten years from the Contract Year to which such records relate, or such longer period as may be required by Applicable Law, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Water Transmission and Purchase Agreement.

(2) On the expiration of such period or at the earlier request of SAWS, the Project Company shall deliver all those records (or, if those records are required by statute to remain with the Project Company or Project Contractor, copies thereof to SAWS in the manner and at the location as SAWS specifies, acting reasonably.) SAWS shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section upon reasonable notice.

(C) Disposal of Records. During the Term, the Project Company may dispose of any records referred to in Section 9.12(E) (Records to Be Kept) if any are more than 10 years old or in respect of which the required period for their retention has expired, provided that the Project Company first notifies SAWS in writing and provides SAWS with 60 days to elect to receive delivery of such records.

(D) Drawing Requirements. Any drawings required to be made or supplied pursuant to this Water Transmission and Purchase Agreement shall be prepared in accordance with the requirements of Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where by prior agreement with the Project Company SAWS has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Project Company shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

(E) Records to Be Kept.

The Project Company shall retain the following:

(1) This Water Transmission and Purchase Agreement and the documents executed based on the Transaction Forms, including all amendments to such agreements;

(2) Records relating to the appointment and supervision of SAWS Representative and the Project Company Representative;

(3) Documents relating to Governmental Approvals, including applications, refusals and appeals;

(4) Documents relating to any amendment, material dispute or litigation under any Project Site Lease;

(5) Notices, reports, results and certificates relating to completion of the Construction Work, Commissioning, and Capital Modifications;

(6) All operation and maintenance manuals;

(7) Record drawings and documents, and periodic updates;

(8) Documents relating to Uncontrollable Circumstances;

(9) All notices made to or received from the SAWS Representative;

(10) Documents relating to a request for the consent of SAWS to any Change in Control by the Project Company;

- (11) Documents relating to a Refinancing of the Project Company;
- (12) Tax invoices and records applicable to the Project (other than any income tax records for the Project Company or records pertaining to other taxes personal to the Project Company);
- (13) Records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Project Company with respect to the Construction Work and Operating Work;
- (14) Documents relating to the Required Insurance; and
- (15) All other records, notices or certificates required to be produced or maintained by the Project Company pursuant to the express terms of this Water Transmission and Purchase Agreement.

SECTION 9.13. EMERGENCIES.

(A) Emergency Plan. Within 90 days prior to the Commercial Operation Longstop Date, the Project Company shall provide SAWS with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety, power outage, and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to SAWS and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by SAWS and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary, in accordance with the Operating Protocol.

(B) Emergency Action. Notwithstanding any requirement of this Water Transmission and Purchase Agreement requiring SAWS approval or consent to reports or submittals, if at any time the Project Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project, or to mitigate the immediate consequences of an emergency event, then the Project Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Project Company shall notify SAWS of the event at an emergency phone number supplied by SAWS, and the Project Company's response thereto.

SECTION 9.14. HAZARDOUS SUBSTANCE MANAGEMENT DURING THE OPERATING PERIOD.

As between the parties, the Project Company shall be responsible for, and shall bear the risk and cost, of managing and disposing of Hazardous Substances (including Hazardous Substances in Unacceptable Water) as may exist at or as may arise from the operation of the Project during the Operating Period; and SAWS shall be responsible for, and shall bear the risk and cost of managing and disposing of, such Hazardous Substances as may exist at, or arise from the operation of, the SAWS Distribution System during the Operating Period. The Project Company shall update as reasonably necessary: (1) the Hazardous Substance Management Program; and (2) the Response Plan.



ARTICLE 10

PERFORMANCE

SECTION 10.1. GENERAL PERFORMANCE RESPONSIBILITIES.

(A) Project Company Acknowledgment. The Project Company acknowledges that the Project will constitute: (1) a significant source of treated drinking water for conveyance to the SAWS Distribution System; and (2) a critical part of SAWS' long term water supply availability program. The parties acknowledge and agree that this Section shall not be construed to expand or otherwise modify the Project Company's obligations under this Water Transmission and Purchase Agreement.

(B) Asset Management. SAWS: (1) has and shall retain full management responsibility for the SAWS Distribution System; and (2) shall be responsible for the operation, maintenance, repair, replacement and management of the SAWS Interconnection Improvements. The Project Company shall be responsible, in accordance with this Water Transmission and Purchase Agreement, for the operation, maintenance, repair, replacement and management of the Project. The Cabinet Interface, SCADA and other communication systems to be installed and operated by the parties in connection with the Project will be designed to provide electronic data and information to both parties to facilitate the continuous automatic parallel operation of the Project and the SAWS Distribution System.

(C) Delivery Tank. The Project, the Project Company Storage Tank and the SAWS Storage Tank shall be designed such that Product Water may be directed either to the Project Company Storage Tank or the SAWS Storage Tank at the election of SAWS as the operator of both tanks. The particular tank to which Product Water is directed at any time is referred to herein as the "**Delivery Tank.**"

(D) Limitations on Project Company Rights. The Project Company shall not treat water other than Raw Groundwater, and shall not use the Project for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than SAWS. Except at the direction and with the permission of SAWS given under Section 26.5 (Opportunities), the Project Company shall not deliver Product Water to any person other than SAWS, and shall not impose a fee or charge on any person other than SAWS for the supply of Product Water. The only compensation to the Project Company for the supply of Product Water and for performing the Operating Work shall be the Monthly Water Purchase Payments and other amounts payable by SAWS hereunder.

(E) Reserved Opportunities and Rights. SAWS shall own the opportunities and have the reserved rights with respect to the Project set forth in Section 26.5 (Opportunities).

SECTION 10.2. PRODUCT WATER QUALITY GUARANTEE.

(A) Applicable Law Limits. The Project Company shall operate the Project so as to produce Product Water from Raw Groundwater in compliance with the quality and other requirements of Applicable Law and this Water Transmission and Purchase Agreement. In no event shall the Project Company make available Product Water that is not in compliance with the requirements of Applicable Law.

(B) Additional Product Water Quality Standards. In addition to its obligation to comply with the Product Water requirements imposed by Applicable Law as provided in Section 10.2(A) (Applicable Law Limits), the Project Company shall make available Product Water in compliance with the quality requirements set forth in Appendix 8 (Performance

Guarantee Requirements), including the bacterial testing and rectification requirements set forth therein (the “**Additional Product Water Quality Standards**”). The Additional Product Water Quality Standards and the requirements in Section 10.2(A) (Applicable Law Limits) shall collectively mean the “**Product Water Quality Guarantee**”.

(C) Compliance. Compliance with the Product Water Quality Guarantee shall be measured at the Product Water Quality Sampling Location. SAWS shall have no obligation prior to or after taking delivery of any Product Water made available by the Project Company to conduct tests to determine whether such Product Water meets the Product Water Quality Guarantee or is Off-Specification Product Water or Unacceptable Product Water. SAWS may, however, conduct tests to make such a determination, either by testing Product Water in the Project pursuant to Section 10.12(B) (SAWS Testing Rights) or by testing Product Water in the SAWS Distribution System.

(D) Remedies for Breach of Product Water Quality Guarantee - Off-Specification Product Water. In the event SAWS takes delivery of any Product Water that constitutes Off-Specification Product Water: (1) each Unit of such Off-Specification Water shall be deemed to constitute a Monthly Delivered Water Unit; (2) SAWS shall have the right in its discretion to impose a Deduction in the amounts specified in Table 8-2 of Appendix 8 (Performance Guarantee Requirements); (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon the resumption of deliveries will not constitute Off-Specification Product Water; and (4) SAWS shall further have the additional remedies set forth in Section 10.10 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any Unit of Product Water made available by the Project Company but not taken delivery of by SAWS pursuant to the exercise of its rights under this Section shall not constitute a Monthly Delivered Water Unit.

(E) Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water. In the event SAWS takes delivery of any Product Water that constitutes Unacceptable Product Water: (1) each Unit of Unacceptable Product Water shall be deemed not to constitute a Monthly Delivered Water Unit; (2) SAWS shall have no obligation to compensate the Project Company for such Unit of Unacceptable Product Water; (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that (a) Product Water that is taken delivery of by SAWS upon resumption of deliveries will not constitute Unacceptable Product Water, and (b) SAWS has adequate time, acting reasonably and in light of its duty to mitigate, to investigate any adverse effect of such deliveries on the SAWS Distribution System and take any necessary corrective action; (4) SAWS shall have the right to bring an action for damages; and (5) SAWS shall further have the additional remedies set forth in Section 10.10 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any damages payable by the Project Company as a result of any such judgment or settlement shall be paid as a Direct Payment.

(F) Boil Water and Do Not Drink Notices. In the event the TCEQ requires the issuance of a “boil water” or “do not drink” notice on the basis of the quality of Product Water of which SAWS has taken delivery: (1) the Project Company shall, if reasonably required by SAWS, cause the Operating Service Agreement to be terminated and enter into a replacement Operating Service Agreement in accordance with Section 13.4 (Project Contracts), (2) such notice shall constitute a Project Company Remediable Breach pursuant to Section 20.1(B) (Project Company Remediable Breach Defined), and (3) SAWS shall have the further remedies specified herein, including those specified in Section 10.10 (SAWS Remedies for Non-Compliance with Performance Guarantees). If, at any time during the Term following the issuance of a first such notice, the TCEQ subsequently requires the issuance of a second such notice on the basis of the quality of Product Water delivered to SAWS, a Project Company Event of Default shall be deemed to have occurred and SAWS may pursue the remedies available

under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default), and Article 22 (Termination).

(G) Reporting Off-Specification Product Water and Unacceptable Product Water. The Project Company shall report to SAWS the making available to SAWS of any Off-Specification Product Water and Unacceptable Product Water immediately upon having actual knowledge of any such circumstance.

(H) Indemnity for Loss-and-Expense from Non-Complying Product Water. In the event that SAWS takes delivery of any Product Water that fails to comply with the Product Water Quality Guarantee, the Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting from the supply of such non-complying Product Water to third parties. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends to and shall include any special, incidental, consequential, punitive and other similar damages awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 19.6 (No Special, Consequential or Punitive Damages).

(I) No Uncontrollable Circumstances Relief. In no event shall an Uncontrollable Circumstance excuse the Project Company from its obligation to comply with the Product Water Quality Guarantee. No Unacceptable Product Water taken delivery of by SAWS shall constitute Daily Delivered Water Units, irrespective of the occurrence of an Uncontrollable Circumstance.

SECTION 10.3. PRODUCT WATER SUPPLY AND DEMAND DEFINITIONS.

(A) Definitions. As used in this Water Transmission and Purchase Agreement:

(1) Advance Project Company Make-Up Units. "**Advance Project Company Make-Up Units**" has the meaning set forth in Section 10.4(D)(2) (Supply of Make-Up Units).

(2) Baseline Annual Volume. "**Baseline Annual Volume**" means 50,000 Acre Feet.

(3) Baseline Daily Volume. "**Baseline Daily Volume**" means 137.0 Units.

(4) Daily Delivered Water Units. "**Daily Delivered Water Units**" means, for any day, the number of Units actually made available by the Project Company and taken delivery of by SAWS at the Product Water Delivery Point.

(5) Daily Maximum Volume. "**Daily Maximum Volume**" means (a) 137 Units of Product Water on any day in the months of November, December, January and February, and (b) 149.2 Units on any day in all other months (all subject to the Baseline Annual Volume).

(6) Delivery Tank “**Delivery Tank**” has the meaning set forth in Section 10.1(C) (Delivery Tank).

(7) Demand Shortfall Units. “**Demand Shortfall Units**” means the number of Units, if any, by which the number of Daily Delivered Water Units is less than the number of Units that the Project Company has made available on such day as determined under Section 10.4(C) (Determination of Water Made Available), up to the Daily Maximum Volume. Demand Shortfall Units shall not, however, include any Tank Structural Failure Units. In no event shall Demand Shortfall Units be deemed to have been created on any day during which the Product Water level in the Delivery Tank was lower than the Flow Shutdown Tank Level throughout the entire day, unless and only to the extent that SAWS has directed the Project Company in writing to curtail or shut down Product Water flow into the Delivery Tank.

(8) Excess Product Water. “**Excess Product Water**” means, for any Contract year, the number of Daily Delivered Water Units for such Contract Year that is in excess of 50,000 Units.

(9) Excused Supply Shortfall Units. “**Excused Supply Shortfall Units**” means the sum of (a) the number of Supply Shortfall Units which the Project Company did not make available due to an Uncontrollable Circumstance, and (b) the number of Tank Structural Failure Units. The Project Company shall be allowed seven days for scheduled maintenance of the Project Improvements in each Contract Year, and accordingly on each day on which the Project Improvements are shut down for any such scheduled maintenance, the Project Company shall be credited with 137.0 Excused Supply Shortfall Units. A Tank Structural Failure Unit is an Excused Supply Shortfall Unit.

(10) Flow Curtailment Tank Level “**Flow Curtailment Tank Level**” has the meaning set forth in Section 10.3(B) (Flow Curtailment Tank Level).

(11) Flow Shutdown Tank Level “**Flow Shutdown Tank Level**” has the meaning set forth in Section 10.3 (C) (Flow Shutdown Tank Level),

(12) Make-Up Units. “**Make-Up Units**” means the number of Units made available by the Project Company at the Product Water Delivery Point that exceeds 137.0 Units on any day.

(13) Supply Shortfall Units. “**Supply Shortfall Units**” means the number of Units by which the volume of Product Water made available by the Project Company at the Product Water Delivery Point is less than the Baseline Daily Volume.

(14) Tank Structural Failure Units. “**Tank Structural Failure Units**” means for any day the number of Units that SAWS, after reasonable efforts to comply with its mitigation obligations through the use of the SAWS Storage Tank as the Delivery Tank and other appropriate measures, did not take delivery of on account of a structural failure of the Project Company Storage Tank that prevented its continued use due to operational or regulatory requirements and occurred due to the Project Company’s failure to build the Project Company Storage Tank in accordance with the requirements of this Water Transmission and Purchase Agreement.

(15) Unexcused Supply Shortfall Units. “**Unexcused Supply Shortfall Units**” means the number of Supply Shortfall Units which the Project Company did not make available that was not due to an Uncontrollable Circumstance.

(B) Flow Curtailment Tank Level. Promptly following substantial completion of the Project design, the parties shall negotiate and establish the level in the Delivery Tank (expressed in feet above mean sea level) at which a skilled operator applying Good Management Practice should begin to curtail the flow of Product Water to the Delivery Tank in order to avoid the risk of the Product Water level in the Delivery Tank reaching the Flow Shutdown Tank Level in a two-hour period if Product Water were to continue to flow into the Delivery Tank at the rate of 33,000 GPM with no Product Water drawdown by SAWS from the Delivery Tank during such two-hour period. The agreed-upon level shall be the “**Flow Curtailment Tank Level**”, and shall be reflected in a Contract Administration Memorandum. Until and unless the parties agree otherwise pursuant to this subsection, the Flow Curtailment Tank Level shall be 1070 MSL.

(C) Flow Shutdown Tank Level. Promptly following completion of the Project design and in conjunction with the establishment of the Flow Curtailment Tank Level, the parties shall negotiate and establish the level in the Delivery Tank (expressed in feet above mean sea level) at which a skilled operator applying Good Management Practice should shut down the supply of Product Water to the Delivery Tank in order to avoid the possibility that the Product Water level in the Delivery Tank will reach a level that would overflow the Delivery Tank. The agreed-upon level shall be the “**Flow Shutdown Tank Level**”, and shall be reflected in a Contract Administration Memorandum. Until and unless the parties agree otherwise pursuant to this subsection, the Flow Shutdown Tank Level shall be 1079 MSL.

(D) Records and Tracking Accounts. The Project Company shall record the Daily Delivered Water Units, the Excused Supply Shortfall Units, the Unexcused Supply Shortfall Units, the Demand Shortfall Units, the Make-Up Units and the Advance Make-Up Units on a daily basis (rounding the number of Units in each to the nearest one-tenth of one Acre Foot), and keep tracking accounts for all such Units by Category.

SECTION 10.4. PROJECT COMPANY RIGHT TO SUPPLY PRODUCT WATER.

(A) Supply Prior to Commercial Operation Date. The Project Company shall have the right, commencing on January 16, 2020, to deliver Product Water for purposes of conducting the Performance Test. SAWS shall take delivery of such Product Water to the extent that the SAWS Interconnection Improvements are completed and permit Product Water delivery. No compensation shall be payable by SAWS for any Product Water of which it takes delivery prior to the Commercial Operation Date.

(B) Supply Following Commercial Operation Date. The Project Company shall have the right, commencing on the Commercial Operation Date (but not earlier than April 15, 2020) and throughout the Term, to make available a maximum of 50,000 Acre Feet of Product Water each Contract Year at the Product Water Delivery Point (except as provided in Section 10.4(D)(2) (Supply of Make-Up Units) with respect to the delivery of Project Company Make-Up Units). Product Water shall be supplied and made available in accordance with the following terms and conditions:

(1) In the first and second months of March and the first and second months of April following the Commercial Operation Date, the Project Company may not supply more than 137.0 Units on any day;

(2) The Project Company may not supply Project Water on any day in excess of the Daily Maximum Volume applicable to such day;

(3) In the event of an extended Project shutdown, the Project Company may not supply Project Water except in accordance with the requirements of Section 6.6.2 (Extended Shutdowns) of Appendix 6 (Operating and Maintenance Standards);

(4) Whenever the Product Water level in the Delivery Tank reaches the Flow Curtailment Tank Level, the Project Company shall curtail the Flow Rate to a rate not in excess of 31,000 GPM; and

(5) Whenever the Product Water level in the Delivery Tank reaches the Flow Shutdown Tank Level, the Project Company shall shut down the flow of Product Water to the Delivery Tank.

(C) Determination of Water Made Available. Product Water shall be deemed to have been made available on any day:

(1) In the first 30 days after the Commercial Operation Date, in a volume equal to the average daily volume of Product Water successfully produced by the Project Company and supplied to SAWS during the Performance Test, up to the Baseline Daily Volume applicable in such 30-day period; and

(2) Thereafter, in a volume equal to the average daily number of Daily Delivered Water Units in the 30-day period immediately preceding such day, subject to the following:

(a) If on any day in such 30-day period Product Water has not been taken delivery of by SAWS for any reason (including due to a curtailment or shutdown under Section 10.4(B)(4) or (5) above), such average daily volume shall be calculated by using only the days within such 30-day period on which SAWS has taken delivery of all Product Water made available by the Project Company. For example, if during such a 30-day period, SAWS did not take delivery of any Product Water in whole or in part on three days, the daily average shall be calculated over the 27 days on which SAWS did take delivery of all Product Water made available by the Project Company; and

(b) If on any day in such 30-day period the Project Company is not capable of delivering Product Water in volumes up to the Baseline Daily Volume, whether due to physical operating capacity constraints or due to limitations under Governmental Approvals or other Applicable Law (including regulatory reductions in permitted production or transportation volumes), then Product Water shall be deemed to have been made available only in a volume up to the volume that the Project Company was operationally capable of delivering under Applicable Law on that day. In the event the average daily volume calculated under item (C)(2) above is less than the volume that the Project Company was operationally capable of delivering under Applicable Law on such day, such lesser average daily volume shall be deemed to be the volume of Product Water made available.

(D) Supply of Make-Up Units. Subject to the Daily Maximum Volume:

(1) On any day when there are Excused Supply Shortfall Units standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units so long as the volume of Product Water made available on any day does not exceed the Daily Maximum Volume; and

(2) On any day when there are no Excused Supply Shortfall Units standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units (“**Advance Project Company Make-Up Units**”) up to a maximum of 3,000 Advance Project Company Make-Up Units at any time outstanding, which Advance Project Company Make-Up Units shall be available for application whenever Excused Supply Shortfall Units subsequently occur.

Make-Up Units supplied pursuant to this subsection (D) shall be so identified and recorded as such on a daily basis in the appropriate tracking account, and used as appropriate for monthly and annual tracking and reconciliation purposes.

(E) Effect of Opportunities. In the event SAWS exercises its rights under Section 26.5 (Opportunities), the parties shall negotiate and reflect in a Contract Administration an appropriate adjustment to the Product Water Delivery Point and to the terms and conditions of this Section in order to give effect to SAWS’ exercise of such rights in a manner that does not adversely affect any of the Project Company’s rights hereunder.

SECTION 10.5. SAWS OBLIGATION TO TAKE DELIVERY OF AND PURCHASE PRODUCT WATER.

(A) SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date. Following the Commercial Operation Date, SAWS shall take delivery of and purchase all Product Water made available by the Project Company, subject to and in accordance with the limits set forth in Section 10.4(B) (Supply Following Commercial Operation Date) and the terms and conditions of this Water Transmission and Purchase Agreement.

(B) SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date. To the extent that in any Billing Period following the Commercial Operation Date there are any Demand Shortfall Units that have not been made up by SAWS Make-Up Units, SAWS shall pay the Unit Price for such Demand Shortfall Units even though SAWS has not taken delivery of the Product Water made available by the Project Company that would have constituted Daily Delivered Water Units. The failure of SAWS to take delivery of any Product Water to any degree or for any reason shall not constitute a breach of this Water Transmission and Purchase Agreement or the basis for a SAWS Event of Default.

(C) Off-Specification Product Water and Unacceptable Product Water. Any SAWS failure to take delivery of Product Water pursuant to the exercise of rights under Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water) and Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water) shall not constitute a breach of Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date), and any Product Water not taken delivery of on account of such exercise of rights shall not constitute Demand Shortfall Units.

(D) Measurement. The volume of Product Water of which SAWS has taken delivery shall be measured by the Project Flow Meter.

(E) Excess Product Water. It is the intention of the parties that the Project Company shall not make available, and SAWS shall not take delivery of, Excess Product Water (except as provided in Section 10.4(D) (Supply of Make-up Units)). In the event that SAWS nonetheless takes delivery of Excess Product Water (except as provided in Section 10.4(D) (Supply of Make-up Units)), SAWS shall have no obligation to pay the Unit Price to the Project Company on account thereof.

(F) Payments. SAWS shall make the payments required under this Section by making Monthly Water Purchase Payments in accordance with Article 17 (Monthly Water Purchase Payments).

#### SECTION 10.6. MAKE-UP UNITS.

(A) Project Company Make-Up Units. Any Make-Up Units on any day shall first be applied to the credit of the Project Company to make up any Excused Supply Shortfall Units in the Excused Supply Shortfall Units tracking account (“**Project Company Make-Up Units**”). Project Company Make-Up Units shall be purchased by SAWS as provided in Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date). The Project Company shall not have any opportunity to make up Unexcused Supply Shortfall Units.

(B) SAWS Make-Up Units. Any Make-Up Units on any day that are not credited to the Project Company as Project Company Make-Up Units under Section 10.6(A) (Project Company Make-Up Units) shall constitute “**SAWS Make-Up Units.**” Because SAWS shall have already paid the Unit Price for Demand Shortfall Units as provided in Section 10.5(B) (SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date), SAWS Make-Up Units shall be made available by the Project Company and taken delivery of by SAWS without any additional compensation.

(C) Delivery of Make-Up Water. To the extent that at any time there are Demand Shortfall Units that have not been made up by SAWS Make-Up Units, the Project Company (subject to the Daily Maximum Volume unless otherwise agreed by the parties), shall use all reasonable efforts to deliver Product Water so as to create SAWS Make-Up Units as soon as practicable with the objective of minimizing the volume of Product Water to be delivered at the end of the Term.

#### SECTION 10.7. PROJECTED ANNUAL DELIVERY SCHEDULES.

(A) Projected Annual Supply Schedules. The Project Company and SAWS shall negotiate and establish a proposed Product Water production plan (the “**Projected Annual Supply Schedule**”) for each Contract Year (commencing with the Contract Year in which the Commercial Operation Date occurs) during the Term setting forth the daily and monthly volumes of Product Water (expressed in number of Units per day) that the Project Company proposes to produce and make available and that SAWS proposes to take delivery of and purchase during each Billing Period of such Contract Year. The Projected Annual Supply Schedule shall be prepared on an estimated basis not later than 365 days prior to the commencement of each such Contract Year, and on a definitive basis not later than 60 days prior to the commencement of each such Contract Year (or, for the first such Contract Year, not later than 30 days prior to the Commercial Operation Date). The Project Company acknowledges that the Projected Annual Supply Schedule will be incorporated into SAWS annual Distribution System operating plan. The Projected Annual Supply Schedules will be prepared for planning purposes only and will not be binding on the parties. The Projected



Annual Supply Schedule established for a particular Contract Year shall be applicable to the subsequent Contract Year unless and until a Projected Annual Supply Schedule is negotiated and established for the subsequent Contract Year.

(B) Delivery Schedule Factors. The Projected Annual Supply Schedule shall take into account and reflect the following:

(1) Project Company Scheduled Maintenance. Planned shutdowns or partial outages of any part of the Project in order to perform scheduled maintenance, repair and replacement, which shall be limited to the months of November, December, January and February to the extent reasonably practicable. Specific hours designated by the Project Company in the Projected Annual Delivery Schedule for scheduled maintenance are “**Scheduled Company Shutdown Hours**”;

(2) SAWS Scheduled Maintenance. Planned shutdowns or partial outages of any part of SAWS Distribution System in order to perform scheduled maintenance, repair and replacement, which may limit SAWS ability to receive Product Water during the period of SAWS shutdown. Specific hours designated by SAWS in the Projected Annual Delivery Schedule for scheduled SAWS Distribution System maintenance are “**Scheduled SAWS Shutdown Hours**”;

(3) Electric Utility Maintenance. Planned shutdowns or partial outages of any Utility or other facilities supplying electricity necessary for Project operations in order to perform scheduled maintenance, repair and replacement. Specific hours designated by the Project Company for scheduled Utility maintenance are “**Scheduled Utility Shutdown Hours**”;

(4) Capital Modifications. The timing of any Capital Modification work to be performed during the Contract Year; and

(5) Other Operating Considerations. Other considerations material to Project and SAWS Distribution System operations.

The designation of any Scheduled Project Company Shutdown Hours, Scheduled SAWS Shutdown Hours, and Scheduled Utility Shutdown Hours shall not serve to lessen the Baseline Annual Volume. The parties may at any time, by mutual agreement, modify the Projected Annual Supply Schedule.

(C) Projected Monthly Supply. “**Projected Monthly Supply**” means the number of Units that the parties, pursuant to Section (A) of this Section, negotiate and agree upon that are intended to be made available by the Project Company and taken delivery of by SAWS for each Billing Period in a Contract Year. The Projected Monthly Supply for each Billing Period shall be established such that the sum of the Projected Monthly Supply Units for the Contract Year equals the Baseline Annual Volume.

#### SECTION 10.8. SAWS-DIRECTED CURTAILMENTS AND SHUTDOWNS.

The Project Company acknowledges that operating conditions in SAWS Distribution System as a whole may require SAWS to immediately curtail receipt of Product Water, and that such conditions may therefore necessitate the issuance by SAWS Representative of a written directive requiring the immediate curtailment or cessation of ordinary operations at the Project and placement of the Project in Shutdown Mode. Such conditions may occur as a result of mechanical or structural failure within the SAWS

Distribution System, emergency conditions originating in the SAWS Distribution System or other unexpected factors. The issuance of any such directive shall constitute an Uncontrollable Circumstance. In responding to any curtailment or shutdown directive issued by SAWS under this Section, the Project Company shall use reasonable efforts to meet the curtailed water delivery level and all of the other Performance Guarantees; provided, however, that the Project Company shall be under no obligation to do so unless such requirements can be met while operating the Project in accordance with Applicable Law, Good Management Practice, and within its design limits. The Project Company shall resume full operations of the Project within 24 hours of receipt by the Project Company of a written resumption directive issued by SAWS Representative.

SECTION 10.9. EXTENSION OF TERM.

(A) Shortfall Units. The Term shall be extended as and to the extent required:

(1) Excused Supply Shortfall Units. To allow for any Excused Supply Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS;

(2) Demand Shortfall Units. To allow for any Demand Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS without further compensation.

The Project Company shall provide written notice to SAWS, at least 90 days prior to the Expiration Date, as to whether and to what extent the Expiration Date will need to be extended as of the date thereof to account for the matters described in this Section 10.9(A) (Shortfall Units), together with the basis therefor. On or before the Expiration Date, the parties shall execute a Contract Administration Memorandum confirming the extended Expiration Date. Throughout the extended Term, the Project Company shall provide quarterly updates as to such matters, as well as additional information related to events that occur during the extended Term that may require additional extensions.

(B) Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance. In the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of an Uncontrollable Circumstance, then the Term shall be extended subject to and in accordance with the following:

(1) As soon as practicable after the Project Company becomes aware of the need to issue additional Permitted Debt, the Project Company shall provide to SAWS the following information at least 45 days prior to the date on which the Project Company proposes to issue the Permitted Debt (the **“Permitted Debt Issuance Date”**):

(a) a term sheet and other relevant information on the terms of the proposed Capital Modification;

(b) details concerning any proposed financing of such proposed Capital Modification including the amount of any anticipated equity contribution and the principal amount and anticipated interest rate pertaining to any additional Permitted Debt proposed to be issued (the **“Proposed Financing”**);

(c) the Financial Close Financial Model; and

(d) a pro-forma post-Proposed Financing Financial Model, which modifies the Financial Close Financial Model by making the following adjustments to take into account the Proposed Financing:

(i) Entry of the proposed equity contribution, if any, into the Financial Close Financial Model as of the proposed Permitted Debt Issuance Date. This incremental equity contribution will be assumed to earn a pre-tax internal rate of return of 13.741% (which was the pre-tax internal rate of return anticipated to be earned in the Contract Date Financial Model);

(ii) Entry of the proposed Permitted Debt issuance amount into the Financial Close Financial Model as of the Permitted Debt Issuance Date. This debt issuance will be assumed to bear interest at the rate set forth in subsection (1)(b) above;

(iii) Holding the Capital and Raw Groundwater Unit Price constant, extend the Term for the necessary number of quarters to amortize the proposed Permitted Debt issuance to maturity assuming level debt service payments which begin at the Senior Debt Discharge Date as anticipated in the Financial Close Financial Model (June 2049) or such later date as may be necessary assuming principal balances of previously issued Permitted Debt remain outstanding beyond such Senior Debt Discharge Date; and

(iv) To the extent that the cash flows associated with the extension of Term in subsection (1)(d)(iii) above have not been sufficient to generate a pre-tax internal rate of return of 13.741% on the incremental equity contribution referred to in item (i) of this subsection, further extend the Term (beyond the extension described in subsection (1)(d)(iii) above) for the additional necessary number of quarters to achieve this target level of return. For purposes of this computation, it is assumed that all cash flows previously being utilized to service Permitted Debt will now be available to provide additional equity returns.

(2) Following receipt of the information from the Project Company set forth in subsection (1) above, SAWS shall within 21 days review and, if in agreement, provide its approval to the Proposed Financing and its requisite extension of the Term, such approval not to be unreasonably withheld. In the event SAWS does not approve such extension, it shall provide the reasons therefor in detail in writing to the Project Company within such 21 day-period and shall make available representatives with decision-making authority at a mutually agreed time and place to meet with equivalent representatives of the Project Company within 10 days thereafter to discuss and review in detail the information set forth in the submittals of the Project Company and the reasons for the disapproval of SAWS.

(3) SAWS shall cooperate with the Project Company and provide reasonable assistance to the Project Company with respect to each financing pursuant to this Section 10.9(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(4) Upon completion of the Proposed Financing, the steps outlined in subsection (1)(d) above will be completed using the actual interest rates achieved in order to determine the ultimate extension of the Term. A copy of the Financial Close Financial Model taking into account the actual results of the financing will be forwarded to SAWS within 10 days of the closing of the Proposed Financing, with the actual extension of the Term being as determined in such adjusted Financial Close Financial Model. The parties shall document any extension of the Term by executing a Contract Administration Memorandum.

(5) The parties acknowledge that in the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of any Uncontrollable Circumstances during the extended Term, then the parties shall follow the same procedures set forth in this Section 10.9 (Extension of Term) in order to further extend the Term, subject to the limitations set forth in this Section 10.9 (Extension of Term).

(C) Maximum Term Extension. The maximum Term extension resulting from any or all of the extensions provided for in Sections 10.7(A) (Shortfall Units) and 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) shall be 20 years following the original Expiration Date.

(D) No Increase in Capital and Raw Groundwater Unit Price. During the period of any extension of the original Term occurring under this Section 10.9 (Extension of Term), there shall be no adjustment of the Capital and Raw Groundwater Unit Price for any reason, including the reasons that caused an extension of the original Term.

SECTION 10.10. SAWS REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Project Company fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the Project Company shall, without relief under any other Performance Guarantee, and in addition to the payment of Deductions and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

(1) notify SAWS promptly (and in any event not later than 24 hours) of the Project Company's having knowledge of any such non-compliance;

(2) provide SAWS promptly (and in any event not later than 24 hours) with copies of any notices sent to or received from the EPA, the TCEQ, the POSGCD or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law;

(3) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom;

(4) take any commercially reasonable action necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee; and

(5) assist SAWS with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

The Project Company shall consult with SAWS in a timely manner regarding the appropriate remedy.

(B) Project Performance Testing. In the event that the Project Company fails to meet the Performance Guarantees for four consecutive Billing Periods, SAWS may require a performance test of the Project to be conducted by the Project Company, at the Project Company's cost and expense, to determine the cause of such failure; provided, however, that such test shall not materially and adversely affect the Project or the Project Company's performance of (or cost of the performance of) the Contract Obligations. The Project Company shall use reasonable efforts to make all necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

SECTION 10.11. SERVICE COORDINATION.

At least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Project Company shall update, subject to the approval of SAWS, the Operating Protocol consistent with the Contract Standards. The Operating Protocol shall set forth all practices, procedures and protocols which are necessary or useful in coordinating the activities of the parties hereunder, including particularly the establishment and modification from time to time of SAWS' demands for Product Water, all operational and informational communications between SAWS and the Project Company, and all data and information required to demonstrate the extent to which the Project is being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Water Transmission and Purchase Agreement. SAWS' Representative and the Chief Operator shall be responsible for coordinating all matters relating to the Operating Protocol.

SECTION 10.12. METERING AND TESTING.

(A) Testing. The Project Company shall conduct all tests of Raw Groundwater and Product Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and, prior to the Commercial Operation Date, shall be conducted at the Project Company's sole cost and expense; thereafter, the cost and expense of such tests shall constitute Compensable Costs. All Raw Groundwater and Product Water sampling and testing for contract performance shall be conducted at the testing locations identified in the testing and sampling standards set forth in Appendix 8 (Performance Guarantee Requirements) and the other Contract Standards. SAWS shall have the right to approve all testing locations, acting reasonably.

(B) SAWS Testing Rights. SAWS, using its own personnel or another designated person, shall have the right from time to time, upon reasonable notice to the Project Company, to enter the Project for the purpose of conducting tests of the Raw Groundwater and the Product Water at the approved testing locations, and to conduct such tests in accordance with Good Management Practice in a manner that does not materially interfere with the Project Company's performance of the Contract Services. If requested by the Project Company, SAWS shall furnish split samples and copies of all test reports prepared pursuant to this Section to the Project Company.

(C) Well Field Meters. In accordance with Appendix 6 (Operating and Maintenance Standards), the Project Company shall maintain in good working order and repair, and replace when necessary, flow metering devices capable of metering the daily total volume of Raw Groundwater received at the Well Field Facilities (the “**Well Field Meters**”).

(D) Project Flow Meter. The Project Company shall design, calibrate, test, and install the Project Flow Meter in accordance with Appendix 3 (Technical Specifications). After Acceptance, the Project Company shall be responsible for the routine servicing and maintenance of the Project Flow Meter and appurtenant field mounted instruments, and for all major maintenance, repairs and replacements with respect thereto.

(E) Meter Inspections. The Project Company shall engage a qualified third-party inspection firm to confirm the accurate calibration and proper functioning of the Well Field Meters and the Project Flow Meter. The inspection firm shall perform quarterly inspections and provide copies to its inspection reports promptly to SAWS and to the Project Company.

(F) Project Company Estimates During Meter Incapacitation or Testing. To the extent any metering device is incapacitated or is being tested, the parties shall estimate as accurately as practicable, based on all available relevant information, the data required by the Project Company to perform the Contract Services and to invoice SAWS. This estimate and methodology shall be used as the basis for determining the operating data required hereunder during the outage.

(G) Extended Project Flow Meter Incapacitation. The Project Company shall repair or replace the Project Flow Meter with the utmost urgency in the event the Project Flow Meter is incapacitated. In the event any period of Project Flow Meter incapacitation extends beyond 24 hours, any water made available to SAWS thereafter shall not constitute Monthly Delivered Water Units and SAWS shall have no obligation to compensate the Project Company for any such water.

SECTION 10.13. RELEASES, LEAKS AND SPILLS.

(A) Unauthorized Releases. The Project Company shall operate the Project in such a manner that Raw Groundwater, Product Water, Project By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, to the extent prohibited by Applicable Law other than as permitted by the most stringent of any of the Contract Standards.

(B) Notification and Reporting. The Project Company shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release of Raw Groundwater, Product Water, Project By-Products or chemicals into the environment from or in connection with its operation and management of the Project. The Project Company shall provide to SAWS copies of documents provided to the relevant Governmental Body regarding the release.

(C) Project Site Assessment Upon Termination or Expiration. SAWS may at its own cost and expense conduct an assessment of the Project Sites upon any assignment and conveyance of the Project Assets pursuant to Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), or any election to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) to determine whether any Raw Groundwater, Product Water, Project By-Products or chemicals have been released, leaked or spilled on or into, or discharged into the environment in violation of Applicable Law. The Project Company shall be responsible for the

remediation of any such release caused by the Project Company and discovered by SAWS through any such assessment of the Project Sites in the manner and to the extent provided in Section 10.13(D) (Cleanup and Costs).

(D) Cleanup and Costs. The Project Company shall remediate any unauthorized material release of chemicals by the Project Company but only to the extent required by the least stringent standard provided for under such Applicable Law making use of any restrictions or other use limitations consistent with the then current use of the relevant property.

SECTION 10.14. PROJECT COMPANY DISPOSAL OF RESIDUALS.

(A) Residuals Management. The Project Company shall locate an Acceptable Disposal Site and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term in accordance with Applicable Law. The Project Company shall transport all Residuals to an Acceptable Disposal Site in accordance with Applicable Law.

(B) Acceptable Disposal Site. An “**Acceptable Disposal Site**” means any waste disposal, treatment or recycling facility permitted or allowed under Applicable Law to accept the Residuals.

(C) Transportation Operations. In the event of a release, spill, leak or loss of Residuals during transfer or transit within the Project Company’s control or responsibility or under its supervision, the Project Company shall take all remedial or response measures required under Applicable Law.

(D) Acceptable Disposal Site Information. The Project Company shall keep and maintain such logs, records, manifests, bills of lading or other documents as are required to be kept or maintained under Applicable Law pertaining to the Residuals and shall make available for review and copying by SAWS, upon request, copies of all weights and measures data and information relating to Residuals quantities generated and disposed of hereunder.

(E) Indemnity. The Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals by the Project Company.

SECTION 10.15. PROJECT COMPANY DISPOSAL OF WASTEWATER.

The Project Company shall manage all Wastewater produced at the Project and the Project Sites during the Term in accordance with Applicable Law. SAWS shall have no obligation to receive, treat or dispose of any Wastewater, and no Wastewater shall be discharged or disposed of on any SAWS property.

SECTION 10.16. ADMINISTRATIVE OBLIGATIONS.

Except to the extent excused by Uncontrollable Circumstances, SAWS shall have the right to require the Project Company to make a Direct Payment to SAWS in the amount provided in this Section for failure to perform the following administrative obligations:

- (1) report any material violation of any Governmental Approval or Applicable Law as required by Section 9.8 (Operating Governmental Approvals);

- (2) respond to a written request for information related to this Water Transmission and Purchase Agreement made by the Contract Administrator and designated as a “priority request” within three business days as required by Section 26.6(A) (Authority of SAWS Representative);
- (3) respond to complaints and communications received by the Project Company as required by Section 9.2(C) (Complaints and Communications);
- (4) report complaints or communications to SAWS as required by Section 9.2(C) (Complaints and Communications);
- (5) attend SAWS meetings, as reasonably requested, with advance notice from SAWS;
- (6) provide SAWS with any report, record, logs or other document required hereunder on time;
- (7) respond to alarms at the Project as required hereunder;
- (8) provide any plan, proposal, report or other deliverable required hereunder with respect to an Uncontrollable Circumstance or any regulatory deadline agreed to by the parties thereto;
- (9) properly sample, test or report the results thereof as required by Applicable Law or by this Water Transmission and Purchase Agreement; and
- (10) mitigate noise complaints as required by Section 9.2(C) (Complaints and Communications).

The amount of such Direct Payment shall be \$1,000 (Index Linked) per occurrence for the Project Company’s failure to comply with the administrative obligations set forth above (an occurrence being deemed to have taken place where, in any Contract Year, there are three instances of non-compliance for the same obligation or three instances of non-compliance for different obligations). The Project Company shall have the right to discuss with SAWS any such occurrence prior to being obligated to make any such Direct Payment.



ARTICLE 11

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 11.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance, Repairs and Replacements. The Project Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Project, shall keep the Project in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Project as originally constructed and in accordance with the Design Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Contract Standards. The Project Company shall keep maintenance logs in accordance with the Maintenance, Repair and Replacement Plan.

(B) Major Maintenance, Repairs and Replacements. The Project Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Term of this Water Transmission and Purchase Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency.

(C) Repair and Maintenance of Project Sites. The Project Company, in accordance with the Contract Standards, shall keep the grounds of the Project Sites in a neat and orderly condition. The Project Company shall also maintain and repair all Project Sites signage, fencing and other security systems. In addition, the Project Company shall provide all landscaping services for the Project Sites.

SECTION 11.2. MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.

(A) Maintenance, Repair and Replacement Plan. Appendix 6 (Operating and Maintenance Standards) contains requirements for preparing the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan is intended to establish a minimum standard by which to measure the Project Company’s performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. Within 90 days following the Commercial Operation Date, the Project Company shall incorporate the Maintenance, Repair and Replacement Plan into the Electronic Operation and Maintenance Manual. The Project Company shall adhere to these plans as incorporated in the Electronic Operation and Maintenance Manual, except where it can demonstrate to SAWS that changes are reasonable under Good Management Practice. The timing and extent of maintenance, repair and replacement activities performed by the Project Company hereunder with respect to the Project, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 6 (Operating and Maintenance Standards), as incorporated in the Electronic Operation and Maintenance Manual, and shall take into account the Transfer Condition Requirements that are applicable at the end of the Term. The Project Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

(B) Maintenance, Repair and Replacement Schedule. Appendix 6 (Operating and Maintenance Standards) sets forth the requirements for major equipment repair and replacement activities which would be required to be performed by the Project Company over the Term hereof in order to achieve the standard of overall Project maintenance and repair for the proper operability, durability and reliability of the Project in accordance with the Contract Standards. Without limiting any of the Project Company's obligations under this Section, the Project Company shall make and complete all major equipment repairs and replacements which are necessary to achieve such standard of repair and replacement by performing maintenance, repair and replacement in accordance with the Maintenance, Repair and Replacement Schedule, as such schedule may be altered or amended pursuant to this Section. Downtime for scheduled maintenance, repair and component replacement shall, to the extent practicable, be scheduled for the months of November, December, January and February. The parties acknowledge that, in light of the long term nature of the Water Transmission and Purchase Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Maintenance, Repair and Replacement Schedule. Accordingly, the Project Company shall have the right to deviate from the Maintenance, Repair and Replacement Schedule at any time during the Term, provided that the Project Company provides SAWS with a reasonable justification in advance for such deviation and that such deviation shall be consistent with the requirements set forth in Appendix 6 (Operating and Maintenance Standards). Any alterations to the Maintenance, Repair and Replacement Schedule shall be reflected in a Contract Administration Memorandum and specifically identified in budget variance reports. The Project Company shall coordinate with SAWS with respect to any unscheduled or unanticipated maintenance or repair which would reasonably lead to failure to comply with the Contract Obligations.

### SECTION 11.3. PROJECT EVALUATIONS.

(A) Asset Registry. The Project Company shall, prior to the Commercial Operation Date, photograph, video (to the extent reasonably accessible) and prepare an itemized inventory of all material property constituting the Project, including records of assets originally installed, manufacturer and model number, identification number and, to the extent available, original cost data (the "**Asset Registry**"). The Asset Registry shall be prepared in accordance with Appendix 6 (Operating and Maintenance Standards) based on information and data collected in achieving Substantial Completion, and shall reflect, based on the construction price and the Design Requirements, the condition, functionality and value of the Project as originally constructed by the Project Company hereunder. The purpose of the Asset Registry shall be to establish an informational baseline for determining compliance by the Project Company with its maintenance, repair and replacement obligations under this Article. The Asset Registry shall be kept in a secure environment at a location other than at the Project Sites. The Project Company shall provide an electronic copy of the Asset Registry to SAWS in a form reasonably acceptable to SAWS. The Asset Registry (except the photographs and video components thereof) shall be annually updated by the Project Company as required by Appendix 6 (Operating and Maintenance Standards), and reflected in a report that is separate from the annual operations and maintenance reports prepared pursuant to Section 9.11(B) (Annual Operations and Maintenance Reports).

(B) Final Evaluation of the Project. Within 15 days after SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option), or no later than three months prior to the Expiration Date, the Independent Evaluator shall conduct a final evaluation of the Project in accordance with the protocol established in Appendix 11 (End of Term Project Condition Requirements) and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Project Company shall furnish SAWS and the Independent Evaluator with the Asset Registry and record documentation

prepared pursuant to Appendix 11 (End of Term Project Condition Requirements) and all database information developed in connection with the implementation of the CMMS.

(C) Disputes. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than \$250,000 (Index Linked) which is in dispute between SAWS and the Project Company shall be final and binding upon the parties. For disputes involving amounts greater than \$250,000 (Index Linked), the Independent Evaluator's determination shall be advisory only, and such dispute shall be handled as provided in Sections 18.1 (Forum for Dispute Resolution) and 18.2 (Non-Binding Mediation).

#### SECTION 11.4. PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform an inspection of the Project and relevant records of the Project Company each Contract Year following the Commercial Operation Date to determine compliance with the Contract Standards. SAWS' annual inspection may include the inspection of: (1) the Project and the Project Sites; (2) all in-house laboratories where tests are conducted for samples from the Project; (3) all areas where chemicals are stored or used; and (4) all operations, maintenance, repair and replacement records kept by the Project Company.

(B) Full-Scale Biennial Inspections. Every full second Contract Year following the Commercial Operation Date, SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Project Equipment and Project Structures, pipelines, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Any such inspection and review shall be performed by or on behalf of SAWS by a SAWS Engineer at SAWS' expense, and shall take place at such time as SAWS shall determine upon three months' written notice to the Project Company. The principal purpose of the inspection and review shall be to permit SAWS to ascertain on a comprehensive and focused basis the extent to which the Project is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports.

(C) Non-Interference. The Project Company shall cooperate fully with all inspections conducted pursuant to this Section, which shall not materially interfere with the Project Company's performance of the Contract Services and shall not impose any material costs on the Project Company.

#### SECTION 11.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.

The Project Company shall develop and maintain a computerized maintenance management system (the "**CMMS**") as part of the Construction Work that it is capable of providing a record of repair and replacement of the Project on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; and monitoring routine operations within the Project. The CMMS shall be developed consistently with the Asset Registry and the requirements of Appendix 6 (Operating and Maintenance Standards), and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Project. The Project

Company shall utilize the CMMS to provide SAWS with documentation which allows it to efficiently monitor compliance by the Project Company with its maintenance, repair and replacement obligations hereunder. SAWS shall have computer-based real time, read-only access to the Project Company's CMMS. The Project Company shall permit all electronic data to be replicated and provided to SAWS for review by the SAWS Engineer except for information regarding costs incurred by the Operating Service Provider.

SECTION 11.6. END OF TERM PERFORMANCE EVALUATION REQUIREMENTS.

(A) Applicability of End of Term Performance Evaluation Requirements. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company complies with the End of Term Performance Evaluation Requirements, the Project Company shall have no obligation to perform the Exit Performance Test.

(C) Non-Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company has not complied with the End of Term Performance Evaluation Requirements, the Project Company shall, at its cost and expense, conduct an Exit Performance Test of the Project (the "**Exit Performance Test**"). The Exit Performance Test shall be conducted in accordance with Appendix 11 (End of Term Project Condition Requirements) and in the same manner as required hereunder for the Performance Test that established Acceptance. In the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, the Project Company at its own cost and expense shall make all repairs and replacements necessary so that the Project is capable of achieving the Minimum Performance Criteria. Upon completion of the repair and replacement work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until an Exit Performance Test demonstrates that the Minimum Performance Criteria have been achieved.

(D) Applicable End of Term Performance Evaluation Period. The applicable "**End of Term Performance Evaluation Period**" under this Section shall be a period of six full consecutive Billing Periods, designated by the Project Company by written notice to SAWS, commencing no later than (1) 60 days after SAWS has delivered its notice (pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options)) of its intent to exercise its Project Assets Purchase Option during the Term; and (2) six months prior to the Expiration Date.

(E) Condition of Project Structures and Project Equipment. In addition to either complying with the End of Term Performance Evaluation Requirements or the Exit Performance Test, the Project Company shall meet the Transfer Condition Requirements.

SECTION 11.7. PROJECT ASSETS TRANSFER CONDITION.

(A) SAWS Exercise of End-of-Term Purchase Option. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Required Project Condition. On the Termination Date, the Project shall be in a condition:

(1) Which, with respect to buildings, structures and pipelines that as of the Conforming Contract Amendment Date were expected to have a useful life of more than 20 years and other Project Structures (as set forth in Appendix 11 (End of Term Project Condition Requirements), have functional or structural ratings of at least “4” (as defined in Appendix 11 (End of Term Project Condition Requirements)); and

(2) Which, with respect to Project Equipment’s maintenance, repair and replacement status, meets the standards set forth in Section 11.7 (Project Transfer Condition Requirements) of Appendix 11 (End of Term Project Condition Requirements).

The requirements of this Section constitute the “**Transfer Condition Requirements**”.

(C) Transfer Condition Survey and Work Plan. Within 15 days after SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or no later than 18 months prior to the Expiration Date, the Project Company and SAWS shall jointly cause the Independent Evaluator to conduct an inspection and survey of the Project over a 45-day period for the purpose of determining if the Project has been maintained in accordance with the Transfer Condition Requirements (the “**Joint Inspection and Survey**”). This Joint Inspection and Survey shall be separate from and in addition to all other inspections provided for in this Water Transmission and Purchase Agreement. If these surveys indicate that any element of the Project, on the Termination Date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements upon the Project Company implementing the plans and programs required under Appendix 6 (Operating and Maintenance Standards) over the remainder of the Term, within 60 days of completion of the survey the Project Company shall deliver to SAWS the Project Company’s plan to perform the additional work necessary to meet the Transfer Condition Requirements, together with a cost estimate for the work as part of the Transfer Condition Plan (as defined in Appendix 11 (End of Term Project Condition Requirements)).

(D) Determination of Transfer Condition Retainage. Within 30 days of receipt of the Transfer Condition Plan from the Project Company, SAWS shall provide the Project Company written notice which: (i) assesses the adequacy of the Transfer Condition Plan; and (ii) establishes the amount of the Transfer Condition Retainage. If SAWS has

determined that the Transfer Condition Plan is inadequate, in its written notice, SAWS shall direct the Project Company to amend the Transfer Condition Plan to add the corrective work and cost of that work SAWS has reasonably determined is necessary to comply with the Transfer Condition Requirements, in accordance with the costs provided in the Final Project Structure Evaluation Report and the Joint Inspection and Survey Report (both as defined in Appendix 11 (End of Term Project Condition Requirements)). SAWS shall, after giving due consideration to the Project Company's cost estimate and the Independent Evaluator's assessment conducted pursuant to Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement and Section 11.8 (Transfer Condition Joint Inspection and Survey) of Appendix 11 (End of Term Project Condition Requirements), determine in good faith the amount SAWS reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the "**Transfer Condition Retainage**").

(E) Establishment and Use of Transfer Condition Retainage Account. SAWS shall hold back and retain from each Monthly Water Purchase Payment (starting with the monthly payment for the first month after SAWS determines the amount of Termination Condition Retainage pursuant to Section 11.7(D) (Determination of Transfer Condition Retainage) an amount equal to (1) the Transfer Condition Retainage, divided by (2) the number of months between the first monthly payment for which Termination Condition Retainage is withheld and the Termination Date, and shall deposit such amount in an interest bearing account held by a Qualified Commercial Bank. The account shall be the property of SAWS, subject to the Project Company's withdrawal rights under this Section; provided, however, that any Transfer Condition Retainage remaining in the Transfer Condition Retainage Account shall be reimbursed to the Project Company when the Transfer Condition Requirements have been met. The Project Company shall have the right, upon the submittal of certified requisitions to SAWS with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Transfer Condition Requirements. Notwithstanding the foregoing, the Project Company shall be entitled to post a letter of credit with SAWS in an amount equal to the Transfer Condition Retainage in lieu of such holdback from the Monthly Water Purchase Payments.

(F) Performance of the Transfer Condition Work and Further Inspection. The Project Company shall implement the Transfer Condition Plan and take all other steps necessary to assure compliance with the Transfer Condition Requirements, notwithstanding SAWS' participation in the transfer condition survey or review of the Project Company's work plan or the fact that the actual cost of compliance may be higher than the amount of the Transfer Condition Retainage. At least 120 days prior to the Termination Date or a date that is mutually agreed upon, the Project Company and SAWS shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Transfer Condition Plan work. If, 90 days prior to the Termination Date, the Project (1) has failed to demonstrate that it has the capacity to meet the End of Term Performance Evaluation Requirements or, if applicable, the Exit Performance Test; or (2) is not being operated or maintained in compliance with the Contract Standards, then SAWS may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Project that would be necessary to allow the Project to meet the requirements of the Exit Performance Test. If the Project subsequently meets the requirements of the Exit Performance Test prior to the Termination Date, the Transfer Condition Retainage shall be reduced by an appropriate amount, as reasonably determined by SAWS.

(G) Final SAWS Condition Assessment. By the date that is the earlier of five Business Days after the joint inspection set forth in Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) or the Termination Date, SAWS shall either:

(1) Issue to the Project Company a certificate confirming compliance with the Transfer Condition Requirements (the “**Transfer Condition Plan Completion Certificate**”) and return any remaining Transfer Condition Retainage to the Project Company; or

(2) Notify the Project Company of its decision not to issue the Transfer Condition Plan Completion Certificate, setting out each respect in which the Project does not comply with the Transfer Condition Requirements and stating SAWS’ estimate of the cost of completing all remaining work required for the Project to comply with the Transfer Condition Requirements.

(H) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with Section 11.7(G)(2) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company’s proposals in respect of such matters.

(I) Final Compliance. If SAWS delivers to the Project Company a Transfer Condition Plan Completion Certificate, SAWS shall transfer any remaining portion of the Transfer Condition Retainage to the Project Company. If the Project did not, at the Termination Date, comply in all respects with the Transfer Condition Requirements, SAWS will promptly either: (1) use any remaining proceeds of the Transfer Condition Retainage to complete any work necessary to cause such compliance; or (2) if a letter of credit is provided in lieu of the Transfer Condition Retainage pursuant to Section 11.7(E) (Establishment and Use of Transfer Condition Retainage Account), draw upon such letter of credit in an amount equal to the estimated value of completing such work, and use such amount to complete such work; provided, however, that any such proceeds of the Termination Condition Retainage or any amounts drawn upon the letter of credit which are not spent on such work shall be paid to the Project Company upon the completion of such work.

ARTICLE 12

CAPITAL MODIFICATIONS

SECTION 12.1. CAPITAL MODIFICATIONS GENERALLY.

A “**Capital Modification**” means a material change to the physical assets constituting the Project (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Project, or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate with any related changes, exceeds \$2,000,000 (Index Linked) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Project or materially alters the original design of the Project as set forth in the Design Requirements. Repairs or replacements of the Project Equipment or the Project Structures shall not constitute Capital Modifications.

SECTION 12.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

(A) General. The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company’s request. Any such Capital Modification shall be financed and paid for by the Project Company, and there shall be no increase in the Unit Price or other compensation payable by SAWS on account thereof.

(B) SAWS Approval. SAWS shall have the right, acting reasonably, to approve any Capital Modification requested by the Project Company under Section 12.2(A) (General). SAWS may condition the exercise of its approval right in any reasonable manner it chooses. To assist SAWS in the exercise of its approval right under this Section, the notice shall contain sufficient information for SAWS to determine that the Capital Modification:

- (1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not materially impair the quality, integrity, durability and reliability of the Project; and
- (3) Is feasible.

SECTION 12.3. CAPITAL MODIFICATIONS AT SAWS REQUEST.

(A) General. SAWS shall have the right to direct the Project Company to make Capital Modifications (whether above or below the \$2,000,000 cost threshold) at any time and for any reason whatsoever after the Commercial Operation Date (including Capital Modifications to expand the capacity of the Project), whether and however the exercise of such rights affects this Water Transmission and Purchase Agreement (“**SAWS-Requested Capital Modifications**”), so long as the implementation of any such SAWS-Requested Capital Modification does not contravene the limitations referred to in Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs of any such SAWS-Requested Capital Modification, shall be financed by the Project Company as and to the extent as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications).



(B) Inability of Project Company to Obtain Financing. If the Project Company is unable to obtain financing for SAWS-Requested Capital Modifications, or if SAWS does not approve the proposed financing therefor, in either case as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications), SAWS (1) shall withdraw its direction to make the SAWS-Requested Capital Modification, or (2) shall pay the Project Company directly on a milestone basis (separately from the Monthly Water Purchase Payments) an amount equal to the negotiated lump sum price for the design and construction of such SAWS-Requested Capital Modifications, as such lump sum price is negotiated in accordance with Section 17.14 (Cost Substantiation). SAWS shall make any such payments for design and construction work from its own available funds or reserves, or shall finance such payments using its own borrowing capacity.

(C) No Senior Debt Creditor Obligation. SAWS acknowledges that the Senior Debt Creditors have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

SECTION 12.4. PROCEDURES FOR IMPLEMENTING SAWS-REQUESTED CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. The implementation procedures set forth in this Section shall apply with respect to SAWS-Requested Capital Modifications. The Project Company may implement Capital Modifications under Section 12.2 (Capital Modifications at Project Company Request) by any means of its own choosing in accordance with Applicable Law.

(B) Project Company Conceptual Plan and SAWS Review. At the request of SAWS, the Project Company shall prepare and deliver to SAWS a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and lifecycle capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. SAWS shall review the Project Company's conceptual plan and recommendations, and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of SAWS the Project Company shall submit a formal implementation proposal to SAWS for its consideration. The Capital Modification implementation proposal shall contain (1) a Project Company services element, to be implemented through a Water Transmission and Purchase Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain: (a) the Project Company's offer to perform design, construction management and performance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a performance test and a guaranteed maximum construction price if so requested by SAWS and agreed to by the Project Company; and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and

manage the Capital Modification following construction and commissioning for an Index-Linked fixed fee and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct either qualification-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company.

(D) Preparation Costs. The cost and expense of preparing a conceptual plan and any formal implementation proposed under this Section shall be borne by SAWS as a Direct Payment or through an adjustment to the Unit Price.

(E) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following SAWS' review of the Project Company's submittal and quotation, to negotiate to reach an agreement on the required Unit Price adjustment (based on the fixed prices in the Project Company's implementation proposal) and any related adjustment to the terms and conditions of this Water Transmission and Purchase Agreement. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) Design requirements;
- (2) Construction management services;
- (3) Performance tests, standards and procedures;
- (4) A guarantee of completion;
- (5) Performance guarantees;
- (6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) A payment schedule for the design and construction management-related services;
- (8) Any adjustments to the Unit Price resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) A financing plan; and
- (10) Any other appropriate amendments to this Water Transmission and Purchase Agreement.

The Project Company shall not be obligated to undertake any SAWS-Requested Capital Modification, nor shall the Unit Price be adjusted or any Direct Payment be due the Project Company on account of any such Capital Modification, except following agreement by the parties as to all matters affected thereby.

(F) Implementation Procedures. SAWS shall have the same substantive and procedural rights with respect to the implementation of each Capital Modification that it has with respect to the design, construction, commissioning and performance testing of the Project as originally built (with appropriate changes in light of the nature of the particular Capital Modification), as set forth in this Water Transmission and Purchase Agreement.

ARTICLE 13

CONTRACTING AND LABOR PRACTICES

SECTION 13.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. SAWS acknowledges that the Project Company may carry out the Contract Obligations by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Surety Bonds. The Project Company shall cause the Design Build Contractor to provide the performance and payment bonds required under the Design Build Contract, and shall cause the Operating Service Provider to provide the operations performance bond required under the Operating Service Agreement.

(C) Use of Project Contractors, Subcontractors and Key Individuals. The Project Company shall use the Project Contractors, Subcontractors and Key Individuals listed in Appendix 14 (Project Company and Project Contractors Information) or such others as SAWS in its discretion may approve, acting without unreasonable delay, for the performance of the Contract Obligations in the roles indicated in Appendix 14 (Project Company and Project Contractors Information). The Operating Service Provider shall be designated as provided in Section 13.1(F) (Operating Service Provider).

(D) Restricted Persons. In performing the Contract Obligations, the Project Company shall not contract with, or allow any of its Project Contractors or any material Subcontractors to contract with, any person that is a Restricted Person. In the event that SAWS determines that the Project Company has contracted with, or allowed Project Contractor to enter into a material contract with, a person that is, in SAWS' reasonable opinion, a Restricted Person, SAWS shall notify the Project Company and the Project Company shall replace (or use commercially reasonable efforts to cause the Project Contractor to replace) such person within 30 days.

(E) SAWS Access to and Communications with Project Contractors and Subcontractors. The Project Company shall provide SAWS with access to the Project Contractors and Subcontractors as follows:

(1) General Communications. The Project Company shall grant SAWS' Director of Engineering and Director of Operations (or management personnel senior to such positions) direct access to the Project Contractors and Subcontractors and their senior management personnel (including the head of security) for meetings and email, telephone and fax communications regarding any material aspect of the work being performed by the Project Contractor or Subcontractor or Blue Water Vista Ridge, LLC. This right of direct access shall apply during normal business hours and at any time during emergencies. Any such meetings on communications shall require 12 hours' advance notice to and the approval of the Project Company, acting reasonably, except where SAWS reasonably believes that a material breach of this Water Transmission and Purchase Agreement has occurred or may imminently occur, in which case such notice and approval shall not be required. The Project Company, upon request, shall have the right to be present at any such meetings, and to receive copies of any such communications (including reasonable advance notice of any meetings). In the exercise of its rights under this paragraph, SAWS shall not unreasonably interfere with, and shall have no right to direct, the performance of the Operating Work. The Operating Service Agreement shall expressly

obligate the Operating Service Provider to respond promptly to any communication from SAWS' Director of Engineering and Director of Operations (or management personnel senior to such positions), to attend any meeting reasonably called by such SAWS personnel, and to furnish any material information requested by SAWS personnel, in each case that has a bearing on the performance of the Contract Obligations with respect to which the Project Contractor has responsibility, involvement or knowledge.

(2) Other Communications During the Construction Period. During the Construction Period, the Construction Superintendent or his or her delegate shall be available to be contacted by SAWS' on-site representative: (1) on a 24 hours per day basis for emergency response; and (2) during normal business hours for safety concerns or others issues requiring immediate attention.

(3) Other Communications During the Operating Period. During the Operating Period, the Chief Operator or its designee shall be available to be contacted by SAWS on a 24 hours per day basis for emergency response and operational coordination.

(F) Operating Service Provider. As of the Conforming Contract Amendment Date, the Operating Service Provider has not been designated. The Operating Service Provider shall be designated no later than 18 months prior to the Commercial Operation Date. The Project Company shall give notice to SAWS of a proposed Operating Service Provider, together with the proposed form of Operating Service Agreement, at least 90 days prior to the date on which the Project Company intends to execute the Operating Service Agreement. The parties understand that the Project Company may propose an Operating Service Provider seeking to also serve as an equity investor in the Project. In such event, the Operating Service Provider shall execute both the Operating Service Agreement and an Equity Contribution Agreement, and will also be subject to Section 24.2 (Limitations on Change in Control). SAWS shall have the right, in its discretion, to approve the Operating Service Provider and the terms and conditions of the Operating Service Agreement. Notice of SAWS approval or disapproval shall be given to the Project Company not later than 60 days thereafter. At any time prior to the execution of the Operating Service Agreement, SAWS may request the Project Company to consider contracting with SAWS to serve as the Operating Service Provider upon terms and conditions proposed by SAWS. In the event SAWS makes such a request, the Project Company shall consider the request in good faith. Neither party shall be obligated, however, to enter into an Operating Service Agreement except in its discretion. The Operating Service Provider shall be a highly qualified and experienced operator of water production, treatment and distribution facilities with substantial experience in projects of a similar scale or nature, nationally or internationally, to the Project. Concurrently with the execution and delivery of the Operating Service Agreement, the Water Supply Corporation, the Operating Service Provider and SAWS shall execute and deliver the Operating Service Provider Substitution Agreement in the form set forth as Transaction Form C.

(G) Design Build Contractor Substitution Agreement and Operating Service Provider Substitution Agreement. The Project Company acknowledges the rights of SAWS under the Design Build Contractor Substitution Agreement and Operating Service Provider Substitution Agreement.

#### SECTION 13.2. WATER SUPPLY CORPORATION.

(A) Formation and Intended Use. The parties acknowledge that the Project Company has caused the Water Supply Corporation to be formed with the intent of having the Water Supply Corporation facilitate and serve the public purpose of the Project in the manner described herein; that on or before the Financial Closing Date the Project Company has

executed the Water Transportation Agreement with the Water Supply Corporation; and that on or before the Financial Closing Date the Water Supply Corporation has executed the Design Build Contract with the Design Build Contractor; and that following the Financial Closing Date the Water Supply Corporation will execute the Operating Service Agreement with the Operating Service Provider as provided in Section 13.1(F) (Operating Service Provider). The Project Company shall have the right to contract and conduct business with the Water Supply Corporation as contemplated hereby.

(B) Water Supply Corporation Related Covenants. The Project Company:

(1) Covenants that neither the Project Company, nor Garney Holding Company or any of their Affiliates shall (a) take or cause to be taken, or (b) to the extent they have legal authority, permit or suffer to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, or entering into or performing their obligations under any agreement with the Water Supply Corporation) the effect of which, individually or as a whole, would cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, the Real Property Conveyance Agreement, or this Water Transmission and Purchase Agreement;

(2) Shall cause the Water Supply Corporation to perform all of the obligations to be performed by the Water Supply Corporation under any agreement entered into by the Water Supply Corporation with any party; and

(3) Unconditionally and absolutely guarantees to SAWS the performance of all of the obligations of the Water Supply Corporation under its formation documents or under any agreement entered into by the Water Supply Corporation with any party that are material to the Project, the Project Real Property Conveyance Agreement or this Water Transmission and Purchase Agreement.

(C) Severance and Continued Effect. The Project Company acknowledges and agrees that the use of the Water Supply Corporation is not essential to the ability of the Project Company to perform the Contract Obligations, and that the Project can be accomplished and the Contract Obligations can be performed without the use of the Water Supply Corporation. If, at any time during the Term, the Water Supply Corporation for any reason (including reasons related to its status or powers as a not-for-profit corporation or a water supply corporation) is determined in any Legal Proceeding not to have the authority under Applicable Law to enter into or perform its obligations or exercise its intended powers under any agreement related to the Project:

(1) No such determination shall affect the Project Company's sole and complete responsibility for the performance of all of the obligations that the Project Company intended to be performed by the Water Supply Corporation, including specifically the Project Company's ownership of all of the Project Real Property and obligation to acquire and hold Project Real Property and to assign and convey such Project Real Property to SAWS upon the expiration hereof or upon the termination of this Water Transmission and Purchase Agreement following SAWS exercise of its right to purchase the Project Assets hereunder, all as provided in Article 3 (Term) and Article 4 (Development and Financing Period) and otherwise in the Project Real Property Conveyance Agreement; and

(2) In accordance with Section 1.2(S) (Severability), the parties acknowledge and agree that:

(a) Any term, condition or provision of this Water Transmission and Purchase Agreement relating to the Water Supply Corporation that is determined in any such Legal Proceeding to be invalid, unenforceable or illegal shall be severed from this Water Transmission and Purchase Agreement;

(b) Such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Water Transmission and Purchase Agreement, which shall continue in effect; and

(c) The continued effectiveness of this Water Transmission and Purchase Agreement as modified is not contrary to the basic understandings and intentions of the parties, and there is no need to negotiate any new provisions to restore this Water Transmission and Purchase Agreement to its original intent and effect.

SECTION 13.3. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to SAWS under this Water Transmission and Purchase Agreement for all matters related to the Contract Obligations. No failure of a Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Obligations shall relieve the Project Company from its obligations hereunder to perform the Contract Obligations. The Project Company shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the Design Build Contractor and the Operating Service Provider all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against SAWS for labor, services, materials or equipment furnished for the Contract Obligations. The Project Company acknowledges that its indemnity obligations under Section 25.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by a Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Obligations to the extent that those claims fall within the scope of the indemnity in Section 25.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts (and any related parent company guaranty) entered into by the Project Company with respect to the Project shall be assignable to SAWS solely at SAWS' election and without cost or penalty, upon the expiration or termination of this Water Transmission and Purchase Agreement.

SECTION 13.4. PROJECT CONTRACTS.

(A) SAWS Consents. Unless SAWS has consented to such course of action, such consent not to be unreasonably withheld or delayed, and subject to the terms of the Creditors' Remedies Agreement, the Project Company shall not:

(1) Terminate, or agree to or permit the termination of, all or any material part of any Project Contract; provided, however, that the Project

Company may terminate the Operating Service Agreement if it enters into a replacement Operating Service Agreement on terms reasonably acceptable to SAWS with an Operating Service Provider listed on Appendix 14 (Project Company and Project Contractors Information) or who is otherwise reasonably acceptable to SAWS;

(2) Make, or agree to or permit the making of:

(a) any material amendment of any Project Contract (other than material amendments directly resulting from SAWS-Requested Capital Modifications); or

(b) any material departure by any party from any material provision of any Project Contract;

(3) Permit a Project Contractor to assign or transfer to any person any of such Project Contractor rights or obligations under a Project Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Project Contract; or

(4) Enter into, or permit the entering into of, any replacement of a Project Contract entered on or before the Contract Date.

(B) Timeframe for Consents. SAWS shall give or deny such consent within:

(1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Project Contract immediately; and

(2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

The giving or denial of consent by SAWS shall not create any liability of SAWS to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, SAWS' reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of \$25,000 (Index Linked). After SAWS' decision is rendered, SAWS will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section.

#### SECTION 13.5. REPLACEMENT PROJECT CONTRACTS.

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project, the Project Company:

(1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and



(2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, Project Contractor Substitution Agreement.

SECTION 13.6. DELIVERY OF AMENDED OR REPLACEMENT PROJECT CONTRACTS.

If at any time any amendment is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into, the Project Company shall deliver to SAWS a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 13.7. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. As between SAWS and the Project Company, the Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. SAWS shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any and all Loss-and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that would reasonably be expected to materially and adversely affect any of the Contract Obligations, the Project Company shall promptly:

(1) Give notice thereof to SAWS, including all relevant information related to the dispute of which the Project Company has knowledge; and

(2) Take all reasonable steps to ensure that such labor dispute does not materially and adversely affect the performance of any of the Contract Obligations including, if necessary, by applying for relief to appropriate agencies or courts.

ARTICLE 14

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 14.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable; provided, however, that the Project Company shall not be obligated to carry Required Insurance to the extent and for any period that coverage for any particular risk or event is not available on commercially reasonable terms. SAWS in any such circumstances shall bear no risk or responsibility upon the occurrence of any such uninsured or underinsured risk or event.

(B) Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) Proof of Insurance Coverage. Annually, the Project Company shall furnish, or shall cause Project Contractor to furnish, SAWS with (1) any endorsements to the policies for such insurance obtained for the Project, and (2) certificates of insurance from each insurance carrier showing that the insurance required under such Project Contract is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least 60 days (or 10 days in the case of cancellation due to non-payment of premiums) after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by SAWS). Each policy of insurance (or renewal policy of insurance) furnished hereunder shall: (a) evidence the existence and coverage amounts of the Required Insurance; and (b) show SAWS as an "additional insured" or "named insured", as required by Appendix 7 (Insurance Requirements) for the particular policy of Required Insurance.

(E) Failure to Provide Insurance Coverage. If the Project Company fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, SAWS may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by SAWS the amount thereof shall be immediately reimbursable as a Direct Payment to SAWS by the Project Company. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses, be a satisfaction of any Project Company liability under this Water Transmission and Purchase Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

(F) Use of Property Insurance Proceeds. The Senior Debt Financing Agreements shall provide that property Insurance Proceeds shall be deposited in a designated fund established thereunder, and grant the Project Company the right to direct the use thereof, subject to the terms and conditions set forth therein and in the Creditors' Remedies

Agreement. The Project Company shall exercise such right so as to cause all property Insurance Proceeds to be applied first to the repair or reconstruction of the Project, with any proceeds in excess of those required for such purpose applied to any other purpose permitted under such Section; and in such regard the Project Company shall use all reasonable efforts to satisfy the conditions to the use of property Insurance Proceeds for repair or reconstruction set forth in the Senior Debt Financing Agreements.

SECTION 14.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to SAWS and the applicable insurers providing the Required Insurance, immediately upon obtaining knowledge thereof, any material damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to SAWS. Upon any such occurrence the Project Company also shall comply with the reporting requirements of any insurer providing Required Insurance. The Project Company shall submit to SAWS within five Business Days of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or Governmental Body.

(B) Repair of Property. The Project Company shall promptly repair or replace all property owned by SAWS that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Obligations. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to at least its character and condition existing immediately prior to the damage.

SECTION 14.3. WATER TRANSMISSION AND PURCHASE AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Water Transmission and Purchase Agreement or to demand any increase in any amounts payable to the Project Company under this Water Transmission and Purchase Agreement.

ARTICLE 15

FORCE MAJEURE EVENTS

SECTION 15.1. FORCE MAJEURE EVENTS GENERALLY.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of a Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with Applicable Law and in accordance with Section 15.2 (Project Company's Obligations Upon Material Damage or Destruction).

(B) Performance and Schedule Relief. A Force Majeure Event is an Uncontrollable Circumstance, and the Project Company shall be entitled to performance and schedule relief on account thereof as and to the extent provided herein.

(C) No Compensation Relief. If a Force Majeure Event occurs,

(1) The Unit Price shall not be increased, nor (except for operation and maintenance expenses) shall any other compensation be payable, on account of the occurrence of the Force Majeure Event; and

(2) SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee in accordance with Section 10.2(D)(Remedies for Breach of Product Water Quality Guarantee – Off - Specification Product Water).

(D) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. SAWS and the Project Company shall cause an Insurance Proceeds account to be created and held by the Senior Debt Creditors pursuant to the terms of the Senior Debt Financing Agreements. Upon the occurrence of a Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in such Insurance Proceeds account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Water Transmission and Purchase Agreement and following the procedures set forth in the Senior Debt Financing Agreements.

(E) SAWS Remedies and Termination Right. The failure of the Project Company to comply with its obligations under Section 15.1(A) (Project Company Reinstatement) shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle SAWS to exercise all of its remedies, including the right, by notice to the Project Company, to terminate this Water Transmission and Purchase Agreement in accordance with Section 20.4 (SAWS Termination Right).

SECTION 15.2. PROJECT COMPANY'S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than \$5,000,000, Index Linked, to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued operations of other parts of the Project, provide SAWS with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and

restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under Section 15.2(D) (Reinstatement Plan Details).

(B) Comment on Draft Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, SAWS shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan.

(C) Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of SAWS' comments, the Project Company shall deliver to SAWS a revised plan (the "**Reinstatement Plan**") to reasonably take into account the comments received from SAWS and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works;

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Contract Obligations to be fully performed);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Water Transmission and Purchase Agreement and on the payment obligations of the Project Company under the Project Contracts; and

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works.

Thereafter the Project Company shall repair, replace or restore the Project, subject to Applicable Law.

SECTION 15.3. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Section 15.1 (Force Majeure Events Generally) shall be made or done in compliance with the Design Requirements and the requirements set forth in Appendix 3 (Technical Specifications), subject to any agreement made between SAWS and the Project Company to revise the Design Requirements or the requirements set forth in Appendix 3 (Technical Specifications) as they pertain to the replacement, repair or reconstruction work.

SECTION 15.4. UNAVAILABILITY OF REQUIRED INSURANCE.

The Project Company shall bear the risk of the unavailability of Required Insurance with Qualified Insurers; the risk of any event or circumstance that at any time is uninsurable or is uninsured; and the risk that the premiums payable or the terms and conditions for insuring the risks intended to be covered by the Required Insurance are to any degree in excess of or are more burdensome than the premiums, terms and conditions existing on the Conforming Contract Amendment Date or assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.

ARTICLE 16

UNCONTROLLABLE CIRCUMSTANCES

SECTION 16.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Project Company. If an Uncontrollable Circumstance occurs, the Project Company may be entitled to relief from its performance obligations and extensions of time, but only as and to the extent provided in this Article. Except as provided in Section 17.3 (Operating and Maintenance Costs) and without limiting the Project Company's rights under Section 10.9 (Extension of Term), the Project Company may not claim compensation relief on an account of an Uncontrollable Circumstance.

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 26.4 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Water Transmission and Purchase Agreement in compliance with Applicable Law.

SECTION 16.2. PROCEDURES UPON THE OCCURRENCE OF AN UNCONTROLLABLE CIRCUMSTANCE.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Project Company shall give notice of the occurrence of the Uncontrollable Circumstance to SAWS as soon as practicable, and in any event within ten Business Days of the date the Project Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Water Transmission and Purchase Agreement. The Project Company's notice shall include a written report:

(1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;

(2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;

(3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Project Company's obligations under this Water Transmission and Purchase Agreement; and

(4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide SAWS with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in Section 16.2(A) (Notice and Written Report). In particular, the Project Company

shall notify SAWS as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to SAWS a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in Section 16.2(A) (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such 30-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Project Company to SAWS after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of an Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 26.4 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Water Transmission and Purchase Agreement.

(H) Project Company Information. SAWS shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert an Uncontrollable Circumstance.

(I) SAWS Response. Within 30 days after receipt of a relief request by the Project Company pursuant to Section 16.2(C) (Submittal of Relief Request), SAWS (without waiving any claims) shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable. Either party may refer any dispute for resolution pursuant to Article 18 (Dispute Resolution).

### SECTION 16.3. PROJECT COMPANY RELIEF DUE TO A SAWS FAULT.

(A) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from a SAWS Fault. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by a SAWS Fault. With respect to schedule relief:



(1) The Commercial Operation Longstop Date shall be extended as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances); and

(2) Except as provided in Section 10.9 (Extension of Term), the occurrence of a SAWS Fault shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations or SAWS is obligated to take delivery of and purchase Product Water.

(B) Compensation Relief for SAWS Fault Occurring Prior to the Commercial Operation Date. If a SAWS Fault occurs prior to the Commercial Operation Date:

(1) Except as provided in Section 6.2(C) (Completion Delay), the Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs for any reason; and

(2) If the Commercial Operation Date occurs, the Project Company shall be compensated as provided in Section 16.3(C) (Compensation Relief for Changes On or After the Commercial Operation Date), such compensation to be reflected in the Unit Price.

(C) Compensation Relief for Changes On or After the Commercial Operation Date. If a SAWS Fault occurs on or after the Commercial Operation Date (or, as provided in Section 16.3(B)(2)), occurs prior to the Commercial Operation Date and the Project subsequently achieves the Commercial Operation Date),

(1) The Unit Price shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations in compliance with Applicable Law, to the extent resulting from the SAWS Fault.

SECTION 16.4. PROJECT COMPANY RELIEF DUE TO UNCONTROLLABLE CIRCUMSTANCES.

(A) Performance and Schedule Relief. Except with respect to the Product Water Quality Guarantee, the Project Company shall be relieved from its obligation to perform the Contract Obligations, and from the schedule to perform the Contract Obligations, to the extent that any such failure results from an Uncontrollable Circumstance. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by an Uncontrollable Circumstance. With respect to schedule relief:

(1) The Commercial Operation Longstop Date shall be extended, as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances);

(2) The Project Company shall have the right to deliver Project Company Make-Up Units to replace the Excused Supply Shortfall Units caused by the Uncontrollable Circumstance, as and to the extent provided in Section 10.6(A) (Project Company Make-Up Units); and

(3) The Expiration Date shall be extended, as and to the extent provided in Section 10.9 (Extension of Term).

(B) No Compensation Relief. If an Uncontrollable Circumstance occurs,

(1) The Unit Price shall not be increased, nor shall any other compensation be payable, on account of the occurrence of the Uncontrollable Circumstance;

(2) SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee; and

(3) The Project Company shall bear all costs resulting from the occurrence of the Uncontrollable Circumstance, except as provided in Section 17.3 (Operating and Maintenance Costs) and except, further, that nothing in this Section 16.4(B)(3) (No Compensation Relief) shall limit the Project Company's entitlement to payment in the circumstances described in Section 6.2(C) (Completion Delay).

ARTICLE 17

MONTHLY WATER PURCHASE PAYMENTS

SECTION 17.1. PAYMENTS GENERALLY.

(A) Monthly Water Purchase Payments Following the Commercial Operation Date. From and after the Commercial Operation Date and through the Termination Date, SAWS shall pay the Project Company Monthly Water Purchase Payments in accordance with the terms hereof.

(B) Limitation on Payments. Other than the payments expressly provided for herein, the Project Company shall have no right to any further compensation from SAWS in connection with the delivery of Product Water, the performance of the Contract Obligations, or otherwise in connection with the Project.

(C) Operating Expenses. SAWS and the Project Company represent and covenant that, with respect to payments to be made by SAWS to the Project Company pursuant to Section 17.2 (Capital and Raw Groundwater Unit Price) and Section 17.3 (Operating and Maintenance Costs), such payments shall constitute reasonable and necessary “operating expenses” (as defined in Chapter 1502, as amended, Texas Government Code) of the SAWS Distribution System and that all such payments will be made solely from the revenues of SAWS derived from ownership and operation of the SAWS Distribution System. SAWS represents and has determined that the Product Water is absolutely necessary and essential to SAWS’ present and future operation of the SAWS Distribution System and that SAWS’ entering into this Water Transmission and Purchase Agreement represents a long-term plan for making available potable water to meet current and projected needs of the present and future customers of the SAWS Distribution System. Accordingly, the payments required by this Water Transmission and Purchase Agreement to be made by SAWS to the Project Company shall constitute reasonable and necessary operating expenses of the SAWS Distribution System as described above, with the effect that under City Ordinance Number 75686 such payments from revenues of the SAWS Distribution System (1) shall be deducted from gross revenues of the SAWS Distribution System in the same manner as other SAWS Distribution System operating expenses for purpose of determining net revenues available to pay bonds or other similar obligations heretofore or hereafter issued by SAWS, which obligations are payable from and secured by a pledge of the revenues of the SAWS Distribution System after deduction of its operating expenses, and (2) shall be taken into account in establishing and maintaining rates and charges for facilities and services afforded by the SAWS Distribution System.

(D) Limited Source of Payment. The sole source of any payment made or to be made by SAWS in satisfaction of any obligations assumed by it or imposed on it under and by virtue of this Water Transmission and Purchase Agreement shall be limited solely and exclusively to the revenues derived by SAWS from the ownership and operation of the SAWS Distribution System. As further provided in Section 17.18 (No Recourse to City’s General Fund, General Credit or Ad Valorem Taxes) the Project Company (including its successors in legal interest, assigns, or Affiliates), shall never have the right to demand payment from any other source of revenue or fund of the City, including (but not limited to) funds raised or to be raised by taxes. The obligations of SAWS under this Water Transmission and Purchase Agreement shall never be construed to be a debt of any kind or for any purpose, including for the purpose of requiring that the City levy and collect a tax to discharge any such obligation.

SECTION 17.2. CAPITAL AND RAW GROUNDWATER UNIT PRICE.

The “**Capital and Raw Groundwater Unit Price**” for each Contract Year shall be \$1,606 per Acre Foot, and shall remain fixed for the Term.

SECTION 17.3. OPERATING AND MAINTENANCE COSTS.

(A) General Principles. It is the intent of the parties that (1) the Project Company be compensated for the reasonable and necessary costs of operating, maintaining, repairing and replacing the Project Improvements, except insofar as such costs result from any Project Company failure to properly operate, maintain, repair and replace the Project Improvements, and (2) that a standing panel determine on a definitive basis the proper level of compensation for such work. Compensable operating, maintenance repair and repair costs (“**Compensable Costs**”) are described in Section 19.1 of Appendix 19 (Compensable Costs and O&M Budget Panel Administration). The composition and functioning of the standing panel (the “**O & M Budget Panel**”) are described in Section 19.9 of Appendix 19 (Compensable Costs and O&M Budget Panel Administration). Compensable Costs shall be subject to Cost Substantiation.

(B) Determination of Compensable Costs. The O & M Budget Panel shall determine for each Contract Year throughout the Term following the Commercial Operation Date the amount of Compensable Costs properly payable to the Project Company for operating, maintaining, repairing and replacing the Project Improvements in that Contract Year. Compensable Costs shall be characterized by the O & M Budget Panel as fixed or variable. Fixed Compensable Costs (“**Fixed Compensable Costs**”) shall be Compensable Costs that must be paid irrespective of the volume of Product Water made available to SAWS. Variable Compensable Costs (“**Variable Compensable Costs**”) are Compensable Costs that vary with the volume of Product Water made available to SAWS. Compensable Costs for major repairs and replacements (“**Major Repair and Replacement Compensable Costs**”) shall be determined by the O & M Budget Panel separately from other Compensable Costs.

(C) Budgeted Annual Compensable Costs. Not later than June 1 in the Contract Year preceding each Contract Year, the Project Company shall submit to the O & M Budget Panel and to SAWS a detailed estimate and explanation of estimated Compensable Costs for the upcoming Contract Year. The O & M Budget Panel, not later than July 1 of such preceding Contract Year, shall make its determination as to estimated Compensable Costs for the upcoming Contract Year (“**Budgeted Compensable Costs**”). In making its determination, the O & M Budget Panel shall take into account the Project Company’s estimate and the Five Year Capital Plan and annual updates thereto prepared by the Project Company pursuant to Section 6.2.20 of Appendix 6 (Operating and Maintenance Standards). The determination of the O & M Budget Panel as to Budgeted Compensable Costs shall be final and non-appealable.

(D) Payment of Budgeted Fixed Compensable Costs. Budgeted Fixed Compensable Costs shall be payable to the Project Company as part of the Monthly Water Purchase Payments as provided in Section 17.5(3) (Monthly Water Purchase Payments).

(E) Budgeted Variable Compensable Costs Unit Price. Budgeted Variable Compensable Costs shall be used in determining the Variable Compensable Cost Unit Price. The “**Variable Compensable Costs Unit Price**” for each Contract Year shall be an amount equal to (1) Budgeted Variable Compensable Costs for such Contract Year, divided by (2) 50,000 Acre Feet.

(F) Payment of Major Repair and Replacement Compensable Costs. The Project Company shall be compensated for Major Repair and Replacement Compensable Costs as a Direct Payment to be made in the Billing Period following the Billing Period in which the major repair or replacement is actually made. No accruals shall be included in Compensable Costs for any such costs, regardless of their amount. SAWS may reserve for such costs in its discretion.

(G) Actual Compensable Costs. The O & M Budget Panel, in connection with establishing the Annual Settlement Amount, shall determine the Compensable Costs to which the Project Company was entitled to receive in the preceding Contract Year (the “**Actual Compensable Costs**”). In connection therewith the Project Company shall provide Cost Substantiation for Compensable Costs to the O & M Budget Panel. The determination by the O & M Budget Panel as to Actual Compensable Costs shall be final and non-appealable to any forum. In the event that Actual Compensable Costs exceed the Budgeted Compensable Costs for a Contract Year, SAWS shall pay the difference to the Project Company as a Direct Payment. In the event that Budgeted Compensable Costs exceed the Actual Compensable Costs for a Contract Year, the Project Company shall pay the difference to SAWS as a Direct Payment. Payment by the obligated party of such Direct Payment shall be made by May 1 following the end of the Contract Year with respect to which payment is due.

SECTION 17.4. UNIT PRICE.

The “**Unit Price**” for Product Water delivered in volumes up to the Baseline Annual Volume shall be an amount equal to the sum of (1) the Capital and Raw Groundwater Unit Price, and (2) the Variable Compensable Costs Unit Price.

SECTION 17.5. MONTHLY WATER PURCHASE PAYMENTS.

SAWS shall pay the Project Company a Monthly Water Purchase Payment for each Billing Period during the Term equal to:

- (1) The number of Daily Delivered Water Units delivered during such Billing Period (less any SAWS Make-Up Units, which have been previously paid for as Demand Shortfall Units), multiplied by the Unit Price; plus
- (2) The number of Demand Shortfall Units occurring during such Billing Period that have not been made up during such Billing Period by SAWS Make-Up Units, multiplied by the Unit Price; plus
- (3) One-twelfth of the Budgeted Fixed Compensable Costs for the applicable Contract Year; plus or minus
- (4) Direct Payments,

all subject to the adjustments provided for in this Article.

SECTION 17.6. DEDUCTIONS CREDIT.

The “**Deductions Credit**” component of the Direct Payments shall be the sum of all Deductions (including any Deductions imposed pursuant to Section 9.8(G) (Deductions for Failure to Obtain a Ground Water Transportation Permit Extension) and Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand)) imposed with respect to the applicable Billing Period.

SECTION 17.7. DIRECT PAYMENTS.

The Direct Payments component of the Monthly Water Purchase Payments, which may be a charge or a credit, shall be equal to the net amount of the Direct Payments with respect to the applicable Billing Period.

SECTION 17.8. FORM OF COMPENSATION ADJUSTMENTS FOR EVENTS OCCURRING AFTER THE CONFORMING CONTRACT AMENDMENT DATE.

(A) General. This Water Transmission and Purchase Agreement provides increased or decreased compensation to the Project Company over the Term based on the occurrence of specified events following the Conforming Contract Amendment Date (“**Compensation Adjustment Events**”). Such payments and adjustments shall be paid and made either as an adjustment to the Unit Price or a Direct Payment, as provided in this Section. The Project Company shall substantiate its entitlement to additional compensation in the manner required by Section 17.14 (Cost Substantiation).

(B) Adjustments to the Unit Price. Compensation to the Project Company shall be payable as an adjustment to the appropriate Charge component of the Unit Price (“**Unit Price Adjustments**”), and other adjustments to the appropriate Charge component of the applicable Unit Price shall be made, in accordance with and subject to the terms and conditions of this Water Transmission and Purchase Agreement, upon the occurrence of the events described in the following Sections:

- (1) Section 5.10 (Good Management Practice and Good Engineering and Construction Practice);
- (2) Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs);
- (3) Section 7.6 (Refinancing and Refinancing Gain);
- (4) Section 12.3 (Capital Modifications at SAWS Request);
- (5) Section 16.3 (Project Company Relief Due to a SAWS Fault).

The adjustment to one or more of the Charge components of the Unit Price to be made under this Section shall be established at the time the appropriate compensation relief is agreed upon, and such compensation shall be payable solely to the extent that SAWS is obligated to make Monthly Water Purchase Payments based on the Unit Price with respect to Product Water delivered or available for delivery hereunder. The Project Company acknowledges, accordingly, that any failure by the Project Company to deliver or make available for delivery Product Water for which it would have been entitled to payment based on the Unit Price (including the adjustment to one or more Charge components thereof reflecting such compensation relief) will result in a reduction in the compensation relief to which it would have been entitled upon the occurrence of the compensation relief circumstance had the Project Company delivered or made available for delivery such Product Water.

(C) Direct Payments by the Parties. SAWS shall pay the Project Company as a direct payment (and not as part of an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price)), and the Project Company shall pay SAWS as a direct payment, any amounts due under or referred to in the following Sections. The net amount shall constitute the “**Direct Payment**” and, except to the extent payable following any termination of this Water Transmission and Purchase Agreement, applied as a credit or debit in calculating the Monthly Water Purchase Payment:

- (1) Section 4.4(C) (Project Assumption Fee);
- (2) Section 5.15 (Project Company Storage Tank Warranties);

- (3) Section 6.2 (SAWS Interconnection Improvements);
- (4) Section 8.5(C) (Achievement of Acceptance);
- (5) Section 8.8(C) (Achievement of Final Completion);
- (6) Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period);
- (7) Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water);
- (8) Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water);
- (9) Section 10.16 (Administrative Obligations);
- (10) Section 12.4(D) (Preparation Costs);
- (11) Section 17.3(F) (Payment of Major Repair and Replacement Compensable Costs);
- (12) Section 14.1(E) (Failure to Provide Insurance Coverage);
- (13) Section 17.6 (Deductions Credit);
- (14) Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law);
- (15) Article 19 (Remedies of the Parties);
- (16) Section 23.8 (Project Company to Cooperate);
- (17) Section 25.1 (Project Company’s Obligation to Indemnify), and any other term or condition hereof, under which indemnification payments are owed by the Project Company (provided that the Project Company shall promptly pay SAWS any such payment which is owed prior to the Commercial Operation Date or which exceeds the amount of the Monthly Water Purchase Payment);
- (18) Appendix 7 (Insurance Requirements) (Section 7.2.10), with respect to any additional insurance coverage requested by SAWS;
- (19) Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by either party; and
- (20) Any other term or condition hereof, under which payment is owed by one party to the other that has not been accounted for by an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price).

SECTION 17.9. BILLING AND PAYMENT.

(A) Invoicing and Monthly Water Purchase Payment Due Date. The Project Company shall provide SAWS with an invoice for each Billing Period by the tenth Business Day following the end of such Billing Period. The invoice shall set forth the amount of the Monthly

Water Purchase Payment due with respect to such Billing Period and, in addition, shall state the accumulated payments to the date of such invoice and such other documentation or information as SAWS may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Water Transmission and Purchase Agreement. SAWS shall pay the invoice within 30 days of receipt, except as provided in Section 17.15 (SAWS' Right of Set Off) and Section 17.16 (Billing Statement Disputes).

(B) Electricity-Related Payments Made Annually. Any amount due SAWS on account of exceedances of the Guaranteed Maximum Annual Electricity Costs shall be paid as part of the Annual Settlement Statement pursuant to Section 17.11 (Annual Settlement).

(C) Late Annual Monthly Water Purchase Payments. In the event SAWS fails to make a Monthly Water Purchase Payment when due under Section 17.9(A) (Invoicing and Monthly Water Purchase Payment Due Date), interest shall accrue and be payable thereon, as and to the extent provided in Section 17.17 (Interest on Overdue Amounts).

#### SECTION 17.10. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Budgeting. For SAWS budgeting purposes, (1) no later than 60 days prior to the Commercial Operation Date, and (2) no later than 90 days preceding each Contract Year, the Project Company shall provide to SAWS a written statement setting forth for such Contract Year its reasonable estimate of the Monthly Water Purchase Payments, each component thereof, the Inflation Index, and the adjustments provided for in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand). The estimate shall not be binding on the Project Company but, in the event that any component of the Monthly Water Purchase Payments for a Billing Period cannot be determined when the invoice for such Billing Period is being submitted, then such estimate shall be used, subject to an appropriate adjustment in a subsequent invoice when the actual value of such component becomes available.

#### SECTION 17.11. ANNUAL SETTLEMENT.

(A) Annual Settlement Statement. Within 60 days after the end of each Contract Year, the Project Company shall provide to SAWS an annual settlement statement (the "**Annual Settlement Statement**") setting forth the actual aggregate Monthly Water Purchase Payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by SAWS with respect to such Contract Year. SAWS or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with SAWS an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(B) Annual Settlement of Electricity Costs. As part of the annual settlement process, SAWS shall, within 30 days after the end of each Contract Year (or within 30 days of the end of the Term if this Water Transmission and Purchase Agreement is earlier terminated), calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs. The Guaranteed Maximum Annual Electricity Costs for a Contract Year shall be



calculated in accordance with Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand) based on the Project Company's Annual Delivered Water Volume. The Project Company acknowledges that the calculation of the Guaranteed Maximum Annual Electricity Costs will include any basic service charges imposed by the electricity provider, and will exclude any fines and penalties imposed by the electricity provider and reimbursed by the Project Company pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period). If the Actual Annual Electricity Costs are greater than the Guaranteed Maximum Annual Electricity Costs, the Project Company shall reimburse SAWS in an amount equal to such excess costs.

SECTION 17.12. TAXES.

(A) General. The Project Company shall pay, without reimbursement from SAWS, all Taxes imposed with respect to the Project or the Contract Obligations, including:

- (1) any property Tax on the Project;
- (2) any Tax on or related to Raw Groundwater or any Project Site Lease;
- (3) any possessory interest or similar Tax imposed with respect to the Project;
- (4) any sales or use Tax imposed on building materials incorporated in the Project; and
- (5) any sales or use Tax imposed on operating or maintenance supplies and services (except to the extent any such Tax constitutes a Compensable Cost),

whether any such Tax exists on the Contract Date or is imposed at any time during the Term. The Project Company acknowledges that all such Taxes have been taken into account in establishing the Monthly Water Purchase Payments.

(B) Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law. All income and other Taxes imposed on the Project Company shall be borne by the Project Company, except as provided in this Section. In the event Taxes are imposed on the Project Company by a Discriminatory Change in Tax Law or a Specified Change in Tax Law, SAWS shall pay the Project Company an amount equal to such Taxes as a Direct Payment. Such payment shall be paid by the last day of the month following the month in which the Project Company paid the Tax, subject to the Project Company's Cost Substantiation obligations under Section 17.14 (Cost Substantiation) and mitigation obligations under Section 26.4(A) (Mitigation by the Project Company).

SECTION 17.13. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

Except with respect to Discriminatory Changes in Tax Law and Specified Changes in Tax Law as provided herein, there shall be no adjustment of the Monthly Water Purchase Payments or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

- (1) Any change in any provision of Income Tax law to take effect after the Conforming Contract Amendment Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person

(including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Monthly Water Purchase Payments or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Water Transmission and Purchase Agreement or any Project Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,

(2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

#### SECTION 17.14. COST SUBSTANTIATION.

(A) General. The Project Company shall substantiate all costs for which it claims compensation hereunder other than costs that are part of the Unit Price, including compensation (1) on account of Project Company Reimbursable Costs, (2) on account of Compensable Costs, or (3) for costs related to a SAWS-Requested Design-Requirements Change, a SAWS-Requested Capital Modification or a SAWS Fault ("**Cost Substantiation**"), whether compensation is to be paid as part of adjustment to the Unit Price or as a lump sum, as provided in Section 17.8 (Form of Compensation Adjustments for Events Occurring After the Conforming Contract Amendment Date). Cost Substantiation shall be provided in advance of incurring or paying the cost, except when emergencies or other immediate needs make advance cost substantiation impracticable. The requirement in this Section for Cost Substantiation for costs that are not related to the Capital and Raw Groundwater Unit Price shall not be construed to mean that the Capital and Raw Groundwater Unit Price is subject to change for any reason.

(B) Competition Practices. In incurring costs for additional work required due to SAWS-Requested Design Requirements Changes or SAWS-Requested Capital Modifications which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$500,000 (Index Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and SAWS' potential obligation to pay for it; provided, however, that during the Construction Period, the Project Company shall not be required to utilize competitive practices for additional work self-performed by the Design Build Contractor or by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to SAWS that the additional costs in response to a SAWS-Requested Capital Modification hereunder are commercially reasonable.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate expected or incurred cost shall state the amount of such cost and the provisions of this Water Transmission and Purchase Agreement under which compensation is payable by SAWS, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required and reasonably paid or incurred pursuant to this Water Transmission and Purchase Agreement. The Cost Substantiation Certificate shall be accompanied by copies of such documentation as shall be necessary to demonstrate the reasonableness of the cost. Such documentation shall be in a format reasonably acceptable to SAWS and shall include reasonably detailed information concerning all Subcontracts and self-perform work.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm actual incurred costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to SAWS, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed construction work requiring Cost Substantiation, the Project Company shall be entitled to (i) in the case of contracts for work totaling more than \$2,000,000, a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors, and (ii) in the case of contracts for work totaling less than \$2,000,000, a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its owner personnel, and for subcontracted work a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors. There shall be no double mark-up between the Project Company and any contractor relating to the same construction work.

#### SECTION 17.15. SAWS' RIGHT OF SET OFF.

Once SAWS determines that any credits, payments, reimbursements or liquidated damages are owed to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement and have not been reflected in any previously submitted Billing Statement, SAWS shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to SAWS under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to SAWS in accordance with this Section, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to SAWS under this Water Transmission and Purchase Agreement.

#### SECTION 17.16. BILLING STATEMENT DISPUTES.

If SAWS disputes in good faith any amount billed by the Project Company, SAWS shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to SAWS for the dispute. In the event that the Project Company disputes any amounts offset by SAWS, it shall provide SAWS with a written objection indicating the amount being disputed and the reasons then known to the Project Company. When any billing dispute is finally resolved, if payment by SAWS to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the

date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 17.17 (Interest on Overdue Amounts).

SECTION 17.17. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable under this Water Transmission and Purchase Agreement is not made when due (including the Project Assets Purchase Price), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due (or was determined to have been due, in the case of amounts being disputed by SAWS) under this Water Transmission and Purchase Agreement until paid. The party to whom payment is owed and overdue shall notify the other party at least quarterly of the overdue amount.

SECTION 17.18. NO RECOURSE TO CITY'S GENERAL FUND, GENERAL CREDIT OR AD VALOREM TAXES.

As provided in Section 17.1(D) (Limited Source of Payment), the source of payment in satisfaction of any and all obligations of SAWS assumed or imposed by it or arising under this Water Transmission and Purchase Agreement shall be limited to the revenues derived by SAWS from ownership and operation of the SAWS Distribution System, with such payment constituting an "operating expense" (as defined in Chapter 1502, as amended, of the Texas Government Code) of the SAWS Distribution System. As a result, the Project Company (including its successors in legal interest, assigns, or Affiliates) shall have no recourse to the general fund or general credit of the City (including the right to require the levy and collection of any tax, whether ad valorem or otherwise), or any other fund (including other enterprise funds), source of revenue, asset, instrument or property of the City, in satisfaction of the payment of any amount due the Project Company hereunder, whether on account of the Monthly Water Purchase Payment, any termination payment, or for any payment or claim of any nature arising from the performance or non-performance of SAWS' obligations hereunder. The sole recourse of the Project Company for the payment of all such amounts shall be to the revenues of SAWS derived from the ownership and operation of the SAWS Distribution System pursuant to City Ordinance 75686, under which SAWS is established and pursuant to which revenue bonds are issued from time to time to finance SAWS' capital improvements. The payment of all such amounts is subject to the terms and conditions of City Ordinance 75686. No such amount shall be payable from any ad valorem taxes. In furtherance of the foregoing, the Project Company hereby acknowledges and agrees it is not entitled to demand payment of the obligations of SAWS hereunder out of any money raised by taxation.

SECTION 17.19. GOODS AND SERVICES.

The parties agree that the mutual commitments stated in this Water Transmission and Purchase Agreement to make available Product Water, to take delivery of and purchase Product Water and to finance, implement and transfer the Project Improvements required therefor constitute an agreement to provide goods and services, and that this Water Transmission and Purchase Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

SECTION 17.20. EFFECT OF CITY APPROVAL.

Notwithstanding the City's approval of this Water Transmission and Purchase Agreement, the City's obligations hereunder shall be limited as and to the extent provided in City Ordinance Number 75686, under which the City has delegated to SAWS sole management and control over the SAWS Distribution System. The City's approval hereof shall not be construed to obligate the City (except by and through SAWS as provided herein) to perform any

obligation hereunder, or to create a right of any kind of the Project Company against the City (independent of any right against SAWS under the terms hereof).

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

(A) Court Jurisdiction. It is the express intention of the parties that all Legal Proceedings related to this Water Transmission and Purchase Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas. The Project Company and SAWS each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

(B) Waiver of Jury Trial. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS WATER TRANSMISSION AND PURCHASE AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(C) Disputes as to Acceptance. In the event (1) SAWS and the Project Company become involved in any mediation or judicial proceeding with respect to whether Acceptance has been achieved, and (2) the Project Company determines that it would be appropriate that any corresponding dispute between the Project Company and the Design Build Contractor under the Design Build Contract (with respect to issues that are substantially identical under both the Water Transmission and Purchase Agreement and the Design Build Contract) be resolved in that proceeding, SAWS consents to the Design Build Contractor's joinder to, and consolidated resolution of such substantially identical issues in, that proceeding.

SECTION 18.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Water Transmission and Purchase Agreement. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between SAWS and the Project Company.

(B) Procedure. The Mediator shall be a professional firm or individual mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Water Transmission and Purchase Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Water Transmission and Purchase Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation. Further, nothing in this Section shall operate to limit or interfere with judicially imposed mediation.

ARTICLE 19

REMEDIES OF THE PARTIES

SECTION 19.1. REMEDIES FOR BREACH.

The parties agree that in the event that either party breaches this Water Transmission and Purchase Agreement, the other party may exercise any legal rights it may have under this Water Transmission and Purchase Agreement and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Water Transmission and Purchase Agreement except as provided or referred to in Article 22 (Termination). Any such damage payment shall be a Direct Payment.

SECTION 19.2. NO EFFECT ON CONTRACT OBLIGATIONS.

The exercise by SAWS of any of its rights under this Article 19 (Remedies of the Parties) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Obligations.

SECTION 19.3. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Water Transmission and Purchase Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Water Transmission and Purchase Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.4. EXERCISE OF REMEDIES.

(A) Remedies Cumulative. The rights and remedies of the parties under this Water Transmission and Purchase Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.5. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Water Transmission and Purchase Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Water Transmission and Purchase Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Water Transmission and Purchase Agreement.

SECTION 19.6. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER OR OBLIGATED IN ANY MANNER TO PAY TO THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES BASED UPON CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS OR OTHERWISE UNDER THIS WATER TRANSMISSION AND PURCHASE AGREEMENT, OR ANY REPRESENTATION MADE IN THIS WATER TRANSMISSION AND PURCHASE AGREEMENT BEING MATERIALLY INCORRECT, WHETHER SUCH CLAIMS ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL THEORY. THIS SECTION SHALL NOT LIMIT THE RECOVERY OF ANY SUCH LOSSES OR DAMAGES UNDER Article 25 (INDEMNIFICATION) IN RESPECT OF CLAIMS BY THIRD PARTIES.

SECTION 19.7. STANDBY DEED OF TRUST.

(A) Delivery of Deed of Trust. The parties acknowledge that pursuant to Section 3.12 of the Project Real Property Conveyance Agreement, the Water Supply Corporation will be delivering the Standby Deed of Trust to SAWS (or, if required under the Creditors' Remedies Agreement, to the Project Company with a collateral assignment to SAWS) as further security for SAWS' right to timely acquire the Project Assets.

(B) Conveyance of Project Assets. In the event that SAWS shall have commenced Conveyance Litigation and the Project Company disputes that the Project Assets were required to be conveyed to SAWS under the terms of this Water Transmission and Purchase Agreement, then the Project Company shall have the right, as its sole remedy for such dispute, to litigate such claims in the Conveyance Litigation. In the event the Project Company obtains a final unappealable judgment determining that the Project Assets were not required to be conveyed to SAWS at the time of the foreclosure, then SAWS' foreclosure of the Standby Deed of Trust shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) and, as its sole and exclusive remedy and damages, the Project Company shall be entitled to the payment of (a) the difference between (i) the amount payable to the Project Company pursuant to Section 23.1(B) (Project Assets Purchase Price) (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (ii) any amounts previously paid by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company's behalf in respect of the Senior Debt) plus (b) interest on the amount in clause (a) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate for pre-judgment interest.

(C) Remedy for Failure to Convey. Notwithstanding anything to the contrary in this Article 19 (Remedies of the Parties), in the event SAWS shall have foreclosed upon the Project Assets pursuant to the Standby Deed of Trust, such remedy shall be SAWS' sole remedy for a failure to timely convey, or cause the conveyance of, the Project Assets, as required under this Water Transmission and Purchase Agreement, and no further recovery or damages shall be obtainable against the Project Company for such failure to convey, provided, however, that nothing in this Section 19.7 (Standby Deed of Trust) shall limit or impair SAWS' rights or remedies in respect of any breach of this Water Transmission and Purchase Agreement other than a failure to convey the Project Assets and SAWS shall be entitled to assert any such other claims in the Conveyance Litigation or otherwise in its discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(D) Monetary Nature of Disputes. The parties agree that SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of this Water Transmission and Purchase Agreement and payment of the



amounts provided for hereunder, which amounts are to be determined solely as provided herein. Accordingly, the parties further agree that any disputes relating to any conveyance of the Project Assets are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Water Transmission and Purchase Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company seeks an injunction or other judicial action to prevent SAWS' foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Section 19.7(C) (Remedy for Failure to Convey) shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Water Transmission and Purchase Agreement, “**Project Company Event of Default**” means any of the following events or circumstances:

(1) The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program), unless the occurrence of the Project Company Remediable Breach is due to the occurrence of an Uncontrollable Circumstance.

(2) The failure of the Project Company to timely achieve Acceptance by the Commercial Operation Longstop Date, as provided in Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date).

(3) The occurrence of a Project Company Bankruptcy-Related Event.

(4) The Project Company abandons the Project, unless such abandonment is due to the occurrence of an Uncontrollable Circumstance.

(5) The Project Company breaches Section 24.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 24.2 (Limitations on Change in Control).

(6) The issuance by SAWS at the direction of TCEQ or another authorized Governmental Body of a second “boil water” or “do not drink” notice with respect to Product Water, as provided in Section 10.2(F) (Boil Water and Do Not Drink Notices) unless such event is due to the occurrence of an Uncontrollable Circumstance.

(B) Project Company Remediable Breach Defined. For purposes of this Water Transmission and Purchase Agreement, “**Project Company Remediable Breach**” means any of the following breaches, unless the breach is due to the occurrence of an Uncontrollable Circumstance:

(1) A failure by the Project Company to pay any amount due and owing to SAWS under this Water Transmission and Purchase Agreement on the due date (which amount is not being disputed in good faith) and the Project Company has not remedied such failure to pay within any of the following breaches of failures except to the extent such breach, failure or circumstance is caused by an Uncontrollable Circumstance 30 Business Days following notice from SAWS, provided that interest on any such overdue amount shall be paid as provided in Section 17.17 (Interest on Overdue Amounts);

(2) A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement and to comply with its obligation under Appendix 7 (Insurance Requirements) to name SAWS as an insured party;

(3) A failure by the Project Company to comply with its obligation under Section 15.1 (Force Majeure Events Generally) to repair, replace or restore the Project following the occurrence of a Force Majeure Event;

(4) The Project Company fails to immediately take all appropriate action in the event that SAWS notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company's failure to comply with the Contract Standards;

(5) Except as provided for in items (1) through (4) of this Section 20.1(B) (Project Company Remedial Breach Defined), a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to SAWS (other than a breach for which SAWS may impose Deductions) or any representation or warranty made by the Project Company to SAWS in this Water Transmission and Purchase Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;

(b) a risk of material liability of SAWS to third persons;

(c) an adverse effect on the performance of the Contract Obligations to the extent that SAWS is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement; or

(d) any material provision of this Water Transmission and Purchase Agreement being unenforceable against the Project Company;

(6) a breach in any rolling period of 36 consecutive Billing Periods, the sum in any 24 or more of such Billing Periods of (i) all Daily Delivered Units in such Billing Periods, and (ii) all Demand Shortfall Units in such Billing Periods, is less than 75,000 Acre Feet;

(7) with respect to Product Water Quality, the exceedance of the same primary drinking water MCL in three consecutive months, four times in any consecutive 12 month period;

(8) a breach, other than a breach described in Section 20.1(A) (Project Company Events of Default Defined) or in items (1) through (7) of this Section 20.1(B) (Project Company Remedial Breach Defined) which, due to the fact that such breach, demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Water Transmission and Purchase Agreement; or

(9) Any other fact or circumstance designated as a "Project Company Remediable Breach" under this Water Transmission and Purchase Agreement; or

(C) Project Company Bankruptcy-Related Event Defined. For purposes of this Water Transmission and Purchase Agreement, "**Project Company Bankruptcy-Related Event**" means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other

process being levied or enforced upon, the whole or any material part of the assets of the Project Company; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify SAWS of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is continuing, SAWS may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 60 days after such notice or within such longer period as is reasonably required for the Project Company to rectify or remedy such Project Company Remediable Breach as long as the Project Company is diligently pursuing such rectification or remedy, but in no event exceeding 270 days after such notice; or

(2) If either SAWS (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 60 days of such notice, the Project Company shall deliver to SAWS within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under Section 20.3(A)(1)).

(B) Remediable Program Limited to Project Company Remediable Breaches. The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

SECTION 20.4. SAWS TERMINATION RIGHT.

(A) Termination Right. If a Project Company Event of Default occurs, then SAWS may (if the Project Company Event of Default continues unwaived and unremedied), subject to Section 22.1(E) (Continued Performance), terminate this Water Transmission and Purchase Agreement by notice to the Project Company. The right of SAWS to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which SAWS may have in connection with the Project Company's non-compliance with this Water Transmission and Purchase Agreement, including SAWS right to purchase the Project Assets as provided in Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) and those rights set forth in Article 19 (Remedies of the Parties).

(B) Creditors' Remedies Agreement. The rights of SAWS under this Section are subject to the terms of the Creditors' Remedies Agreement.

ARTICLE 21

SAWS EVENTS OF DEFAULT

SECTION 21.1. SAWS EVENTS OF DEFAULT.

For the purposes of this Water Transmission and Purchase Agreement, “**SAWS Event of Default**” means any of the following events or circumstances:

(1) A failure by SAWS to pay any amount due and owing to the Project Company under this Water Transmission and Purchase Agreement within 60 days of the due date for such amount;

(2) Except as provided in Section 21.1(1), a breach, or series of breaches, by SAWS of any term, covenant or undertaking to the Project Company or any representation or warranty made by SAWS to the Project Company in this Water Transmission and Purchase Agreement being incorrect when made, the consequence of which is:

(a) a material and adverse effect on the performance of the Contract Obligations; or

(b) any material provision of this Water Transmission and Purchase Agreement being unenforceable against SAWS to the extent that the Project Company is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement;

(3) The authorized filing by SAWS of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for SAWS shall not in and of itself constitute a SAWS Event of Default hereunder; or

(4) SAWS breaches Section 24.4 (Limitation on Assignment by SAWS).

SECTION 21.2. PROJECT COMPANY OPTIONS UPON A SAWS EVENT OF DEFAULT.

(A) Notice. After the occurrence of a SAWS Event of Default and while a SAWS Event of Default is continuing, the Project Company may, at its option, serve notice on SAWS of the occurrence and specifying the details of such a SAWS Event of Default.

(B) Remediable SAWS Event of Default. If the relevant matter or circumstance has not been rectified or remedied by SAWS:

(1) in the case of a SAWS Event of Default under Section 21.1(1), within 30 days of such notice; or

(2) in the case of a SAWS Event of Default under Section 21.1(2), within 60 days after the notice provided by the Project Company pursuant to Section 21.2(A) or within such longer period as is reasonably required for SAWS to rectify or remedy such SAWS Event of Default as long as SAWS is diligently pursuing such rectification or remedy,

the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(C) Non-Remediable SAWS Events of Default. In the case of a SAWS Event of Default under Section 21.1(3) or 21.1(4), concurrently with, or at any time after, the delivery of notice under Section 21.2(A) (Notice), the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(D) Other Rights Upon SAWS Non-Compliance. The right of the Project Company to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which the Project Company may have in connection with SAWS' non-compliance with this Water Transmission and Purchase Agreement.

SECTION 21.3. PROJECT COMPANY RIGHT TO REQUIRE SAWS TO PURCHASE THE PROJECT ASSETS.

In lieu of serving a further notice on SAWS terminating this Water Transmission and Purchase Agreement and bringing an action to enforce payment of the amounts due pursuant to Section 21.2(B) (Remediable SAWS Events of Default) or Section 21.2(C) (Non-Remediable SAWS Events of Default), the Project Company may in its discretion serve a further notice on SAWS requiring SAWS to purchase the Project Assets. SAWS shall purchase the Project Assets for the Project Assets Purchase Price set forth in Section 23.1(B) (Project Assets Purchase Price). SAWS shall determine the closing date for the purchase and sale of the Project Assets, which shall be not later than 180 days following receipt of notice from the Project Company under this Section. The procedures set forth in Section 23.3(C), (D) and (E) (Purchase Option Procedures) shall apply to any purchase of Project Assets under this Section. Upon payment of the purchase price for the Project Assets provided in this Section, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate. Between the date of notice given by the Project Company under this Section and such Termination Date, the Project Company shall have no obligation to perform the Contract Obligations, and interest on SAWS' overdue amounts shall accrue at the Overdue Rate as provided in Section 17.17 (Interest on Overdue Amounts).

ARTICLE 22

TERMINATION

SECTION 22.1. TERMINATION RIGHTS.

(A) SAWS Termination Rights. This Water Transmission and Purchase Agreement may be terminated by SAWS prior to the Expiration Date:

(1) In connection with the convenience termination rights of SAWS during the Development and Financing Period, pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally);

(2) In connection with a Project Company Event of Default, pursuant to Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date);

(3) In connection with a Project Company Event of Default, pursuant to Section 20.4 (SAWS Termination Right); or

(4) Upon the exercise by SAWS of any of its options to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), in which event this Water Transmission and Purchase Agreement shall terminate upon the date of purchase.

(B) Project Company Termination Rights. This Water Transmission and Purchase Agreement may be terminated by the Project Company prior to the Expiration Date:

(1) In connection with the convenience termination right of the Project Company during the Development and Financing Period, pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period); or

(2) In connection with a SAWS Event of Default, pursuant to Section 21.2 (Project Company Options Upon a SAWS Event of Default).

(C) Extent of Termination Rights. Except as provided or referred to in Sections 22.1(A) (SAWS Termination Rights) and 22.1(B) (Project Company Termination Rights), neither party shall have the right to terminate this Water Transmission and Purchase Agreement.

(D) Termination Date. The “**Termination Date**” for any early termination of this Water Transmission and Purchase Agreement as provided in Sections 22.1(A) or (B) shall be the date notice of termination is given by one party to the other party in accordance herewith.

(E) Continued Performance. The parties shall continue to perform their obligations under this Water Transmission and Purchase Agreement (including SAWS continuing to pay the Monthly Water Purchase Payments) until the Termination Date, notwithstanding the giving of any notice of default.

(F) Completion or Continuance by SAWS. Subject to the rights of the Senior Debt Creditors under the Creditors’ Remedies Agreement and the prior right of the Senior Debt



Creditors to enter into agreements with other operators, contractors and technology and equipment suppliers under agreements directly with such contract counterparties, after the Termination Date, and whether termination occurs due to a Project Company Event of Default or otherwise, SAWS may at any time (but without any obligation to do so) enter into contracts with the Operating Service Provider and other operators, contractors and technology and equipment suppliers. The Project Company waives any right at law or in equity it may have to restrict SAWS from entering into any such contracts.

ARTICLE 23

SAWS PROJECT ASSETS PURCHASE OPTIONS

SECTION 23.1. PROJECT ASSETS PURCHASE AND CONVENIENCE TERMINATION OPTION DURING THE TERM.

(A) Option. SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets, and thereby terminate this Water Transmission and Purchase Agreement for its convenience, at any time following the Financial Closing Date.

(B) Project Assets Purchase Price. If SAWS exercises its Project Assets purchase option under this Section, SAWS shall pay to the Project Company on the Project Assets Purchase Date a Project Assets Purchase Price (adjusted as appropriate as provided in Section 23.3(C) (Project Company Notice and Determination)) equal to the aggregate amount, without duplication, of:

(1) (a) the aggregate amount required to prepay in full any Senior Debt outstanding as of the Project Assets Purchase Date, including any prepayment fees, original issue discount, breakage, hedge or swap termination fees, and other amounts that may be payable to any Senior Debt Creditor as a consequence of early termination, minus (b) an amount equal to all amounts on deposit in the funds and accounts held under the Senior Debt Financing Agreements for the benefit of the Senior Debt Creditors on the Project Assets Purchase Date, to the extent applied to the payment of the amounts identified in item (a) of this subsection. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs;

(2) the Employee Payments, the Operating Service Provider Breakage Costs, and employee and lease termination costs and other reasonable costs incurred by the Project Company in terminating and winding up its business; and

(3) the present value sum, calculated using quarterly compounding, as of the Project Assets Purchase Date using a discount rate of 8.04652%, of the Target Equity Return Amount in the Financial Close Financial Model ("Quarterly Calculations" tab, row 2640) for each of the remaining Contract Years from the Project Assets Purchase Date through the final Contract Year. The Target Equity Return Amount shall mean the quarterly amount shown for each Contract Year as "Pure Equity, Nominal, Pre-SPV-Tax Cash Flows" on the "Quarterly Calculations" tab, row 2640 of the Financial Close Financial Model until expiration of the Water Transmission and Purchase Agreement. In order to satisfy the Financial Closing Date Condition set forth in Section 4.1(B)(19)(c), the parties shall execute a Contract Administration Memorandum which provides an updated discount rate, such discount rate to be determined by multiplying the Target Equity Return Amount generated by the Financial Close Financial Model and 0.65, and row references based on the Financial Close Financial Model, and which sets forth in table or chart form the final Target Equity Return Amount payable for each Contract Year calculated using the methodology set forth in this paragraph (3).

The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

SECTION 23.2. PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.

SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets upon a Project Company Event of Default for a Project Assets Purchase Price equal to (1) the aggregate amount required to prepay in full any Senior Debt outstanding as of the Project Assets Purchase Date, including any prepayment fees, original issue discount, breakage, hedge or swap termination fees, and other amounts that may be payable to any Senior Debt Creditor as a consequence of early termination, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Senior Debt Financing Agreements for the benefit of the Senior Debt Creditors on the Project Assets Purchase Date, to the extent applied to the payment of the amounts identified in item (1) of this subsection. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

SECTION 23.3. PURCHASE OPTION PROCEDURES.

(A) Notice of Exercise of Project Assets Purchase Option. SAWS shall give the Project Company prior written notice of its election to exercise its option to purchase the Project Assets:

(1) At least 180 days prior to the Project Assets Purchase Date, in the case of a purchase under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term); and

(2) On or following the date on which a Project Company Event of Default occurs, in the case of a purchase under Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default).

The written notice shall specify the closing date for the purchase and sale of the Project Assets, and such closing date shall be the **“Project Assets Purchase Date”**.

(B) Notice of Intent Required for Certain Purchase Options. As a condition of SAWS’ right to exercise its Project Assets Purchase Option under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), SAWS shall give the Project Company a notice of intent to exercise its Project Assets Purchase Option at least 270 days prior to the Project Assets Purchase Date. Notwithstanding the delivery of a notice of intent under this Section, SAWS shall have no obligation to exercise the Project Assets Purchase Option that was the subject of such notice.

(C) Project Company Notice and Determination. As soon as practicable after receipt of SAWS’ notice of its election to purchase the Project Assets under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), the Project Company shall, acting reasonably, notify SAWS of the Project Company’s determination of the amount of the Project Assets Purchase Price due, and include in such notice the details and calculations of each component thereof, including certificates from the Senior Debt Creditors as to the amounts owed to them. The Project Company shall provide to SAWS all such documents and information as may be reasonably required by SAWS to support and confirm the amount of the Project Assets Purchase Price due under such Section.

(D) Adequacy of Project Assets Purchase Price. The Project Company agrees that any applicable Project Assets Purchase Price provided for in this Article shall constitute the only compensation from SAWS to the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Project Company’s right to

perform this Water Transmission and Purchase Agreement in connection with the purchase of the Project Assets under this Article.

(E) Reliance on Senior Debt Creditors Certification. SAWS shall be entitled to rely on one or more certificates of agents of the Senior Debt Creditors as conclusive evidence of the amount of the Senior Debt outstanding, and any accrued interest and redemption premium, in any calculation of a Project Assets Purchase Price. Upon receipt of this amount by Project Company, the Senior Debt Creditors shall discharge SAWS' obligation to pay any portion of compensation due to the Project Company that is attributable to the Senior Debt.

(F) Termination. Upon payment of the Project Assets Purchase Price on the Project Assets Purchase Date pursuant to this Article, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate.

#### SECTION 23.4. CONVEYANCE.

(A) Obligation to Convey and Assign. Upon payment by SAWS of the applicable Project Assets Purchase Price under this Article, the Project Company shall assign and convey, or cause to be assigned and conveyed, to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances. Such assignment, conveyance, acceptance and assumption shall be effective on the Project Assets Purchase Date. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including those particularly set forth in Article 4 (Development and Financing Period)) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 23.4(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other party. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall cause the Water Supply Corporation, effective on the Project Assets Transfer Date, to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS the Project Real Property required to be conveyed under the Project Real Property Conveyance Agreement. Such conveyance shall convey good and indefeasible title and interest in the subject Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9) and (10) of the definition of Permitted Encumbrances.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and

conveyances provided for in Section 23.4(A) (Obligation to Convey and Assign), including executing and delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Project Liabilities. Upon the purchase of the Project Assets pursuant to this Article, SAWS shall assume the Assumed Liabilities as and to the extent provided in Appendix 12 (Project Assets and Liabilities). The Assumed Liabilities shall not include the Excluded Liabilities.

SECTION 23.5. FULL SETTLEMENT; ANTECEDENT AND POST-TERMINATION LIABILITIES.

Any and all amounts paid by SAWS to the Project Company upon a purchase of the Project Assets, and the related termination of this Water Transmission and Purchase Agreement, under this Article will be the full and final settlement of each party's rights and claims against the other party in connection with such purchase or with respect to the Project Assets, whether under contract, tort, restitution or otherwise, but without prejudice to:

(1) Any antecedent liability of either party to the other that arose prior to the date of termination of this Water Transmission and Purchase Agreement (but not from the termination itself); and

(2) Any liability of either party to the other that may arise after the Termination Date of this Water Transmission and Purchase Agreement (but not from the termination itself), including liabilities arising under the provisions of this Water Transmission and Purchase Agreement which are intended by Section 3.3 (Survival) to survive termination.

SECTION 23.6. ADDITIONAL OBLIGATIONS UPON PROJECT ASSETS PURCHASE.

(A) Transfer Responsibilities. If SAWS exercises its right to purchase the Project Assets under this Article, then on or promptly after the Termination Date:

(1) The Project Company shall, or will use reasonable efforts to cause a Project Contractor to, offer to sell to SAWS at fair market value, free from any security interest, all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or a Project Contractor and reasonably required by SAWS in connection with the operation of the Project or the provision of the Contract Obligations;

(2) The Project Company shall deliver to SAWS (to the extent not already delivered to SAWS):

(a) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Contact Obligations (or any Subcontracts); and

(b) to the extent reasonably available to the Project Company, copies of all Subcontracts (with confidential or commercially sensitive information redacted), together with a statement of:

- (i) the items ordered and not yet delivered pursuant to each agreement;
- (ii) the expected delivery date of all such items;
- (iii) the total cost of each agreement and the terms of payment; and
- (iv) the estimated cost of canceling each agreement;

(3) The Project Company shall give written notice of termination, effective as of the Expiration Date, promptly under each policy of Required Insurance (with a copy of each such notice to SAWS), but permit SAWS to continue such policies thereafter at its own expense, if possible; and

(4) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters.

(B) No Additional Compensation. The Project Company shall ensure that provision is made in all applicable contracts to ensure that SAWS will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

SECTION 23.7. TRANSITIONAL ARRANGEMENTS.

If SAWS exercises its right to purchase the Project Assets under this Article, the Project Company shall, in connection with the expiration or termination of this Water Transmission and Purchase Agreement:

- (1) Stop performance of the Contract Obligations on the Termination Date;
- (2) On the Termination Date deliver to SAWS:
  - (a) all keys, access codes or other devices required to operate the Project; and
  - (b) any Project Intellectual Property required to be delivered by the Project Company pursuant to Section 23.6(A) (Transfer Responsibilities);
- (3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Project Sites, and leave the Project in a safe, clean and orderly condition;
- (4) On request by SAWS and on payment of the Project Company's reasonable costs (including costs payable to the Operating Service Provider under the Operating Service Agreement) by SAWS, for a period not to exceed 90 days after the Termination Date, co-operate fully with SAWS and any successor providing to SAWS services in the nature of any of the Contract Obligations or any part of the Contract Obligations, in order to achieve a smooth transfer of the manner in which SAWS obtains services in the nature of the Contract Obligations;

(5) As soon as practicable following the Termination Date, remove from the Project Sites all property of the Project Company or any Project Company Person that does not constitute Project Assets or does not belong to SAWS and if it has not done so within 60 days after any notice from SAWS requiring it to do so, SAWS may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and

(6) Comply with all requirements of Section 11.7 (Project Assets Transfer Condition).

**SECTION 23.8. PROJECT COMPANY TO COOPERATE.**

If SAWS exercises its right to purchase the Project Assets under this Article and wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Operating Work following the Termination Date), the Project Company shall prior to the Termination Date co-operate with SAWS fully in such competition process, including by:

(1) Providing any information in the Project Company's control or possession which SAWS may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting SAWS by providing any participants in such competition process with reasonable access to the Project Sites, provided such access does not affect the Contract Obligations in a way that results in any reduction in Monthly Water Purchase Payments or materially interferes with the activities of the Project Company or the Operating Service Provider.

The Project Company shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services and an additional mark-up of 6% of such costs and expenses.

**SECTION 23.9. RECORDING.**

This Water Transmission and Purchase Agreement, or a memorandum hereof, shall be recorded in the land records of the Counties in order to preserve SAWS' assignment and conveyance rights under Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) and SAWS' purchase options for the Project Assets under this Article.

ARTICLE 24

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 24.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement or a Project Contract except:

(1) As security (in accordance with the Creditors' Remedies Agreement or otherwise substantially in a form approved by SAWS, acting reasonably) for any loan made to the Project Company under the Senior Debt Financing Agreements;

(2) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors' Remedies Agreement; or

(3) Otherwise:

(a) prior to the day that is two years after the Commercial Operation Date (the "**Transfer Restriction Date**"), with the prior written consent of SAWS, which may be given or withheld in SAWS' discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under Sections 24.1(2) or (3), the assignee assumes all the obligations of the Project Company under this Water Transmission and Purchase Agreement. Any purported assignment of this Water Transmission and Purchase Agreement in violation of this Section is void.

SECTION 24.2. LIMITATIONS ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Water Transmission and Purchase Agreement "**Change in Control**" means with respect to a person (other than SAWS) any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, Shares or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, Shares or equity, issuance of new shares, Shares or equity or amalgamation, merger consolidation, amendment of a limited liability company certificate or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

(1) Controlling the composition of the majority of the board of trustees of the entity or of a general partner or manager of the entity;

(2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of trustees or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;



(3) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited liability company) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited liability company) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the entity.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors' Remedies Agreement;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Affiliate of a Shareholder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company (or of any person who directly or indirectly owns shares or equity in the Project Company) to Abengoa or any of its Affiliates (to the extent such interest was held by Abengoa Water USA as of the Conforming Contract Amendment Date), or Garney Holding Company or any of its Affiliates; or

(4) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of SAWS, which may be given or withheld in SAWS' discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed.

In determining whether to give its consent to any Change in Control under Section 24.2(B)(4)(b), the SAWS shall take into consideration the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the backgrounds and reputations of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective Affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on the other projects); (3) compliance with SAWS' conflict of interest requirements; and (4) the ability of the Project Company to meet its obligations under this Water Transmission and Purchase Agreement after the transfer.

### SECTION 24.3. FACTORS SAWS MAY CONSIDER.

In determining whether to provide its consent under Sections 24.1(3)(b) or 24.2(B)(4)(b), and without limiting SAWS' consent rights thereunder, it will be reasonable for SAWS to refuse its consent if:

(1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;

(2) The proposed assignee or the new party in control of the Project Company, as the case may be, is, in the reasonable opinion of SAWS, less creditworthy than the assignor; or

(3) The assignment or Change in Control could, in the reasonable opinion of SAWS, have a material and adverse effect on SAWS or the Project.

SECTION 24.4. LIMITATION ON ASSIGNMENT BY SAWS.

SAWS shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement (except to another Governmental Body to which all or substantially all of the revenues, assets and liabilities constituting the SAWS municipal utility water enterprise are transferred), without the prior written consent of the Project Company, which may be given or withheld in the Project Company's reasonable discretion. This covenant shall not be construed to restrict the exercise by SAWS of its rights under Section 26.5 (Opportunities).

SECTION 24.5. COSTS OF REQUEST FOR CONSENT.

(A) General. If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 24.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 24.2 (Limitations on Change in Control), the Project Company shall pay SAWS' reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of \$50,000 (Index Linked). After the decision of SAWS is rendered, SAWS will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

(B) Multiple Requests. The obligations of the Project Company under subsection (A) of this Section shall apply to the requested Garney Change-in-Control, and to any subsequent Change-in-Control.

SECTION 24.6. GARNEY CHANGE IN CONTROL.

(A) Garney Change-in-Control Defined. For purposes of this Water Transmission and Purchase Agreement, "**Garney Change-in-Control**" means the purchase by Garney P3 LLC from Abengoa Water USA LLC of 80% of the membership interests in the Project Company pursuant to Section 1.1 of the Membership Interest and Purchase Agreement.

(B) Delivery of Related Documents. In addition to the documents set forth in Section 4.1(A) (Documents Delivered Prior to the Conforming Contract Amendment Date), the parties acknowledge that the following documents were delivered to SAWS on or before the Conforming Contract Amendment Date:

(1) The executed Project Real Property Conveyance Agreement;

(2) Delivery of mutual certification between Abengoa Water USA and Garney P3 LLC that the conditions to the closing of the Garney Change-in-Control, as described in the Membership Interest and Purchase Agreement, have been fully satisfied; and

(3) Opinions of qualified Spanish or United States legal counsel, as applicable, concerning the validity and enforceability regarding entry and performance of their applicable duties and obligations thereunder of the respective parties to the transaction documents executed in connection with the Membership Interest and Purchase Agreement.

(C) SAWS Consent to Garney Change-in-Control. SAWS hereby consents, pursuant to its rights under Section 24.2 (Limitations in Change-in-Control), to the Garney Change-in-Control. Nothing in the Membership Interest and Purchase Agreement shall be construed to amend, modify or change any term or condition of this Water Transmission and Purchase Agreement, affect SAWS' right hereunder, or create any SAWS obligation thereunder or hereunder, nor shall SAWS review of or comment on the Membership Interest and Purchase Agreement or consent to the Garney Change-in-Control be construed to constitute an approval of or consent by SAWS to any of transactions related to the Garney Change-in-Control that are described in or anticipated by the Membership Interest and Purchase Agreement.

(D) Further Change-in-Control Requirements following the Conforming Contract Amendment Date. On and after the Conforming Contract Amendment Date, Section 24.2 (Limitations on Change-in-Control) shall continue to apply to any subsequent Change-in-Control. In addition, any assignment, sale or transfer that results in Garney Holding Company owning less than a majority of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company shall be deemed to constitute a Change-in-Control for all purposes hereof.

ARTICLE 25

INDEMNIFICATION

SECTION 25.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall indemnify and keep the City and SAWS, and their respective elected officials, trustees, members, appointed officers, employees, representatives, agents, attorneys, financial advisors, and contractors (each a "**SAWS Indemnitee**") indemnified at all times from and against all Loss-and-Expense that any SAWS Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person), arising by reason of any:

- (1) Breach of any representation or warranty by the Project Company under this Water Transmission and Purchase Agreement;
- (2) Negligent act or omission of the Project Company or any Project Company Person;
- (3) Willful misconduct of the Project Company or any Project Company Person;
- (4) Non-compliance by the Project Company or any Project Company Person with any of the provisions of this Water Transmission and Purchase Agreement or any Project Contract or Subcontract or any document, instrument or agreement delivered to SAWS as required under this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault;
- (5) Release of Hazardous Substances by the Project Company or any Project Company Person, except to the extent excused by a SAWS Fault;
- (6) Breach by the Project Company or any Project Company Person of, or non-compliance by the Project Company or any Project Company Person with, any Governmental Approval or Applicable Law, or the failure of the Project Company or any Project Company Person to obtain all necessary Governmental Approvals in accordance with this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault; or
- (7) Any other act, event or circumstance as to which the Project Company is obligated to provide an indemnity hereunder, except to the extent excused by a SAWS Fault.

The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. Notwithstanding the foregoing, SAWS Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the SAWS Indemnitees. This Section may be relied upon by the SAWS Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 25.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a SAWS Indemnatee receives any notice, demand, letter or other document concerning any claim for which it appears that the SAWS Indemnatee is, or may become entitled to, indemnification or compensation under this Water Transmission and Purchase Agreement in respect of the entire claim, the SAWS Indemnatee shall give notice in writing to the Project Company.

(B) Consolidation of Claims. If a notice of claim is given pursuant to Section 25.2(A) (Notice) by more than one SAWS Indemnatee relating to the same facts or circumstances, the Project Company may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Project Company Right to Dispute Claim. If notice is given as provided in (A) (Notice), the Project Company shall be entitled to dispute the claim in the name of the SAWS Indemnatee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The SAWS Indemnatee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Conflicts of Interest. In defending any claim as described in Section 25.2(C) (Project Company Right to Dispute Claim) in which there is a conflict of interest between the Project Company and SAWS Indemnatee, SAWS Indemnatee may appoint independent legal counsel in respect of such claim and, if it is determined that the SAWS Indemnatee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the SAWS Indemnatee in so doing will be included in the indemnity or compensation from the Project Company.

(E) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to Section 25.2(C) (Project Company Right to Dispute Claim):

(1) The Project Company shall keep the SAWS Indemnatee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Project Company shall demonstrate to the SAWS Indemnatee, at the reasonable request of the SAWS Indemnatee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Project Company shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of SAWS, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of SAWS and (2) be subject to the consent of SAWS, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, SAWS (with the approval of the SAWS Board of Trustees, given in its discretion) shall, at the sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest.

(F) SAWS Indemnatee Rights to Conduct Defense. A SAWS Indemnatee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Project Company is not entitled to take conduct of the claim in accordance with Section 25.2(C) (Project Company Right to Dispute Claim); or

(2) The Project Company fails to notify the SAWS Indemnatee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the SAWS Indemnatee under Section 25.2(C) (Project Company Right to Dispute Claim) or notifies the SAWS Indemnatee that it does not intend to take conduct of the claim; or

(3) The Project Company fails to comply in any material respect with Section 25.2(E) (Rights and Duties of the Parties).

(G) Transfer of Conduct of Claim to SAWS Indemnatee. A SAWS Indemnatee may at any time, without limiting the Project Company's obligation to indemnify SAWS under this Article (including the obligation to pay fees and costs in connection with such indemnity), give notice to the Project Company that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 25.2(C) (Project Company Right to Dispute Claim) applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the SAWS Indemnatee, and will provide to the SAWS Indemnatee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(H) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without additional cost to SAWS;  
and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 26

MISCELLANEOUS PROVISIONS

SECTION 26.1. CERTAIN REAL PROPERTY-RELATED COVENANTS.

(A) Acquisition by the Project Company of Well Field Facilities Site Real Property Interests and Transmission Pipeline Easements. The Project Company, acting in cooperation with the Water Supply Corporation, shall acquire (1) all of the Well Field Facilities Site Real Property Interests no later than June 10, 2017, and (2) all of the Transmission Pipeline Easements no later than June 10, 2017. In acquiring easements, the Project Company shall comply with Section 26.1(G) (Right-of-Way Easements). The Project Company shall cause possession of all Transmission Pipeline Easements and Well Field Facilities Site Real Property Interests that are the subject of an eminent domain proceeding to have been obtained (subject to continued legal proceedings, as may be applicable) no later than October 13, 2017. SAWS may, in its discretion, provide a variance to the requirements of this Section for a particular property interest on a case by case basis ("**Variance**"), upon written request from the Project Company.

(B) Transmission Pipeline Terminus Site Subdivision Property Line and Final Site Plan. The Project Company is obligated under subsections (C), (D), (E) and (F) of this Section to perform various obligations with respect to the Transmission Pipeline Terminus Site. In performing such obligations, the Project Company (1) shall use, as the final subdivision property line, the subdivision property line dividing the SAWS Portion of the Transmission Pipeline Terminus Site from the Project Company Portion of the Transmission Pipeline Terminus Site indicated in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements), and (2) shall use, as the final site plan, the site plan set forth in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

(C) Final Site Plan Requirements for the Transmission Pipeline Terminus Site. The final site plan for the Transmission Pipeline Terminus Site shall show:

(a) that the location of the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tank and related portion of the SAWS Interconnection Improvements, as set forth in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements), on the Transmission Pipeline Terminus Site are in compliance with all applicable building and setback lines and do not encroach on or interfere with existing easements (whether on, above or below ground in any material matter); and

(b) no encroachments from the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tank and related portion of the SAWS Interconnection Improvements, extending to adjacent property or from adjacent property onto the Project, nor any gaps, gores, projections, protrusions or other survey defects which will have a material adverse impact on the use of the Transmission Pipeline Terminus Site.

(D) Due Diligence Documents for the SAWS Portion of the Transmission Pipeline Terminus Site. Not later than January 13, 2017, the Project Company shall provide SAWS, with respect to that portion of the Transmission Pipeline Terminus Site being conveyed to SAWS (the "**SAWS Portion of the Transmission Pipeline Terminus Site**") pursuant to Section 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations), (a) a proposed subdivision plat of the Transmission Pipeline Terminus Site, subdividing the SAWS Portion of the Transmission Pipeline Terminus Site generally as depicted on the final site plan described in Section 26.1(C) (Final Site Plan Requirements for the Transmission Pipeline Terminus Site),

acceptable to SAWS in its discretion; (b) a survey prepared by a registered professional land surveyor licensed in the State satisfying the requirements of a Category 1A, Condition II Survey, sufficient for a title company to issue all requested survey endorsements, certified to SAWS and the title company; (c) an updated Phase I Environmental Site Assessment (i) dated no more than 180 days prior to the conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site, (ii) made in accordance with then-current ASTM standards, (iii) naming SAWS as a “user”, and (iv) unless recommending further action, sufficient to satisfy the “all appropriate inquiries” necessary for SAWS to be an “innocent landowner” or “bona fide prospective purchaser”, together with any other follow-up reports obtained by the Project Company or Water Supply Corporation; and (d) a title commitment from Chicago Title Insurance Company or such other reputable title company to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Project Company’s purchase price (on a per square foot allocation), subject only to those exceptions to title set forth in Exhibit B to Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site). The SAWS Portion of the Transmission Pipeline Terminus Site must be separately platted as its own lot, at Project Company’s sole expense, prior to conveyance pursuant to Section 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations). If the Phase I Environmental Site Assessment recommends further action, the Project Company shall cause all necessary remediation to be performed to the satisfaction of SAWS such that SAWS can qualify as an “innocent landowner” and “bona fide prospective purchaser.”

(E) Transmission Pipeline Terminus Site Conveyance Obligations.

(1) Conveyance to SAWS of Terminus Site Lot 3. Not later than the Scheduled Grading Completion Date, or the actual date of completion of grading for Terminus Site Lot 2 as required under Appendix 13 (SAWS Interconnection Improvements), whichever is earlier, the Project Company shall convey to SAWS, or shall cause the Water Supply Corporation to convey to SAWS, without compensation, good and indefeasible title to and interest in Terminus Site Lot 3, by deed substantially in the form set forth as Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site). At the closing of the conveyance to SAWS of Terminus Site Lot 3, SAWS and the Project Company shall execute such reasonable and customary documents required by the title company to close such transaction and issue to SAWS the owner policy of title insurance subject to no exceptions or exclusions other than those set forth in Exhibit B to Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site), and shall each pay such reasonable and customary expenses as are typically allocated to a buyer and seller for a closing of a real estate transaction in San Antonio, Texas. The remaining portion of the Transmission Pipeline Terminus Site (including Terminus Site Lot 2 until its conveyance to SAWS pursuant to Section 26.1(E)(2)) (Conveyance to SAWS of the Project Company Storage Tank) is the **“Project Company Portion of the Transmission Pipeline Terminus Site.”** The Project Company, not later than the date of such conveyance, also shall cause all mitigation and related measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements) to be completed so as to cause no interference with or delay to SAWS’ work on Terminus Site Lot 3.

(2) Conveyance to SAWS of the Project Company Storage Tank. On the Notice of Acceptance Date, the Project Company shall convey to SAWS, or shall cause the Water Supply Corporation to convey to SAWS, without compensation, good and indefeasible title to and interest in Terminus Site Lot 2 and the Project Company Storage Tank by deed substantially in the form set forth as Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline



Terminus Site), subject to any additional exceptions to title as SAWS may approve in its discretion, and in accordance with the requirements of subsection 26.1(D) and paragraph (1) of this subsection 26.1(E). All documents so required to be delivered in connection with such conveyance shall be delivered to SAWS no later than 60 days prior to the conveyance date. Title to Terminus Site Lot 1 and the Terminus Site Lot 1 Improvements, which are not subject to any conveyance obligations, shall be retained by the Project Company and thereupon become the Project Company Portion of the Transmission Pipeline Terminus Site for the remainder of the Term.

(F) Reciprocal Easement Agreement. Concurrently with the conveyance provided for in Item (1) of subsection (E) of this Section, SAWS and the Project Company or the Water Supply Corporation, as applicable, shall execute a reciprocal easement agreement for the Transmission Pipeline Terminus Site substantially in the form set forth as Transaction Form J (Reciprocal Easement Agreement for the Transmission Pipeline Terminus Site), providing each owner of the Transmission Pipeline Terminus Site with access to the other owner's portion of the Transmission Pipeline Terminus Site for purposes of this Water Transmission and Purchase Agreement.

(G) Right-of-Way Easements. In acquiring the Transmission Pipeline Easements (other than the Transmission Pipeline Easements acquired by partial assignment of existing easements from Cross County Water Supply Corporation), the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right-of-Way Easement Form). Except for such Cross County Water Supply Corporation easement assignments, all such right-of-way easements shall permit the construction of two water pipelines in the right-of-way, shall provide for an easement width of at least 85 feet, for which there shall be no more than a 15 feet overlap into an adjoining electrical easement (both of which may be lessened on a case-by-case basis as reasonably approved by SAWS), and without SAWS' consent, shall not contain any indemnity provisions that would according to their terms apply or purport to apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements. In the event the Project Company delivers to SAWS a request for its consent to any Variances to these easement requirements, and SAWS has not responded to the Project Company's request within 10 Business Days of receipt, SAWS' consent shall be deemed to have been given. The Project Company shall not deliver to SAWS more than 10 such requests for consent to a Variance from any easement requirement in any period of five Business Days. In the case of a Transmission Pipeline Easement acquired by way of a judgment in a condemnation proceeding, such instrument shall be in the form as prescribed for such proceedings, but shall in substance conform to the requirements set forth hereinabove. In acquiring right-of-way easements for the Collection Pipelines Rights-of-Way, the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right-of-Way Easement Form).

(H) Compliance With Project Site Conveyance Instruments Generally. The Project Company shall comply with its material obligations under the Project Site Conveyance Instruments and keep and maintain the Project Site Conveyance Instruments in full force and effect, and shall promptly notify SAWS of any material breach or default by any party thereto.

(I) Groundwater Leases. With respect to the Groundwater Leases, the Project Company shall, to the extent required in order to provide the Baseline Annual Volume: (1) maintain Raw Groundwater production at levels sufficient to avoid termination of a Groundwater Lease by any Groundwater Lessor, (2) pay all royalties and other amounts due any party thereunder, and (3) comply with all rules and regulations of the POSGCD and other Applicable Law relating to any activity conducted pursuant to rights granted under the Groundwater Leases.

(J) Covenant Against Sale of the Project. The Project Company shall not sell, lease, assign, convey, move or otherwise transfer its ownership or other interests in the Project, the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater without the consent of SAWS given in its discretion, except in connection with an assignment of this Water Transmission and Purchase Agreement pursuant to Section 24.1 (Limitation on Assignment by Project Company). There shall be no Encumbrances registered or recorded on the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater or any part of the Project other than Permitted Encumbrances.

SECTION 26.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of SAWS and the relationship between the parties shall be limited to performance of this Water Transmission and Purchase Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Water Transmission and Purchase Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Water Transmission and Purchase Agreement or the performance thereof.

SECTION 26.3. NO OTHER BUSINESS; NO PUBLIC UTILITY.

(A) No Other Business. The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder.

(B) No Public Utility. Nothing contained in this Water Transmission and Purchase Agreement shall be construed as an intent by the Project Company to dedicate its property or any Project facilities to public use or subject itself to rate regulation as a "retail public utility" (as defined in Chapter 13 of the Texas Water Code or any other Applicable Law).

SECTION 26.4. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from SAWS or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstance or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by SAWS to the Project Company under this Water Transmission and Purchase Agreement, or the length of the extension of time. Upon request from SAWS, the Project Company shall promptly submit a detailed description, supported by all such documentation as SAWS may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this Section.

(B) Mitigation by SAWS. In all cases where SAWS is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, SAWS shall use all reasonable efforts to mitigate such amount required to be paid by the Project Company to SAWS under this Water Transmission and Purchase Agreement, provided that such obligation shall not require SAWS to:

- (1) Take any action which is contrary to the public interest, as determined by SAWS in its discretion;

(2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or

(3) Alter the amount of Deductions it is entitled to make in accordance with Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

SAWS shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or otherwise as expressly provided in this Water Transmission and Purchase Agreement. Upon request by the Project Company, SAWS shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by SAWS to mitigate and meet its obligations under this Section.

SECTION 26.5. OPPORTUNITIES.

(A) General. Except as may be specifically agreed in writing between SAWS and the Project Company during the Term, SAWS reserves the right to all commercial and other opportunities for, arising from, or related to, the Project.

(B) Opportunities Expressly Reserved. Without limiting the generality of Section 26.5(A) (General), SAWS reserves, and subject to the Project Company's rights under Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications), the right to arrange for and exclusively benefit from the conveyance and sale of Product Water to any person, and to direct the Project Company to make a SAWS-Directed Design Requirements Change or a SAWS-Directed Capital Modification to the Transmission Pipeline System to allow for the interconnection of pipelines necessary to convey Product Water to any person. The Product Water Delivery Point for any Product Water sold to any such person shall be the interconnection point on the Transmission Pipeline System designated by SAWS, and title to and ownership of all such Product Water shall pass to SAWS or the purchaser at such Product Water Delivery Point. In any such arrangement, the Project Company shall coordinate the granting of any easement rights and permitting use of the Transmission Pipeline System Real Property Interests as may be required for such interconnection, and SAWS shall remain solely responsible to the Project Company for the purchase of all Product Water in accordance herewith.

SECTION 26.6. CONTRACT ADMINISTRATION.

(A) Authority of SAWS Representative. The Project Company understands and agrees that the SAWS Representative has only limited authority with respect to the implementation of this Water Transmission and Purchase Agreement, and cannot bind SAWS with respect to any Water Transmission and Purchase Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the SAWS Representative. The SAWS Representative shall have the right at any time to issue the Project Company a written request for information relating to a possible breach of this Water Transmission and Purchase Agreement. Any such written request with respect to a material breach designated as a "priority request" shall be responded to by the Project Company within three Business Days. The SAWS Representative shall also have the right to issue Variances.

(B) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Project Company shall be given by the SAWS

Representative and Operating Notices to SAWS shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Water Transmission and Purchase Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Water Transmission and Purchase Agreement between the parties which do not require a Water Transmission and Purchase Agreement Amendment shall be a “**Contract Administration Memorandum**.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by SAWS and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Water Transmission and Purchase Agreement in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents, Variances and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of SAWS reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the SAWS Representative and the Project Company Representative. SAWS and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Water Transmission and Purchase Agreement Amendments and all other documents relating to the administration and performance of this Water Transmission and Purchase Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Water Transmission and Purchase Agreement.

#### SECTION 26.7. WATER TRANSMISSION AND PURCHASE AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 26.6 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Water Transmission and Purchase Agreement shall be made except through a written amendment to this Water Transmission and Purchase Agreement (a “**Water Transmission and Purchase Agreement Amendment**”) duly authorized by SAWS and by the

Project Company. Water Transmission and Purchase Agreement Amendments shall be dated and signed by the SAWS Representative and the Project Company Representative.

(B) Water Transmission and Purchase Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Water Transmission and Purchase Agreement, when a Water Transmission and Purchase Agreement Amendment or other agreement with respect to this Water Transmission and Purchase Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging the Water Transmission and Purchase Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 26.8. SAWS APPROVALS AND CONSENTS.

When this Water Transmission and Purchase Agreement requires any approval or consent by SAWS to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of Section 26.6 (Contract Administration), be given by the SAWS Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by SAWS with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Water Transmission and Purchase Agreement, and except for (1) Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Water Transmission and Purchase Agreement, require a response or action, if SAWS does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of SAWS' receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless SAWS' approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification.

SECTION 26.9. DISCLOSED DATA.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Water Transmission and Purchase Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. The Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any SAWS Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Water Transmission and Purchase Agreement on the grounds:

- (1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (2) That the Disclosed Data was incorrect or insufficient; or
- (3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than SAWS,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Water Transmission and Purchase Agreement on any such ground.

SECTION 26.10. INTELLECTUAL PROPERTY RIGHTS.

The Project Company shall indemnify, defend and hold harmless SAWS and the SAWS Indemnities in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Construction Work and the Operating Work. At its option, the Project Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe.

SECTION 26.11. ACTIONS OF SAWS IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Water Transmission and Purchase Agreement shall be interpreted as limiting the rights and obligations of SAWS under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against SAWS, not based on this Water Transmission and Purchase Agreement, arising out of any act or omission of SAWS in its governmental capacity.

SECTION 26.12. PROJECT COMPANY'S CONFIDENTIALITY OBLIGATIONS.

(A) Confidential SAWS Information. The Project Company shall treat as confidential and proprietary to SAWS all information obtained from SAWS in connection with the Contract Obligations ("**Confidential SAWS Information**"). The Project Company shall not (a) use Confidential SAWS Information for any purpose other than the performance of the Contract Obligations, or (b) disclose any Confidential SAWS Information to any person other than its own employees, agents, Project Contractors or Subcontractors who have a need for such information in the performance of their work relating to the Project, unless such disclosure is specifically authorized in writing by SAWS.

(B) Security Plan. If requested by SAWS, the Project Company shall prepare a security plan to assure that Confidential SAWS Information is not used for any unauthorized purpose or disclosed to unauthorized persons by the Project Company or any of its Project Contractors or Subcontractors. The Project Company shall advise SAWS of any request for disclosure of such information or of any actual or potential disclosure of such information, whether or not a security plan has been prepared by the Project Company.

SECTION 26.13. SAWS' CONFIDENTIALITY OBLIGATIONS.

(A) General. The Project Company acknowledges that SAWS is governed by and must comply with the Texas Public Information Act, as set forth in Chapter 552 of the Texas Government Code, as the same may be amended from time-to-time. SAWS shall have the right to disclose and make public any information received from the Project Company, except as provided in Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information) (the "**Confidential Project Company Information**") and Section 26.13(E) (Procedures Upon Third Party Requests for Confidential Project Company Information).

(B) Disclosable Information. Specifically, SAWS shall have the right to disclose and make public certain information, including the following information, whether or not such information may be withheld pursuant to an exception to disclosure under the Texas Public Information Act:

- (1) information which is or comes into the public domain other than through any disclosure prohibited by this Water Transmission and Purchase Agreement;
- (2) reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to SAWS;
- (3) information supplied to any Governmental Body, including regulatory reports and the information and sampling and testing results provided pursuant to Section 9.8(D) (Reports to Governmental Bodies);
- (4) periodic reports prepared by the Project Company pursuant to Section 9.11 (Periodic Reports);
- (5) records required to be retained and maintained pursuant to Section 9.12 (Maintenance of Records);
- (6) the Performance Test Report delivered to SAWS pursuant to Section 8.3(F) (Test Report);
- (7) invoices prepared pursuant to Section 17.9 (Billing and Payment), including information and supporting documentation requested by SAWS pursuant to such Section;
- (8) any information related to the maintenance, repair and replacement of the Project provided pursuant to Article 11 (Maintenance, Repair and Replacement);
- (9) operating procedures, plans, and readings of monitors and operating manuals and records of chemical consumption;
- (10) any output of the Contract Date Financial Model or Financial Close Financial Model; and
- (11) photographs and videos of the exterior of the Project.

(C) Confidential Project Company Information; Non-Disclosable Information. Except as may be required by Applicable Law, SAWS agrees not to disclose the following information that is provided to SAWS and specifically identified by written notation as “confidential” at the time of disclosure to SAWS:

- (1) the computer program(s) that generated the Contract Date Financial Model and the Financial Close Financial Model;
- (2) process and instrumentation diagrams of Project systems and data sheets;
- (3) financial information regarding Project Contractors and Subcontractors;
- (4) any Project Contract or Subcontract;
- (5) information relating to trade secrets, or secret processes; and

(6) any legal proceedings involving a Project Contract or Subcontract.

(D) Use of Confidential Project Company Information by SAWS' Professional Advisors and Consultants. Notwithstanding the terms and provisions of Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information), SAWS may disclose or grant access to Confidential Project Company Information to its professional advisors and consultants to the extent necessary to enable SAWS to perform (or to cause to be performed) or to enforce its rights or obligations under this Water Transmission and Purchase Agreement (provided that such advisors and consultants agree for the benefit of the Project Company not to disclose such Confidential Project Company Information on such terms as may be reasonably agreed to by the Project Company and such advisors or consultants).

(E) Procedures Upon Third Party Requests for Confidential Project Company Information. If SAWS receives a third party request under the Texas Public Information Act for Confidential Project Company Information, SAWS agrees to deliver prompt written notice to the Project Company of any such third-party request so that the Project Company may seek, at no cost to SAWS, an opinion from the Texas Attorney General for SAWS to withhold disclosure of such Confidential Project Company Information. The obligation to maintain the confidentiality of Confidential Project Company Information does not apply to the extent that SAWS is required to disclose such Confidential Project Company Information as determined by the Texas Attorney General.

#### SECTION 26.14. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information of employees or agents of SAWS:

- (1) with the prior consent of SAWS;
- (2) to the extent necessary to perform the Project Company's obligations under this Water Transmission and Purchase Agreement; and
- (3) in accordance with Applicable Law, including the Public Information Act as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow SAWS on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

#### SECTION 26.15. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under all agreements of the Project Company which are material to the performance of its obligations under this Water Transmission and Purchase Agreement.

#### SECTION 26.16. BINDING EFFECT.

This Water Transmission and Purchase Agreement shall inure to the benefit of and shall be binding upon SAWS and the Project Company and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control).



SECTION 26.17. NOTICES, CONSENTS AND APPROVALS.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Water Transmission and Purchase Agreement (other than Operating Notices as provided in Section 26.6(B) (Operating Notices), shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(1) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(2) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(3) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(4) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(B) SAWS Notice Address. Notices (other than Operating Notices) required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(C) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

Garney P3 LLC  
1333 NW Vivion Road  
Kansas City, MO 64118  
Attention: President  
Fax No.: (816) 278-5945  
Email: mheitmann@garney.com

with a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Attention: Charles G. Renner  
Fax No.: (816) 983-8080  
Email: charles.renner@huschblackwell.com

SECTION 26.18. NOTICE OF LITIGATION.

In the event the Project Company or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 26.19. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Water Transmission and Purchase Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Water Transmission and Purchase Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Water Transmission and Purchase Agreement to be executed by their duly authorized representatives as of the day and year first above written.

APPROVED BY THE CITY OF SAN ANTONIO,  
TEXAS, PURSUANT TO CITY ORDINANCE  
2014-10-30-0818

By: /s/ Ivy R. Taylor

Name: Ivy R. Taylor

Title: Mayor

Date: November 4, 2014\*

ATTEST:

/s/ Leticia Vacek  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

/s/ Robert F. Greenblum  
Robert F. Greenblum  
CITY ATTORNEY

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By: /s/ Berto Guerra, Jr.

Name: Heriberto "Berto" Guerra, Jr.

Title: Chairman

Date: November 4, 2014\*

By: /s/ Robert R. Puente

Name: Robert R. Puente

Title: President/Chief Executive Officer

Date: November 4, 2014

ABENGOA VISTA RIDGE LLC

By: /s/ Pedro Almagro Gavilán

Name: Pedro Almagro Gavilán

Title: Manager and President

Date: November 4, 2014\*

[\* THIRD AMENDMENT – April 5, 2017]

TRANSACTION FORMS

Relating To The

VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

and

VISTA RIDGE LLC

Dated  
November 4, 2014  
As Amended on  
June 10, 2016,  
November 2, 2016  
and April 5, 2017

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**TRANSACTION FORM A**  
**GARNEY GUARANTY AGREEMENT**

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GUARANTY AGREEMENT

from

GARNEY HOLDING COMPANY

to

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

Dated as of

June 10, 2016

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## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of June 10, 2016, between Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of San Antonio, Texas (the "City") acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("SAWS").

### RECITALS

The City acting by and through SAWS and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company"), have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended the date hereof and from time to time hereafter (the "Water Transmission and Purchase Agreement"), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis, all as more particularly described therein.

The Project Company is an indirect subsidiary of the Guarantor.

Performance by SAWS and the Project Company of their obligations under the Water Transmission and Purchase Agreement will result in a direct and substantial benefit to the Guarantor.

The City acting by and through SAWS will enter into an amendment to the Water Transmission and Purchase Agreement only if, concurrently with its execution and delivery by the Project Company, the Guarantor guarantees the performance by the Project Company of certain of the Project Company's Obligations under the Water Transmission and Purchase Agreement as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the amendment to the Water Transmission and Purchase Agreement by the City acting by and through SAWS and in consideration thereof, the Guarantor agrees as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Water Transmission and Purchase Agreement.

“Obligations” means the obligation of the Project Company to pay SAWS Reimbursable Costs, as set forth in Sections 4.5 (Project Company Convenience Termination Option During the Development and Financing Period) and 4.7 (SAWS Reimbursable Costs) of the Water Transmission and Purchase Agreement. No other payment or performance obligations of the Project Company under or in any manner related to the Water Transmission and Purchase Agreement are guaranteed hereby.

“Transaction Agreement” means any agreement entered into by the Project Company in connection with the transactions contemplated by the Water Transmission and Purchase Agreement, including the Water Transmission and Purchase Agreement, and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, SAWS and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Texas.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any

such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to SAWS, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Water Transmission and Purchase Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.



## ARTICLE III

### GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO SAWS. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to SAWS for the benefit of SAWS the full and prompt payment of the Obligations when due from the Project Company under the Water Transmission and Purchase Agreement (including all amendments and supplements thereto) to, or for the account of, SAWS, when the same shall become due and payable pursuant to this Guaranty. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.3 and Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF SAWS TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Project Company to pay or perform any Obligation guaranteed hereunder, SAWS shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Project Company or exhausting any other remedies against the Project Company which SAWS may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that SAWS: (1) file suit or proceed to obtain a personal judgment against the Project Company or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Project Company other than providing the Project Company with any notice of such payment or performance as may be required by the terms of the Water Transmission and Purchase Agreement or required to be given to the Project Company under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which SAWS is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Project Company or to the enforcement of remedies under the Water Transmission and Purchase Agreement. Upon any unexcused failure by the Project Company in the payment of any Obligation and the giving of such notice or demand, if any, to the Project Company and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding SAWS' right to proceed directly against the Guarantor, SAWS (or any successor) shall not be entitled to more than a single full payment in respect of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. Subject to Section 3.9, the obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Project Company shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in this Section 3.3 or Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Project Company, SAWS or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Water Transmission and Purchase Agreement up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by SAWS in the exercise of any right, power or remedy conferred on SAWS with respect to this Guaranty or the Water Transmission and Purchase Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim; provided, however, no such exercise or failure, omission or delay shall result in an increase in the Obligations;

(3) any permitted transfer or assignment of rights or obligations under the Water Transmission and Purchase Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of SAWS or any other person in any Transaction Agreement or in the Project;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement in accordance therewith;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Project Sites or the Project;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Project Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Project Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Project Company;

(9) any failure on the part of the Project Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of SAWS to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Project Company as a condition to the enforcement of Obligations pursuant to the Water Transmission and Purchase Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Project Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Project Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Project Company pursuant to the terms of the Water Transmission and Purchase Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Project Company's rights, benefits, duties or obligations under the Water Transmission and Purchase Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Project Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Project Company may have under the Water Transmission and Purchase Agreement or under Applicable Law (other than bankruptcy or insolvency of the Project Company and other than any defense which the Project Company has expressly waived in the Water Transmission and Purchase Agreement or the Guarantor has expressly waived in Section 3.5 hereof), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Project Company is permitted to assert pursuant to the Water Transmission and Purchase Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

(1) notice from SAWS of its acceptance of this Guaranty;

(2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given pursuant to the Water Transmission and Purchase Agreement or Applicable Law as a condition to the enforcement of the Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Project Company required pursuant to the Water Transmission and Purchase Agreement or Applicable Law as a condition to the payment of any Obligation;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in

similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Project Company;

(6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Project Company) or security;

(7) any requirement that the Project Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by SAWS in the event of the receivership or bankruptcy of the Project Company; and

(9) all demands upon the Project Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5 and not in limitation of Section 3.3 or Section 3.4, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

**SECTION 3.6. PAYMENT OF COSTS AND EXPENSES.** The Guarantor agrees to pay SAWS on demand all Fees and Costs, incurred by or on behalf of SAWS in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that SAWS incurs in performing any of its obligations under the Water Transmission and Purchase Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Project Company of its Obligations.

**SECTION 3.7. SUBORDINATION OF RIGHTS.** The Guarantor agrees that any right of subrogation or contribution which it may have against the Project Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of SAWS hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Project Company until the Project Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

**SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.** The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by SAWS. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Project Company is rescinded or must be otherwise restored by SAWS, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Water Transmission and Purchase Agreement, or any applicable Transaction Agreement or the Project Company's enforcement of such terms under Applicable Law.

**SECTION 3.9. TERM.** This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until the earlier to occur of (1) the Financial Closing Date and (2) the date that all of the Obligations of the Project Company have been fully paid and performed and the Water Transmission and Purchase Agreement has otherwise terminated in

accordance with its terms, and upon the earlier to occur of (1) and (2), this Guaranty shall terminate and be of no further force or effect.

## ARTICLE IV

### GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the Obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Texas, and (b) delivers to SAWS an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a change in the Guarantor's financial condition that would materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of SAWS.

SECTION 4.3. QUALIFICATION IN TEXAS. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Texas.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court, including without limitation any objection to the assertion by such court of personal jurisdiction over the Guarantor.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of SAWS and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of SAWS and the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by SAWS that nothing contained herein shall create any obligation of, or right to look to, any director, officer, employee

or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. (A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received, or delivery is refused, at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) SAWS Notice Address. Notices required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Highway 281 North  
San Antonio, TX 78212  
Attention: President/CEO  
Fax No.: (210) 233-5268

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: Vice President/General Counsel  
Fax No.: (210) 233-4587  
Email: [nbelinsky@saws.org](mailto:nbelinsky@saws.org)

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Garney Holding Company  
133 NW Vivion Road  
Kansas City, MO 64118  
Attention: Michael Heitmann/Chief Executive  
Officer  
Telephone No.: (816) 746-7250  
Fax No.: [FAX NUMBER]

with a copy to:

Husch Blackwell  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Attention: Charles Renner/Partner  
Telephone No.: (816) 329-4702  
Fax No.: (816) 983-8080

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Garney Holding Company, as Guarantor


By: 

Name: Michael Heitman

Title: CEO

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN ANTONIO ACTING BY  
AND THROUGH THE SAN ANTONIO  
WATER SYSTEM BOARD OF TRUSTEES

By: 

Name: Robert R. Puente

Title: President/CEO



**AMENDMENT NO. 1 TO THE  
GUARANTY AGREEMENT**

THIS AMENDMENT TO THE GUARANTY AGREEMENT (this "Amendment") is made and dated as of November [2], 2016, between Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of San Antonio, Texas (the "City") acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("SAWS").

RECITALS

WHEREAS, the City acting by and through SAWS and Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC), a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company"), have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended (the "Water Transmission and Purchase Agreement"), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis, all as more particularly described therein; and

WHEREAS, the Guarantor and the City acting by and through SAWS executed the Guaranty Agreement, dated as of June 10, 2016 (the "Guaranty Agreement"), to guarantee the performance by the Project Company of certain of the Project Company's Obligations under the Water Transmission and Purchase Agreement; and

WHEREAS, the Guarantor and the City desire to amend the Guaranty Agreement in connection with the Project Company's financing of the water supply project; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS. All capitalized terms used and not otherwise defined herein have the meanings set forth in the Guaranty Agreement.

SECTION 2. AMENDED GUARANTY AGREEMENT PROVISIONS.

The Guaranty Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth below.

(A) The definition of "Obligations" in Section 1.1 of the Guaranty Agreement is amended as follows:

"Obligations" means (1) in connection with the exercise by the Project Company of its convenience termination right prior to the Financial Closing Date, the obligation of the Project Company to pay SAWS Reimbursable Costs, as set forth in Sections 4.5 (Project Company Convenience Termination Option During the Development and Financing Period) and 4.7 (SAWS Reimbursable Costs) of the Water Transmission and Purchase Agreement; and (2) in connection with the exercise by SAWS of its right to terminate the Water Transmission and Purchase Agreement pursuant to Section 20.4 (SAWS Termination Right) thereof based on a breach of any of subsections 26.1(A), (B), (C), (D), (E) or (F) thereof, the obligation of the Project Company to pay

SAWS damages, as set forth in Section 19.1 (Remedies for Breach) of the Water Transmission and Purchase Agreement. The maximum amount of damages guaranteed under item (2) of this definition is \$2,000,000. No other payment or performance obligations of the Project Company under or in any manner related to the Water Transmission and Purchase Agreement are guaranteed hereby. Nothing in this definition shall be construed to establish any limit on damages payable by the Project Company to SAWS for any breach of the Water Transmission and Purchase Agreement.

(B) Section 3.9 of the Guaranty Agreement is amended as follows:

TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until ~~the earlier to occur of (1) the Financial Closing Date and (2) the date that all of the Obligations of the Project Company have been fully paid and performed and the Water Transmission and Purchase Agreement has otherwise terminated in accordance with its terms, and upon the earlier to occur of (1) and (2), this Guaranty shall terminate and be of no further force or effect.~~

(C) Section 4.8(B) of the Guaranty Agreement is amended as follows:

SAWS Notice Address. Notices required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Highway 281 North  
San Antonio, TX 78212  
Attention: President/CEO  
Fax No.: (210) 233-5268

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: Vice President/General Counsel  
Fax No.: (210) 233-4587  
Email: [nbelinsky@saws.org](mailto:nbelinsky@saws.org)

(D) Section 4.8(C) of the Guaranty Agreement is amended as follows:

Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Garney Holding Company  
1333 NW Vivion Road  
Kansas City, MO 64118  
Attention: Michael Heitmann/Chief Executive Officer  
Telephone No.: (816) 746-7250  
Fax No.: ~~FAX NUMBER~~ (816) 278-5945

with a copy to:

Husch Blackwell  
4801 Main Street, Suite 1000

Kansas City, MO 64112  
Attention: Charles Renner/Partner  
Telephone No.: (816) 329-4702  
Fax No.: (816) 983-8080

SECTION 3. OTHER TERMS OF GUARANTY AGREEMENT REMAIN IN EFFECT. All terms and conditions of the Guaranty Agreement which are not expressly modified or deleted by the terms of this Amendment shall remain in effect.

SECTION 4. INTERPRETATION. The interpretation provisions set forth in Section 1.2 of the Guaranty Agreement will apply, mutatis mutandis, to any interpretation of this Amendment.

SECTION 5. BINDING EFFECT. This Amendment shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties.

SECTION 6. NO REFERENCE REQUIRED. All notices, communications, agreements, certificates, documents or other instruments executed and delivered after the execution and delivery of this Amendment may refer to the Guaranty Agreement without making specific reference to this Amendment, but nevertheless all such references shall include this Amendment unless the context requires otherwise.

SECTION 7. COUNTERPARTS. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument.

SECTION 8. DUE AUTHORIZATION, EXECUTION AND DELIVERY. This Amendment has been duly authorized, executed and delivered by all necessary action of each party.

[Signature page follows]

**IN WITNESS WHEREOF**, the Guarantor has caused this Amendment to the Guaranty Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first set forth above.

GARNEY HOLDING COMPANY, as  
Guarantor

By: 

Name: Michael Heitmann

Title: President/CEO

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN ANTONIO ACTING BY  
AND THROUGH THE SAN ANTONIO  
WATER SYSTEM BOARD OF TRUSTEES

By:

\_\_\_\_\_

Name: Robert R. Puente

Title: President/CEO

**IN WITNESS WHEREOF**, the Guarantor has caused this Amendment to the Guaranty Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first set forth above.

GARNEY HOLDING COMPANY, as  
Guarantor

By: \_\_\_\_\_

Name: Michael Heitmann

Title: President/CEO

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN ANTONIO ACTING BY  
AND THROUGH THE SAN ANTONIO  
WATER SYSTEM BOARD OF TRUSTEES

By: \_\_\_\_\_

Name: Robert R. Puente

Title: President/CEO

**TRANSACTION FORM B**  
**DESIGN BUILD CONTRACTOR SUBSTITUTION AGREEMENT**

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DESIGN BUILD CONTRACTOR  
SUBSTITUTION AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM

and

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

and

GARNEY COMPANIES, INC.

relating to the

VISTA RIDGE REGIONAL SUPPLY PROJECT

Dated November 2, 2016

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## DESIGN BUILD CONTRACTOR SUBSTITUTION AGREEMENT

THIS DESIGN BUILD CONTRACTOR SUBSTITUTION AGREEMENT is made and entered into November 2, 2016, between the City of San Antonio, Texas (the “City”) acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of Texas Water Code (the “Water Supply Corporation”), and Garney Companies, Inc., a corporation organized and existing under the laws of the State of Missouri (the “Contractor”).

### RECITALS

The City acting by and through SAWS and Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC) (the “Project Company”) have entered into the Vista Ridge Regional Supply Project, dated as of November 4, 2014, as amended from time to time (the “Water Transmission and Purchase Agreement”), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis based on the acquisition of water rights and design, construct, finance, operate and maintain production wells, groundwater storage tanks, pumping stations and raw water collection and transmission pipelines and appurtenant facilities, all as more particularly described therein (the “Project”);

The Water Supply Corporation and the Contractor have entered into an agreement dated November 2, 2016 (the “Design Build Contract”), whereby the Water Supply Corporation has engaged the Contractor to carry out and complete substantially a portion of the Project Company’s obligations under the Water Transmission and Purchase Agreement; and

It is a condition of SAWS’ continuing obligations under the Water Transmission and Purchase Agreement that the Contractor enter into this Agreement with the Water Supply Corporation and the City acting by and through SAWS.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meaning given to such terms in the Water Transmission and Purchase Agreement.

#### SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

(1) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(2) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(5) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(6) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(7) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(8) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant

approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Water Supply Corporation or the Contractor, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the City and the other parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements between the City and the other parties with respect to such transactions.

(13) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(14) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(15) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(16) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(17) Consents. Any consent required to be given under this Agreement must be in writing.

SECTION 1.3. GOVERNING LAW. This Agreement will be deemed to be made pursuant to the laws of the State of Texas and will be governed by and construed in accordance with such laws.

## ARTICLE 2

### SUBSTITUTION PROVISIONS

SECTION 2.1. NOTICE TO SAWS OF INTENT TO TERMINATE. Except as a result of a termination by the Water Supply Corporation pursuant to the terms of the Design Build Contract, the Contractor shall not terminate or treat as terminated its engagement under the Design Build Contract or discontinue its services with respect to the Project, without first giving to SAWS and the Senior Debt Creditors not less than 10 Business Days' prior written notice of the Contractor's intention to do so, specifying the grounds for so doing.

SECTION 2.2. SUSPENSION OF TERMINATION. If SAWS serves on the Contractor a Substitution Notice in accordance with Section 2.3, the Contractor shall not terminate or treat as terminated its engagement, or discontinue the performance of any of its obligations, under the Design Build Contract, but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Design Build Contract.

SECTION 2.3. SUBSTITUTION NOTICE. Unless the engagement of the Contractor under the Design Build Contract has been terminated previously (and whether or not the Contractor has served notice on SAWS pursuant to Section 2.1), and if the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms and SAWS is acquiring the Project, SAWS will be entitled at any time to serve upon the Contractor a notice ("Substitution Notice") requiring the Contractor to thereafter accept the instructions of SAWS or its appointee to the exclusion of the Water Supply Corporation under and in connection with the Design Build Contract and the Contractor shall comply with such notice, all subject to and in accordance with the terms and conditions of Section 2.4.

SECTION 2.4. SUBSTITUTION OF SAWS. From and after the effective date indicated in the Substitution Notice served under and in compliance with Section 2.3, provided that the Contractor has received notice from either SAWS or the Water Supply Corporation that the Water Transmission and Purchase Agreement has been terminated, the Water Supply Corporation shall be deemed to have assigned all the rights, and SAWS or its appointee shall be deemed to have accepted the assignment and assumed and agreed to perform all the obligations, of the Water Supply Corporation under the Design Build Contract outstanding as of the date of service of such notice by SAWS under Section 2.3, arising from or attributable to the period after the effective date indicated in the Substitution Notice, provided that this shall not affect or derogate from any right of action the Water Supply Corporation may have against the Contractor in respect of any breach by the Contractor of its obligations under the Design Build Contract occurring prior to the date of service of notice by SAWS under Section 2.3.

SECTION 2.5. REPLACEMENT PROJECT DESIGN BUILD CONTRACT. If the engagement of the Contractor under the Design Build Contract is terminated as a result of a default by the Water Supply Corporation before service of any notice under Section 2.3, the Contractor shall, if required to do so by notice served by SAWS not later than 20 Business Days after the date the Contractor serves notice pursuant to Section 2.1, enter into a new Design Build Contract with SAWS or its appointee on the same terms as the Design Build Contract but with such revisions to terms and price as SAWS and the Contractor may reasonably and mutually agree to reflect altered circumstances. In such event, references in this Agreement to "Design Build Contract" shall be deemed to include such a new Design Build Contract and SAWS has elected to acquire the Project. The rights of SAWS under this Section will be applicable only after the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms.

SECTION 2.6. NOTICE TO PREVAIL. As against the Water Supply Corporation and SAWS, the Contractor shall be entitled and obligated to rely upon and to comply with any notice served by SAWS under Section 2.3 or Section 2.5, and shall not make, nor be required to make, any inquiry into the entitlement of SAWS as against the Water Supply Corporation to serve such notice.

SECTION 2.7. SENIOR DEBT CREDITORS' RIGHTS PARAMOUNT. Notwithstanding the above, SAWS rights under this Agreement are subject and subordinate to the rights of the Senior Debt Creditor (as defined in the Water Transmission and Purchase Agreement) to exercise similar rights of substitution under the Creditors' Remedies Agreement.

SECTION 2.8. WATER SUPPLY CORPORATION BOUND. The Water Supply Corporation shall be bound to the provisions of this Article.

ARTICLE 3

CONFIDENTIALITY

SECTION 3.1. CONFIDENTIAL INFORMATION. The Contractor represents and warrants that it has and shall hold in confidence any information marked by SAWS as "CONFIDENTIAL" (hereinafter referred to as "Confidential Information"), provided that the provisions of this Section shall not restrict the Contractor from passing such information to its professional advisors, affiliates and subcontractors, to the extent necessary, to enable the Contractor to perform (or cause to be performed) or to enforce its rights or obligations under the Design Build Contract or to such other persons as may be expressly required by the Design Build Contract.

SECTION 3.2. EXCEPTIONS. The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (1) which SAWS confirms in writing is not required to be treated as Confidential Information;
- (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (3) to the extent the Contractor is required to disclose such Confidential Information by Applicable Law or any Governmental Body (but only to that extent); or
- (4) to the extent consistent with any SAWS policy the details of which have been provided to the Contractor in writing prior to the disclosure.

SECTION 3.3. ANNOUNCEMENTS. Unless otherwise required by any Applicable Law, by any Governmental Body or by the rules, orders or regulations of any stock exchange (but only to that extent), the Contractor shall not make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or the Contractor's interest in the Project or any matters relating thereto, without the prior written consent of SAWS, which will not be unreasonably withheld or delayed.

ARTICLE 4

GENERAL

SECTION 4.1. ASSIGNMENT. Other than in conjunction with a permitted assignment of the Design Build Contract in accordance with its terms, the Contractor may assign this Agreement only with the prior written consent of SAWS, which consent may be given in SAWS' sole discretion.

SECTION 4.2. INUREMENT. This Agreement inures to the benefit of and binds the parties and their respective successors and permitted assigns.

SECTION 4.3. NOTICE. Each notice to a party must be given in writing. A notice may be given by delivery in person; by certified mail, return receipt requested, postage prepaid; by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or by fax, and will be validly given if delivered on a Business Day to an individual at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to SAWS:

San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, TX 78212  
Attention: President/CEO  
Fax No.: (210) 233-5268

With a copy to:

San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, TX 78212  
Attention: Vice President/General Counsel  
Fax No.: (210) 233-4587

if to the Water Supply Corporation:

Central Texas Regional Water Supply Corporation  
c/o Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attention: Weir Labatt III  
Fax No.: (512) 320-5638

with a copy to

Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attention: Manuel Mendez/Emily Rogers  
Fax No.: (512) 320-5638

if to the Contractor:



Garney Companies, Inc.  
1333 NW Vivion Road  
Kansas City, MO 64118  
Attention: Scott Parrish  
Fax No.: (816) 741-4488

with a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Attention: Charles G. Renner  
Fax No.: (816) 983-8080

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 4.4. WAIVERS. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 4.5. NO PARTNERSHIP OR AGENCY. Nothing in this Agreement will be construed as creating a partnership or as constituting the Contractor as an agent of SAWS. The Contractor shall not hold itself out as having any power to bind SAWS in any way.

SECTION 4.6. CONFLICTING AGREEMENT. If there is any conflict or inconsistency between the provisions of this Agreement and the Water Transmission and Purchase Agreement, the provisions of the Water Transmission and Purchase Agreement will prevail.

SECTION 4.7. REMEDIES CUMULATIVE. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 4.8. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any representation made in this Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory.

SECTION 4.9. COUNTERPARTS. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

SECTION 4.10. CONSENT TO JURISDICTION. Each party hereto irrevocably: (1) agrees that any Legal Proceeding related to this Agreement or to any rights or relationship among the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.11. DELIVERY BY FAX. Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person; by certified mail, return receipt requested, postage prepaid; or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery to the other parties an originally executed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By: 

Name: Robert R. Puente

Title: President/CEO

Date: November 2, 2014

CENTRAL TEXAS REGIONAL WATER SUPPLY  
CORPORATION

By: \_\_\_\_\_

Name: Weir Labatt III

Title: President

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

GARNEY COMPANIES, INC.

By: \_\_\_\_\_

Name: Michael Heitmann

Title: President/CEO

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

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

THE CITY OF SAN ANTONIO, TEXAS  
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By: \_\_\_\_\_

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CENTRAL TEXAS REGIONAL WATER SUPPLY  
CORPORATION

By:                     Weir Labatt III                    

Name: Weir Labatt III

Title: President

Date:                     November 2, 2014                    

GARNEY COMPANIES, INC.

By: \_\_\_\_\_

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Title: President/CEO

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

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SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By: \_\_\_\_\_

Name: Robert R. Puente

Title: President/CEO

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

CENTRAL TEXAS REGIONAL WATER SUPPLY  
CORPORATION

By: \_\_\_\_\_

Name: Weir Labatt III

Title: President

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

GARNEY COMPANIES, INC.

By:  \_\_\_\_\_

Name: Michael Heitmann

Title: President/CEO

Date: November 2, 2014

**TRANSACTION FORM C**  
**OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT**

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OPERATING SERVICE PROVIDER  
SUBSTITUTION AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

and

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

and

[NAME OF CONTRACTOR]

relating to the

VISTA RIDGE REGIONAL SUPPLY PROJECT

Dated \_\_\_\_\_, 2016



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OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT

THIS OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT is made and entered into \_\_\_\_\_, 2016, between the City of San Antonio, Texas (the "City") acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("SAWS"), Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of Texas Water Code (the "Water Supply Corporation"), and [Name of Contractor], [a corporation organized and existing under the laws of the State of \_\_\_\_\_] (the "Contractor").

RECITALS

The City acting by and through SAWS and Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC) (the "Project Company") have entered into the Vista Ridge Regional Supply Project, dated as of November 4, 2014, as amended from time to time (the "Water Transmission and Purchase Agreement"), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis based on the acquisition of water rights and design, construct, finance, operate and maintain production wells, groundwater storage tanks, pumping stations and raw water collection and transmission pipelines and appurtenant facilities, all as more particularly described therein (the "Project");

The Water Supply Corporation and the Contractor have entered into an agreement dated \_\_\_\_\_, 2016 (the "Operating Service Agreement"), whereby the Water Supply Corporation has engaged the Contractor to carry out and complete that part of the Project Company's obligations under the Water Transmission and Purchase Agreement consisting of the operation of the Project, all as more particularly described in the Operating Service Agreement; and

It is a condition of SAWS' continuing obligations under the Water Transmission and Purchase Agreement that the Contractor enter into this Agreement with the Water Supply Corporation and the City acting by and through SAWS.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meaning given to such terms in the Water Transmission and Purchase Agreement.

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

(1) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(2) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(5) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(6) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(7) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(8) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant

approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Water Supply Corporation or the Contractor, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the City and the other parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements between the City and the other parties with respect to such transactions.

(13) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(14) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(15) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(16) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(17) Consents. Any consent required to be given under this Agreement must be in writing.

SECTION 1.3. GOVERNING LAW. This Agreement will be deemed to be made pursuant to the laws of the State of Texas and will be governed by and construed in accordance with such laws.

ARTICLE 2

SUBSTITUTION PROVISIONS

SECTION 2.1. NOTICE TO SAWS OF INTENT TO TERMINATE. Except in the event of termination by the Water Supply Corporation pursuant to the terms of the Operating Service Agreement, the Contractor shall not terminate or treat as terminated its engagement under the Operating Service Agreement or discontinue its services with respect to the Project, without first giving to SAWS and the Senior Debt Creditors not less than 10 Business Days' prior written notice of the Contractor's intention to do so, specifying the grounds for so doing.

SECTION 2.2. SUSPENSION OF TERMINATION. If SAWS serves on the Contractor a Substitution Notice in accordance with Section 2.3, the Contractor shall not terminate or treat as terminated its engagement, or discontinue the performance of any of its obligations, under the Operating Service Agreement, but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Operating Service Agreement.

SECTION 2.3. SUBSTITUTION NOTICE. Unless the engagement of the Contractor under the Operating Service Agreement has been terminated previously (and whether or not the Contractor has served notice on SAWS pursuant to Section 2.1), and if the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms and SAWS is acquiring the Project, SAWS will be entitled at any time to serve upon the Contractor a notice ("Substitution Notice") requiring the Contractor to thereafter accept the instructions of SAWS or its appointee to the exclusion of the Water Supply Corporation under and in connection with the Operating Service Agreement and the Contractor shall comply with such notice, all subject to and in accordance with the terms and conditions of Section 2.4.

SECTION 2.4. SUBSTITUTION OF SAWS. From and after the effective date indicated in the Substitution Notice served under and in compliance with Section 2.3, provided that the Contractor has received notice from either SAWS or the Water Supply Corporation that the Water Transmission and Purchase Agreement has been terminated and SAWS has acquired the Project, the Water Supply Corporation shall be deemed to have assigned all the rights, and SAWS or its appointee shall be deemed to have accepted the assignment and assumed and agreed to perform all of the payment and other obligations, of the Water Supply Corporation under the Operating Service Agreement outstanding as of the date of service of such notice by SAWS under Section 2.3, arising from or attributable to the period after the effective date indicated in the Substitution Notice, provided that this shall not affect or derogate from any right of action the Water Supply Corporation may have against the Contractor in respect of any breach by the Contractor of its obligations under the Operating Service Agreement occurring prior to the date of service of notice by SAWS under Section 2.3.

SECTION 2.5. REPLACEMENT OPERATING SERVICE AGREEMENT. If the engagement of the Contractor under the Operating Service Agreement is terminated as a result of a default by the Water Supply Corporation before service of any notice under Section 2.3, the Contractor shall, if required to do so by notice served by SAWS not later than 20 Business Days after the date the Contractor serves notice pursuant to Section 2.1, negotiate in good faith with SAWS with respect to entering into a new Operating Service Agreement with SAWS or its appointee on the same terms as the Operating Service Agreement but with such revisions to terms and price as SAWS and the Contractor may reasonably and mutually agree to reflect altered circumstances. In the event the parties agree to enter into such a new Operating Service Agreement, references in this Agreement to "Operating Service Agreement" shall be deemed to include such a new Operating Service Agreement. The rights of SAWS under this Section will be applicable only after the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms and SAWS has acquired the Project.

SECTION 2.6. NOTICE TO PREVAIL. As against the Water Supply Corporation and SAWS, the Contractor shall be entitled and obligated to rely upon and to comply with any notice served by SAWS under Section 2.3 or Section 2.5, and shall not make, nor be required to make, any inquiry into the entitlement of SAWS as against the Water Supply Corporation to serve such notice.

SECTION 2.7. SENIOR DEBT CREDITORS' RIGHTS PARAMOUNT. Notwithstanding the above, SAWS' rights under this Agreement are subject and subordinate to the rights of the Senior Debt Creditor (as defined in the Water Transmission and Purchase Agreement) to exercise similar rights of substitution under the Creditors' Remedies Agreement.

SECTION 2.8. WATER SUPPLY CORPORATION BOUND. The Water Supply Corporation shall be bound to the provisions of this Article.

ARTICLE 3

CONFIDENTIALITY

SECTION 3.1. CONFIDENTIAL INFORMATION. The Contractor represents and warrants that it has and shall hold in confidence any information marked by SAWS as "CONFIDENTIAL" (hereinafter referred to as "Confidential Information"), provided that the provisions of this Section shall not restrict the Contractor from passing such information to its professional advisors, affiliates and subcontractors, to the extent necessary, to enable the Contractor to perform (or cause to be performed) or to enforce its rights or obligations under the Operating Service Agreement or to such other persons as may be expressly required by the Operating Service Agreement.

SECTION 3.2. EXCEPTIONS. The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(A) which SAWS confirms in writing is not required to be treated as Confidential Information;

(B) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

(C) to the extent the Contractor is required to disclose such Confidential Information by Applicable Law or any Governmental Body (but only to that extent); or

(D) to the extent consistent with any SAWS policy the details of which have been provided to the Contractor in writing prior to the disclosure.

SECTION 3.3. ANNOUNCEMENTS. Unless otherwise required by any Applicable Law, by any Governmental Body or by the rules, orders or regulations of any stock exchange (but only to that extent), the Contractor shall not make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or the Contractor's interest in the Project or any matters relating thereto, without the prior written consent of SAWS, which will not be unreasonably withheld or delayed.

ARTICLE 4

GENERAL

SECTION 4.1. ASSIGNMENT. Other than in conjunction with a permitted assignment of the Operating Service Agreement in accordance with its terms, the Contractor may assign this Agreement only with the prior written consent of SAWS, which consent may be given in SAWS' sole discretion.

SECTION 4.2. INUREMENT. This Agreement inures to the benefit of and binds the parties and their respective successors and permitted assigns.

SECTION 4.3. NOTICE. Each notice to a party must be given in writing. A notice may be given by delivery in person; by certified mail, return receipt requested, postage prepaid; by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or by fax, and will be validly given if delivered on a Business Day to an individual at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to SAWS:

San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, TX 78212  
Attention: President/CEO  
Fax No.: (210) 233-5268

With a copy to:

San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, TX 78212  
Attention: Vice President/General Counsel  
Fax No.: (210) 233-4587

if to the Water Supply Corporation:

Central Texas Regional Water Supply Corporation  
c/o Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attention: Weir Labatt III  
Fax No.: (512) 320-5638

with a copy to

Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attention: Manuel Mendez/Emily Rogers  
Fax No.: (512) 320-5638

if to the Contractor:



[Name of Contractor]  
[Address]  
Attention:  
Fax No.:

with a copy to:

[Name of Contractor]  
[Address]  
Attention:  
Fax No.:

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 4.4. WAIVERS. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 4.5. NO PARTNERSHIP OR AGENCY. Nothing in this Agreement will be construed as creating a partnership or as constituting the Contractor as an agent of SAWS. The Contractor shall not hold itself out as having any power to bind SAWS in any way.

SECTION 4.6. CONFLICTING AGREEMENT. If there is any conflict or inconsistency between the provisions of this Agreement and the Water Transmission and Purchase Agreement, the provisions of the Water Transmission and Purchase Agreement will prevail.

SECTION 4.7. REMEDIES CUMULATIVE. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 4.8. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any representation made in this Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory.

SECTION 4.9. COUNTERPARTS. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

SECTION 4.10. CONSENT TO JURISDICTION. Each party hereto irrevocably: (1) agrees that any Legal Proceeding related to this Agreement or to any rights or relationship among the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.11. DELIVERY BY FAX. Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person; by certified mail, return receipt requested, postage prepaid; or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery to the other parties an originally executed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

THE CITY OF SAN ANTONIO, TEXAS ACTING BY  
AND THROUGH THE SAN ANTONIO WATER  
SYSTEM BOARD OF TRUSTEES

By: \_\_\_\_\_

Name: Robert R. Puente

Title: President/CEO

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

CENTRAL TEXAS REGIONAL WATER SUPPLY  
CORPORATION

By: \_\_\_\_\_

Name: Weir Labatt III

Title: President

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

[NAME OF CONTRACTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**TRANSACTION FORM D**  
**RIGHT-OF-WAY EASEMENT FORM**

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**WATER LINE EASEMENT AGREEMENT**

THIS WATER LINE EASEMENT AGREEMENT (this “*Agreement*”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the “*Effective Date*”) by and between \_\_\_\_\_ (“*Grantor*”) and Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code (“*Grantee*”).

**RECITALS:**

- A. Grantor is the fee owner of certain land more particularly described on Exhibit “A” attached hereto (the “*Property*”).
- B. Grantee desires to use a portion of the Property for the Water Line Improvements (as herein defined).
- C. Grantor has agreed to grant, sell and convey to and for the benefit of Grantee a non-exclusive easement across the Grantor’s Property, to be situated in the area set out on Exhibit “A” for the purposes specified herein.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Water Line Easement. Grantor hereby grants and conveys to Grantee a perpetual, non-exclusive easement (the “Water Line Easement”) on, over, across, under and upon the portion of the Property that is designated as the “Water Line Easement Area” on Exhibit “A” for the construction, reconstruction, realignment, inspection, patrol, maintenance, installation, addition, operation, use, repair, replacement and/or removal by Grantee of water supply pipelines and improvements, facilities and appurtenances thereto (the “Water Line Improvements”), TO HAVE AND TO HOLD the above described easement and rights unto the said Grantee, its successors and assigns, until the use of said easement shall be abandoned. Grantor does hereby bind itself, its legal representatives, successors and/or assigns to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. The consideration paid for this easement expressly includes the right to install multiple water lines in the future.

Grantee and Grantee's employees, contractors, agents, licensees and invitees shall have the right of ingress and egress over said Water Line Easement Area for the purpose of constructing, reconstructing, realigning, inspecting, patrolling, maintaining, operating, repairing, upgrading, adding and removing said Water Line Improvements within said Water Line Easement Area. Although this Water Line Easement is non-exclusive, Grantor shall not materially adversely affect Grantee’s or its successors or assigns use or enjoyment of the Water Line Easement Area or Water Line Improvements or otherwise cause or allow any other person or entity to materially adversely affect the use or enjoyment of the Water Line Improvements or Water Line Easement Area by Grantee, its successors or assigns. Grantee shall have the right to remove from said lands all trees and parts thereof, or other obstructions, which may interfere with the exercise of the rights granted hereunder. Grantor expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that no building, structure or trees of any kind will be placed on said Easement Area and that removal of any building, structure or trees placed on said Easement Area shall be at Grantor’s expense.

2. Term of Water Line Easement. The term of this Water Line Easement shall be perpetual.

3. Total Payment. Grantor does hereby confirm that Grantee has paid to Grantor the full consideration due to Grantor for the easement rights granted to Grantee under the terms of this Agreement (the "Total Payments") as set out in the Easement Payment Letter Agreement (the "Payment Letter") executed by Grantor and Grantee in connection with the granting of this Water Line Easement Agreement.

4. Successors and Assigns. This Agreement and the rights, benefits, duties and obligations and the other terms and provisions set forth in this Agreement shall be covenants that run with, bind and benefit the Property and inure to be benefit of Grantee and its successors or assigns. The rights of Grantee shall be fully assignable. Whenever a transfer of ownership of the Grantee's rights under this Agreement occurs, the liability of the transferor for any breach of covenant occurring thereafter shall automatically terminate with respect to such transferor. Any transferee shall automatically assume and be bound by the burdens and obligations under this Agreement running with the land arising from and after the date of such transfer.

5. Notice. Any notice or payment required to be delivered hereunder shall be deemed to be delivered on the earlier of actual receipt or, whether actually received or not, when deposited in the United States mail, postage pre-paid, registered or certified mail, return receipt requested, addressed as follows:

As to Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As to Grantee:  
Central Texas Regional Water Supply Corporation  
PO Box 160573  
Austin, TX 78716

Grantor and Grantee and their respective heirs, executors, administrators, successors and assigns may, from time to time and at any time, change their respective addresses. Any change properly made is effective twenty (20) days after the delivery of written notice to all other parties to this Agreement in the manner provided herein.

6. Special Conditions. This Agreement is granted and accepted subject to the Special Terms and Provisions set out on Exhibit "B" attached hereto and made a part hereof.

7. Status Notice. Upon request of Grantee, Grantor shall, from time to time, execute a letter presented by Grantee, confirming payments received by the Grantor, that the Water Line Easement is in effect and other similar information relating to the status of this Water Line Easement, which Grantor agrees to execute and deliver to Grantee within twenty (20) days after any such request.

8. Complete Agreement. This Agreement, along with the Payment Letter, embodies the complete agreement between the parties hereto with respect to the subject matter hereof and each party hereby expressly acknowledges that there are no oral understandings or agreements with respect to the subject matter hereof which are not contained therein. The terms of the Payment Letter are hereby incorporated into this Agreement by reference.

9. Amendment. No part of this Agreement or the Payment Letter may be modified, amended or terminated without the prior written consent of Grantor and Grantee.

10. Severability. The invalidation of any one of the covenants or agreements contained in this Agreement or Payment Letter by law, judgment, or court order shall in no way affect any other provision, which shall remain in full force and effect. The rule of strict construction shall not apply to the easements granted in this Agreement and the Payment Letter.

11. Governing Law. This Agreement and the Payment Letter shall be construed in accordance with and governed by the laws of the State of Texas, and venue for any action brought in connection with this Agreement and the Payment Letter shall be exclusively in a court of competent jurisdiction in \_\_\_\_\_ County, Texas.

12. Counterparts. This Agreement and the Payment Letter may be executed in several counterparts, each which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]



Parcel Number:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below to be effective for all purposes as of the date first above written.

GRANTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF               §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2016,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

Parcel Number:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below to be effective for all purposes as of the date first above written.

GRANTEE:

Central Texas Regional Water Supply Corporation,  
a not-for-profit water supply corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_ of Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation.

\_\_\_\_\_  
Notary Public Signature

[IF APPLICABLE]

**Consent, Joinder and Subordination by Lender**

The undersigned, \_\_\_\_\_, hereby joins in the execution of this Agreement to evidence its consent and agreement to the terms and provisions hereof, and to confirm and agree that any and all liens held by the undersigned, whether by Deed of Trust, reservation in a deed, constitutional, contractual or otherwise, are subject and subordinate to the terms and provisions of this water easement, as the same may be amended or modified from time-to-time. Without limiting the preceding general statement, it is agreed that the following liens are hereby subordinated to the terms of this Water Line Easement: \_\_\_\_\_

\_\_\_\_\_  
[ADD SIGNATURE BLOCK FOR LIENHOLDER]

By: \_\_\_\_\_  
[NAME, TITLE]

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, National Association, on behalf of said bank.

\_\_\_\_\_  
Notary Public Signature

**EXHIBIT A**

**[IF APPLICABLE]**

**EXHIBIT B  
SPECIAL TERMS AND PROVISIONS**

**TRANSACTION FORM E**  
**GROUNDWATER SUPPLY AGREEMENT**

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## Groundwater Supply Agreement

This Groundwater Supply Agreement (the "*Agreement*") is entered into effective as of the execution by both parties hereto (the "*Effective Date*") between Blue Water Vista Ridge LLC ("*Blue Water*"), a Texas limited liability company, and the City of San Antonio, Texas, acting by and through its San Antonio Water System Board of Trustees ("*SAWS*"), (each also referred to individually herein as "*Party*", or in the plural, the "*Parties*").

### RECITALS

Approximately contemporaneously with this execution of this Agreement by the Parties, SAWS and Abengoa Vista Ridge, LLC ("*Abengoa Vista Ridge*") have entered into that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement dated effective of even date herewith (the "*WTPA*"). The WTPA provides that Abengoa Vista Ridge will deliver potable groundwater to SAWS during the term thereof through a system of groundwater wells, pumping stations, storage tanks, transmission lines and related facilities (the "*Project*", as defined in the WTPA) during the term thereof.

In order to provide potable groundwater to SAWS under the WTPA, contemporaneously with the execution of the WTPA, Abengoa Vista Ridge and Blue Water, among other parties, have entered into that certain "Groundwater Lease Conveyance Agreement" (the "*Lease Conveyance Agreement*") whereby Blue Water has agreed to sublease to Abengoa Vista Ridge the Leases (as hereafter defined) and convey to Abengoa Vista Ridge the Permits (as hereafter defined) so that Abengoa Vista Ridge may withdraw, treat, store and transmit the groundwater to SAWS as potable water in compliance with the terms of the WTPA.

The terms of the WTPA and the Lease Conveyance Agreement collectively provide that at the termination or expiration of the term of the WTPA, (i) the Lease Conveyance Agreement will simultaneously terminate or expire, subject to certain conditions relating to payment of "Senior Debt" (as defined therein), (ii) SAWS will acquire the Project from Abengoa Vista Ridge, (iii) ownership of the Leases and the Permits will revert to Blue Water and (iv) this Agreement will thereafter govern the terms for Blue Water to make available for and provide raw, non-potable groundwater from the Leases and the Permits ("*Groundwater*") to SAWS for the Project.

The Parties hereby find and determine that this Agreement is agreed to as the result of, and constitutes, fair and adequate consideration exchanged between the Parties.

NOW, THEREFORE, it is hereby agreed between the Parties as follows:



## AGREEMENT

1. Blue Water has acquired groundwater resources by leases from private landowners (the "*Leases*") and has the right to acquire and will acquire rights in (i) a Drilling and Operating Permit ("*Operating Permit*") to withdraw up to 50,993 acre feet of groundwater per year, from the Carrizo Aquifer and the Simsboro Aquifer (collectively, the "*Aquifers*"), in Burleson and Milam Counties, Texas (the "*Groundwater Area*") from the Post Oak Savannah Groundwater Conservation District of the State of Texas ("*POSGCD*") and (ii) a "Permit to Transport Groundwater" to transport up to 50,993 acre feet per year from the POSGCD to the Counties of Bastrop, Bell, Bexar, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis and Williamson Counties, Texas (the "*Transportation Permit*") (collectively, the "*Permits*", which are attached hereto as **Exhibits A and B**). The Parties understand and agree that the Permits will be replaced, and Blue Water shall cause the Permits to be replaced, with successor Permits to be issued by POSGCD to Blue Water, and then transferred to Abengoa Vista Ridge, pursuant to the terms of the Lease Conveyance Agreement and the term "*Permits*" as used in this Agreement shall thereafter refer to such replacement Permits. Blue Water agrees to make available for, and sell to, SAWS raw, non-potable groundwater from the Aquifers, under this Agreement and pursuant to the authority and rights contained in the Leases and the Permits, for a term commencing on the "*Commencement Date*" (as defined in Section 2 below) and ending thirty (30) years after the Expiration Date (as defined in the WTPA) (such period hereafter referred to as the "*Term*").

2. The Commencement Date of this Agreement shall occur upon the first to occur of (i) the Expiration Date of the WTPA or (ii) a termination of the WTPA in which, in connection therewith, SAWS acquires all or substantially all of the physical infrastructure of the Project necessary to produce and transport the Groundwater to Bexar County. A condition precedent to the Commencement Date shall be the reversion of the Permits and Leases into Blue Water. In the event of a termination of the WTPA in which, in connection therewith, SAWS does not acquire all or substantially all of the physical infrastructure of the Project necessary to produce and transport the Groundwater to Bexar County, this Agreement shall terminate and be of no force and effect.

3. If the Commencement Date is prior to the date that is thirty (30) years after Commercial Operations Date as defined in the WTPA (to wit, without early termination by either party to the WTPA), then from the Commencement Date until the date that is thirty (30) years after Commercial Operations Date as defined in the WTPA (to wit, without early termination by either party to the WTPA) (the "*Full WTPA Term*"), Blue Water shall make available for, and sell to, SAWS raw groundwater from the Groundwater Area from the Aquifers (the "*Groundwater*"), in the amount of 50,000 acre-feet per year (the "*Annual Supply Amount*").

During the Full WTPA Term, SAWS shall pay quarterly an amount equal to the product of multiplying (a) the Annual Supply Amount divided by four (the "*Quarterly Supply Amount*"), whether taken or not by SAWS or whether SAWS, as provided hereinbelow, takes in excess of

the Quarterly Supply Amount, times (b) \$460 per acre-foot (the foregoing amount being the "*Full WTPA Term Quarterly Water Payment*").

Notwithstanding the foregoing, the Full WTPA Term Quarterly Water Payment will be reduced on a pro rata basis (pro rata both as to amount and time duration) if and to the extent that the Annual Supply Amount is not available to SAWS during such calendar year due to one or more of the following: (i) reduction or cut-backs to the Operating Permit or Transportation Permit, (ii) other order from POSGCD or other governmental entity with jurisdiction over groundwater production, (iii) full or partial expiration or termination of the Leases or Permits that results in a reduction of the Annual Supply Amount available under the Permits, (iv) SAWS inability, without requiring SAWS to drill deeper wells (provided, however, it shall be SAWS obligation to lower pumps as necessary at SAWS sole expense) to produce up to the Quarterly Supply Amount due hydro-geological unavailability of Groundwater and (v) contamination of the Groundwater that cannot be remedied by SAWS using conventional treatment methods common in the municipal water industry without requiring SAWS to construct new treatment facilities or implement new treatment processes (the above reasons in (i) through (v) being "*Uncontrollable Circumstances*"). Notwithstanding the foregoing, in the event that SAWS produces more Groundwater than is "available" to SAWS under the provisions of this paragraph SAWS shall make payment to Blue Water on the basis of actual production and not such "available" Groundwater (for example, notwithstanding an Uncontrollable Circumstance that acted to limit available Groundwater to 30,000 acre feet per annum, if SAWS in such calendar year produced 32,000 acre feet, SAWS shall pay Blue Water on the basis of such 32,000 acre feet multiplied by \$460 per acre foot).

In the event that SAWS was prevented from producing at least  $\frac{1}{4}$  of the Annual Supply Amount in a given quarter due to one or a combination of Uncontrollable Circumstances (the difference between  $\frac{1}{4}$  of the Annual Supply Amount and such SAWS actual production being a "Quarterly Production Deficit"), and SAWS in other quarters in such calendar year produces in excess of  $\frac{1}{4}$  of the Annual Supply Amount, then to the extent the Quarterly Production Deficit was offset by such other excess production, there shall be a reconciliation within thirty (30) days after the end of such calendar year in which SAWS shall make payment, at the rate of \$460 per acre-foot, of such amount of the Quarterly Production Deficit that SAWS was able to offset with excess production. By way of example, if SAWS in a calendar year produces, by quarter, 12,000 acre feet (Q1), 12,500 acre feet (Q2), 13,000 acre feet (Q3) and 12,500 acre feet (Q4), and in Q1 SAWS was prevented from producing 12,500 acre feet due to cutbacks from POSGCD, then SAWS Full WTPA Term Quarterly Water Payment for Q1 shall be reduced pro rata by such 500 acre foot Quarterly Production Deficit, but as SAWS made up such Quarterly Production Deficit in Q3, SAWS shall make a reconciliation payment as provided hereinabove for such 500 acre feet.

Subject to the terms of the Permits and the rules and regulations of the POSGCD, SAWS shall be permitted to spread its Groundwater production throughout a calendar year on an uneven

basis, so that SAWS may produce less in some months and more in others, provided the total annual amount in any calendar year does not exceed the Annual Supply Amount.

If the Permits and the Leases so provide, SAWS may, at its option but without obligation, produce up to 50,993 acre feet per annum and shall pay for such additional water above the Annual Supply Amount at the rate of \$460 per acre foot, provided, however, it is understood that Blue Water is not obligated to make Groundwater available above the Annual Supply Amount. SAWS shall not take more than 50,993 acre feet of Groundwater in any calendar year unless Blue Water has obtained, at its sole expense, amendments to the Permits or other supplies of comparable quality to that of the Groundwater and available to the Project. In the event that SAWS does take more than 50,993 acre-feet of Groundwater per year pursuant to this section, then SAWS shall pay a rate for such additional amount of water which is two (2) times the rate otherwise charged under this Agreement.

All references herein to Groundwater "produced" shall mean as metered at the wellhead.

4. During that portion of the Term beginning on or after the occurrence of both (i) the Commencement Date and (ii) the date that is thirty (30) years after Commercial Operations Date as defined in the WTPA (to wit, without early termination by either party) (the "*Regular Term*"), Blue Water shall make annually available to SAWS the Groundwater in the Annual Supply Amount.

During the Regular Term, SAWS shall pay only for the amount of water actually produced and metered at the wellheads in a quarterly period (such amount being referred to as the "*Regular Term Payment Quantity*") by paying a quarterly amount equal to the product of multiplying (a) the amount of water metered at the wellhead by (b) the product of multiplying 1/4 times the average annual per acre-foot lease rate for two-year term Edwards Aquifer groundwater leases for the five calendar years preceding such payment (the foregoing amount being the "*Regular Term Quarterly Water Payment*").

During the Regular Term, if SAWS produces less than ten thousand (10,000) acre feet of Groundwater in any consecutive six (6) month period, and SAWS was not prevented due to one or more Uncontrollable Circumstances from producing at least ten thousand (10,000) acre feet of Groundwater over such consecutive six (6) month period, then Blue Water may terminate this Agreement by written Notice to SAWS effective upon the expiration of ninety (90) days after such Notice; provided, however, such Notice of termination will not be effective if during said ninety (90) day period SAWS produces an amount of Groundwater which, when added to the amount of Groundwater produced in such prior consecutive six (6) month period (e.g. over the prior nine (9) months), would be equal to or greater than fifteen thousand (15,000) acre feet of Groundwater. In the event that the Permits are reduced below the Annual Supply Amount or production and transportation of the Groundwater is otherwise reduced by order of Governmental Body with jurisdiction over groundwater production, then during such period, the ten thousand (10,000) and fifteen thousand (15,000) acre foot minimums set forth herein shall be

proportionally reduced in the same proportion by which such permissible Groundwater production has been reduced below the Annual Supply Amount.

5. Blue Water agrees to hold and maintain 50,000 acres of the Leases in the Groundwater Area to make available for, and sell to, SAWS each year the Annual Supply Amount from the Groundwater Area during the Term of this Agreement. The 50,000 acres of Leases held by Blue Water to support the Annual Supply Amount that Blue Water is making available to SAWS during the Term of this Agreement is hereafter referred to as the "*Leased Acres*." Blue Water may from time to time release or add additional leases in the Groundwater Area so long as Blue Water maintains 50,000 acres of Leases to support the Annual Supply Amount to SAWS in accordance with the Permits and this Agreement.

6. Blue Water does hereby agree, at all times during the Term of this Agreement, to cause the Permits providing the right to withdraw and transport the Annual Supply Amount to Bastrop, Bell, Bexar, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis and Williamson Counties, Texas, to remain issued and in good standing with the POSGCD, all at Blue Water's sole cost and expense, in a manner sufficient to allow, and that in fact does allow, SAWS to withdraw and transport the Annual Supply Amount from the Groundwater Area. Blue Water shall file all necessary paperwork with POSGCD relating to the Permits to comply with the Permits and POSGCD rules, and the Parties agree to cooperate to provide information necessary for filings with POSGCD. Blue Water shall be responsible, at no additional cost to SAWS, for payment of those fees required to be paid to POSGCD for the purpose of maintaining the Permits (the "*POSGCD Fees*") and all other costs of the Permits such as fines, penalties, etc., that may be owed to POSGCD, except to the extent resulting from SAWS's failure to comply with the Permits or other POSGCD regulations, except to the extent that such failure was due to SAWS not being a named party on the Permits and such action or inaction leading to such failure to comply would have been permitted under the Permits or POSGCD regulations if performed by Blue Water.

7. Notwithstanding the foregoing, the Parties understand and acknowledge the following:

- a. that the Operating Permit, by its terms, expires on September 11, 2044 and that Blue Water will cause the Transportation Permit to expire contemporaneously therewith (the "Permit Expiration Dates");
- b. that the withdrawal and transportation of the Groundwater is subject to the terms and conditions of the Permits and the rules of POSGCD and any other governing authority;
- c. that Blue Water cannot guarantee the renewal or extension of the Permits after the Permit Expiration Dates, but will use diligent and commercially reasonable efforts to obtain such renewal or

- extension for the full Annual Supply Amount for the Term of this Agreement; and
- d. that the rights and obligations of the Parties under this Agreement after each of the Permit Expiration Dates, respectively, are in all respects subject to the renewal or extension of the Permits, and, if renewed or extended, the obligation of Blue Water to make available Groundwater after each Permit Extension Date through the remainder of the Term of this Agreement, and the obligation of SAWS during the Term of this Agreement to pay for Groundwater in the Annual Supply Amount shall be adjusted on a pro-rata basis by the amount of any reduction in the Groundwater which is authorized to be produced and transported by and for SAWS from the Groundwater Area by the POSGCD to the extent it is less than the Annual Supply Amount pursuant to the renewal or extension, and such adjustment amount shall become the new Annual Supply Amount, subject to SAWS rights under Section 19 of this Agreement.

8. Blue Water and SAWS agree to cooperate and take any further necessary actions that may be required by POSGCD or other governmental entity with regulatory authority over the production, transportation and use of the Groundwater that will allow SAWS, under the Permits, to produce and transport the Groundwater through the Project to the terminus in San Antonio, Texas, including but not limited to, at SAWS's request: (i) leasing the Permits to SAWS, under the terms and conditions of this Agreement, for no additional consideration to Blue Water and (ii) naming SAWS as an "operator" for purposes of the Permits and/or (iii) accepting title to the production wells (and such other elements of the Project that SAWS may designate in order to comply with any rules of POSGCD or any other Governmental Body) that comprise the Project provided SAWS would retain the exclusive right and obligation to operate and pay for such wells and other infrastructure. Blue Water and SAWS agree to execute any reasonable instruments for purposes of effectuating the foregoing. Any such Permits lease, operating designation or title acceptance shall be subject to automatic rights of reversion to the Party granting such lease, agreeing to such operating designation or making such title conveyance, however, and the Party may retain a security interest in any such Permits or production wells to secure such rights of reversion.

9. During the Regular Term, Blue Water shall, notwithstanding any term of the Leases to the contrary, agree to compensate the lessors under such Leases in an amount equal to fifty (50) percent of the sums paid by SAWS under Section 4 hereinabove after deductions for any fees charged by the POSGCD under the Permits and paid by Blue Water during the Regular Term.

10. The Parties acknowledge that SAWS will be the owner of the physical infrastructure of the Project and the perpetual real estate interests, consisting of fee simple interests to well sites and easements for pipelines, roads and other Project facilities and SAWS shall be solely responsible, at its sole expense, for the construction, operation, maintenance, repair, replacement, improvement and modification thereof. Blue Water shall not be responsible for constructing, operating, maintaining, repairing, replacing, improving or otherwise modifying the physical infrastructure of the Project. Title to, possession of and control of the raw groundwater shall remain with Blue Water until it enters the Project at the bottom of the wellbore, at which time title to, and possession and control of, the raw groundwater shall pass to SAWS. The Groundwater produced under this Agreement shall be measured at the wellheads of any SAWS wells that are part of the Project.

11. SAWS will own, operate and maintain the meters located at the wellheads. The meters shall be read at least quarterly and a copy of the readings shall be provided to Blue Water by SAWS within ten (10) days of the reading. The meters shall be tested for accuracy by a third party, and at the expense of, SAWS, at least once each calendar year at intervals of approximately every twelve (12) months, and a report of such test shall be furnished to Blue Water within thirty (30) days after completion of the test. The meters shall also be calibrated by, and at the expense of SAWS, at any time a meter is not found to be operating within five (5) percent high or low of accuracy. SAWS shall give Blue Water at least two (2) weeks notice, in advance, to allow Blue Water to witness the test. If a meter is found to be operating more than five (5) percent high or low of accuracy, SAWS shall increase testing of such meter to once every six months until such time as the meter has registered less than five (5) percent high or low of accuracy for two consecutive testings. Nothing in this Agreement shall prevent Blue Water from installing a meter or meters at or in the vicinity of the SAWS meters to check the accuracy of SAWS' meters. Additionally, Blue Water may, at its expense, engage a third party to test the SAWS meters, and a report of such test shall be furnished to SAWS within thirty (30) days after completion of the test.

12. The amounts owed by SAWS hereunder shall be due and payable thirty (30) days after receipt by SAWS of a quarterly invoice from Blue Water. Blue Water must submit its invoices to SAWS not later than thirty (30) days following the end of each quarterly period during the Term. Any amounts unpaid thirty (30) days after receipt by SAWS of written invoice of the amounts due shall bear interest at the lower of the maximum rate of interest permitted by the laws of the State, if applicable, or 7.5 percent annually. SAWS agrees that all payments to be made hereunder by SAWS will constitute reasonable and necessary operating expenses of the SAWS' waterworks and sanitary sewer systems, within the meaning of Section 1502.056, Texas Government Code. The source of payment in satisfaction of any and all obligations of SAWS assumed or imposed by it or arising under this Agreement shall be limited to the revenues derived by SAWS from ownership and operation of the SAWS distribution system. As a result, Blue Water (including its successors in legal interest, assigns, or affiliates) shall have no recourse

to the general fund or general credit of the City of San Antonio ("City"), including the right to require the levy and collection of any tax, whether ad valorem or otherwise, or any other fund (including other enterprise funds), source of revenue, asset, instrument or property of the City, in satisfaction of the payment of any amount due Blue Water hereunder, whether on account of the Full WTPA Term Quarterly Payment, Normal Term Quarterly Water Payment, or for any payment or claim of any nature arising from the performance or non-performance of SAWS' obligations hereunder. The sole recourse of Blue Water for the payment of all such amounts shall be to the revenues of SAWS derived from the ownership and operation of the SAWS distribution system pursuant to City Ordinance 75686, under which SAWS is established and pursuant to which revenue bonds are issued from time to time to finance SAWS's capital improvements. The payment of all such amounts is subject to the terms and conditions of City Ordinance 75686. No such amount shall be payable from any ad valorem or other taxes. In furtherance of the foregoing, the Blue Water hereby acknowledges and agrees it is not entitled to demand payment of the obligations of SAWS hereunder out of any money raised by taxation.

13. Blue Water covenants and agrees that, from and after the Commencement Date until termination or expiration of this Agreement, (i) SAWS shall have the exclusive right to produce and transport all available water from the Leases and the Permits, subject to the terms and conditions of the Leases and the Permits, through the Project, (ii) Blue Water shall maintain the Leases such that the Groundwater Area is one contiguous area of land for the purpose of the Operating Permit to allow the Groundwater in the Annual Supply Amount to be produced from the Groundwater Area, (iii) Blue Water shall maintain the Leases in good standing and in a fully enforceable condition, (iv) except for the Permitted Encumbrances (as defined in the Lease Conveyance Agreement), excluding any SAWS/Lender Non-Permitted Encumbrances (as defined in the Lease Conveyance Agreement), and disclosures in the Lease Conveyance Agreement or those matters which are otherwise subordinated to rights of SAWS under this Agreement, during the Term of this Agreement, Blue Water shall not assign for security purposes, hypothecate, mortgage, pledge or grant a security interest in the Leases, the Permits or its interest in this Agreement and the Leases and Permits shall be free and clear of all liens, security interests and pledges.

14. Blue Water warrants and represents as follows:

(a) Each of the persons executing this Agreement on behalf of Blue Water is duly authorized to do so. Blue Water has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement. This Agreement constitutes the valid and legally binding obligations of Blue Water and is enforceable against Blue Water in accordance with its terms; and neither the execution or delivery of this Agreement nor the performance of Blue Water's obligations under this Agreement violates, or will violate, any contract or agreement to which Blue Water is a party or by which Blue Water is otherwise bound.

(b) The Permits are in full force and effect and authorize the drilling, operation, production and transport of 50,993 acre-feet of Groundwater per year utilizing the Leases, and the transfer of the Groundwater from the District to Bastrop, Bell, Bexar, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis and Williamson Counties.

(c) The Permits constitute legal authority sufficient for the pumping and withdrawal of the Groundwater in quantities not less than the Annual Supply Amount, and no other legal authority is required for such pumping and withdrawal from the POSGCD or any other Governmental Body (hereinafter defined). To the best of Blue Water's knowledge and belief, the application of the Modeled Available Groundwater for Burleson County by POSGCD or other Governmental Body will not result in reductions to the Permits to an amount below the Annual Supply Amount.

(d) The Permits are in full force and effect and there are no defaults under the Permits; No person or entity, including POSGCD, is currently asserting a claim, defense or right to terminate any of the Permits; Blue Water is not in default of payment of Permit fees; no person other than BWS, Blue Water and Vista Ridge has any rights to the Permits, and the Permits are free and clear of all liens, claims and encumbrances; Blue Water has received no notice that any of the Permits are in violation of any laws, or subject to any existing investigation or inquiry by, any governmental authority, which violation has not been cured or investigation has not been satisfactorily completed confirming that no violation has occurred.

(e) Except for the Permitted Encumbrances, excluding any SAWS/Lender Non-Permitted Encumbrances, and any disclosures in the Lease Conveyance Agreement, the Leases are valid and in full force and effect and are binding on the Parties thereto; Blue Water has an ownership interest in the development rights in, and will maintain, the Leases in the Groundwater Area; and such Leases are, and Blue Water shall ensure that such Leases remain valid and binding on the parties thereto and in full force and effect; Blue Water is entitled to all of the production rights as Lessee under the Leases; no other party has any option rights, rights of first refusal, rights of first offer or other rights relating to the Leases.

(f) Blue Water is financially capable of performing its obligations under this Agreement.

(g) Blue Water is, and shall remain during the term of this Agreement, a bankruptcy remote, single-purpose entity.

(h) Neither Blue Water nor any parent or affiliated company (collectively, the "*Blue Water Entities*") has filed or is currently the subject of, any filing, voluntary or



involuntary, as a debtor, for bankruptcy or reorganization under any applicable bankruptcy or creditors' rights laws.

(i) Blue Water has received no notice that any of the Leases are in violation of any laws, or subject to any existing investigation or inquiry by, any governmental authority, which violation has not been cured or investigation has not been satisfactorily completed confirming that no violation has occurred.

(j) No approval, authorization, order or consent of, or declaration, registration or filing with, any federal, state or local governmental body (a "*Governmental Body*") is required for the valid execution and delivery of this Agreement by Blue Water except such as have been duly obtained or made.

(k) To the best of Blue Water's knowledge, there is no legal proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of Blue Water's knowledge, overtly threatened or publicly announced against any of the Blue Water Entities, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by Blue Water or the validity, legality or enforceability of this Agreement against Blue Water, or any other agreement or instrument entered into by Blue Water in connection with the transactions contemplated hereby, or on the ability of Blue Water to perform its obligations hereunder or under any such other agreement or instrument.

(l) Neither Blue Water nor any "*Project Company Person*" (as defined in the WTPA) has directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, campaign contributions, or otherwise) to SAWS, the City or any of their respective elected officials, employees, trustees or executives with a view toward securing this Agreement or the WTPA or securing favorable treatment with respect to any determinations concerning the performance of this Agreement or the WTPA.

(m) Blue Water is in compliance in all material respects with applicable law pertaining to its business and services.

(n) Blue Water is not, and will not by reason of this Agreement or otherwise, be a "retail public utility" within the meaning of Chapter 13 of the Texas Water Code, and are not, and will not be, subject to jurisdiction of the TCEQ or Public Utility Commission of Texas in with respect to utility rates.

(o) If Blue Water discovers that any of its warranties and representations shall be, or become, materially untrue, then Blue Water shall (a) notify SAWS in writing as soon as possible but no later than ten (10) days after Blue Water becomes aware of such condition, and Blue Water shall specify the nature of the materially untrue warranty or representation and (b) shall immediately remedy such materially untrue warranty or

representation, and (c) Blue Water shall be responsible for any additional costs incurred by Blue Water and/or SAWS to remedy such materially untrue warranty or representation. If Blue Water fails to remedy such materially untrue warranty or representation as soon as reasonably possible but not more than sixty (60) days from the date of Blue Water's notice hereinabove, SAWS may, in addition to all rights and remedies for a breach of this Agreement under Section 17, after providing written notice to Blue Water, take actions reasonably required to remedy such materially untrue warranty or representation, and Blue Water shall reimburse SAWS an amount equal to two times all costs incurred by SAWS in connection with remedying such material, untrue warranty or representation, or SAWS may offset amounts owed to Blue Water under this Agreement by two times all such costs.

15. SAWS warrants and represents as follows:

- (a) Subject to the provisions of this Agreement, each of the persons executing this Agreement on behalf of SAWS is duly authorized to do so;
- (b) Subject to the provisions of this Agreement, SAWS has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement;
- (c) This Agreement constitutes the valid and legally binding obligation of SAWS and is enforceable against SAWS in accordance with its terms;
- (d) Neither the execution or delivery of this Agreement nor the performance of SAWS's obligations under this Agreement violates, or will violate, any contract or agreement to which SAWS is a party or by which SAWS is otherwise bound;

16. Blue Water will use best efforts to obtain from the lessors under the terms of the Leases, at its sole cost and expense, an amendment to each of the Leases (where this does not yet exist in the Leases) to provide for a form of notice to SAWS and SAWS right to cure on a lessee default, in a form acceptable to SAWS, at the same time that Blue Water makes best efforts to obtain such notice and cure rights for Abengoa Vista Ridge. If SAWS receives notice of lessee default, SAWS may, at Blue Water's expense, take any reasonable action and pay any sums necessary under the Leases to cure such defaults. All such costs of SAWS may be deducted by SAWS from amounts owed by SAWS under this Agreement.

17. If (i) SAWS fails to materially comply with the provisions of this Agreement and such default continues for a period of thirty (30) days after receiving Notice of such default from Blue Water, then Blue Water may exercise all rights which may be available to it at law or in equity, including but not limited to termination of this Agreement, and (ii) if Blue Water fails to comply with any of the material provisions of this Agreement and such default continues for a period of thirty (30) days after receiving Notice of such default from SAWS, then SAWS may exercise all rights which may be available to it at law or in equity. The above notwithstanding, in the case of a default that cannot reasonably be cured within such thirty (30) day period, no

such default shall be deemed to exist if the Party responsible to address such default is using due diligence to cure such default, continues to do so until the matter is cured and the matter is cured within ninety (90) days from the receipt of the Notice by such allegedly defaulting Party.

18. Notwithstanding any other provisions of this Agreement, SAWS may terminate this Agreement by thirty (30) days prior written Notice to Blue Water in the event SAWS is unable to produce greater than 37,500 acre feet of Groundwater per annum in any calendar year due to one or more Uncontrollable Circumstance. Additionally, notwithstanding any other provisions of this Agreement, SAWS may freely terminate this Agreement during the Regular Term by giving Blue Water eighteen (18) months prior written Notice.

19. Any notices, consents, approvals or written communications ("*Notice*") given pursuant to this Agreement shall be in writing and shall be given or served by depositing the same in the United States mail, postage prepaid and registered or certified and addressed to the party to be notified, with return receipt requested, by delivering the same in person to the party to be notified, by depositing the same with a nationally recognized overnight courier service, charges prepaid, addressed to the party to be notified, or by electronic facsimile or email transmission.

Notice deposited with an overnight courier in the manner hereinabove described shall be effective from and after one (1) day (exclusive of Saturdays and Sundays) after such deposit. Notice deposited in the United States mail, postage prepaid and registered or certified shall be effective from and after two (2) days (exclusive of Saturdays and Sundays) after such deposit. Notice by electronic facsimile or email transmission shall be effective upon sending if delivered by 5:00 p.m. (San Antonio, Texas time) on the date transmitted, and if after 5:00 p.m. (San Antonio, Texas time), shall be effective on the following business day. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purpose of Notice, the addresses for the parties shall, until changed as hereinafter provided, be as follows:

**SAWS:**

San Antonio Water System  
2800 US Hwy 281 N  
San Antonio, Texas 78212  
Attn: President/CEO  
Facsimile: (210) 233-5268  
Email: Robert.puente@saws.org

cc to:

San Antonio Water System  
2800 US Hwy 281 N  
San Antonio, Texas 78212  
Attn: General Counsel  
Facsimile: (210) 233-4587  
Email: Nancy.Belinsky@saws.org

**Blue Water:**

Blue Water Vista Ridge LLC  
Stonebridge Plaza One  
9606 North Mopac, Suite 125  
Austin, Texas 78759  
Attn: Ross M. Cummings  
Facsimile: (512) 451-4008  
Email: ross@bluewatertx.com

cc to:

The Terrill Firm P.C.  
810 W. 10<sup>th</sup> St.  
Austin, Texas 78701  
Attn: Paul M. Terrill  
Facsimile: (512) 474-9888  
Email: pterrill@terrill-law.com

*222*  
*PMC*

20. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, in such event the Parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

21. There are no oral agreements between the Parties hereto with respect to the subject matter hereof. This Agreement made be changed or modification only with the mutual written consent of SAWS and Blue Water.

22. This Agreement may be assigned by either Party to any other entity with notice to and subject to the prior, written approval of, the other Party, provided, however such assignee of Blue Water shall be required to be a Single Purpose Entity. The assignor shall remain liable hereunder, unless released in writing by the other Party.

23. Whenever this Agreement requires a Party to give an approval or consent or to take an action, unless otherwise provided, the Parties agree that such consent, approval or action will not be unreasonably withheld, delayed or conditioned.

24. The recitals are incorporated herein and made a part of this Agreement as if incorporated verbatim.

25. The Parties agree that the venue for any legal proceedings between the parties shall lie in Bexar County, Texas.

26. SAWS represents that SAWS does, and will, maintain other sources of water than the Groundwater provided by the Project.

27. This Agreement is subject to (i) the full execution of the WTPA, (ii) the full execution of the Lease Conveyance Agreement and (iii) approval of the WTPA and this Agreement by the City Council of the City of San Antonio.

28. In lieu of filing this Agreement for record in the Office of the County Clerks in the counties in which the Groundwater Area is located, the Parties agree to execute a form of memorandum of this Agreement provided by SAWS, and subject to the reasonable approval of Blue Water, to provide public notice of this Agreement.

29. This Agreement shall run with the Permits and all those holdings rights as "lessees" under the Leases and shall be binding upon the successors and assigns to the Permits (and all successor permits) and Leases.

30. If the rule against perpetuities or any other rule of law would invalidate this Agreement or any portion or provision hereof, or would limit the time during which this Agreement or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property, if any, shall be effective only from the date hereof until the passing of twenty one (21) years after the death of the last survivor of the now-living descendants of the members of Congress of the United States of America (including the House of Representatives and the Senate) who are serving on the date hereof, but each such interest in property, if any, shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

*Signatures on following page*

EXECUTED TO BE EFFECTIVE THE A DAY OF November, 2014.

CITY OF SAN ANTONIO ACTING BY AND THROUGH ITS  
SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

By: [Signature]  
Name: Robert R. Puente  
Title: President/CEO  
Date: November 4, 2014

APPROVED BY THE CITY OF SAN ANTONIO, TEXAS, PURSUANT TO CITY ORDINANCE  
NUMBER 2014-10-30-0818

By: [Signature]

Name: Ivy R. Taylor  
Title: Mayor

Date: November 4, 2014

ATTEST:

[Signature]  
Jeticia Vacek  
CITY CLERK



APPROVED AS TO FORM:

[Signature]  
Robert F. Greenblum  
CITY ATTORNEY

BLUE WATER VISTA RIDGE LLC  
a Texas limited liability company

By: [Signature]  
Ross M. Cummings  
President

Date: November 4, 2014

Exhibit A

**BLUE WATER SYSTEMS RAW GROUNDWATER PERMITS**

DRILLING AND OPERATING PERMIT

Attached hereto is the Amended and Restated Drilling & Operating Permit Issued by Direction of the Board of Directors of the Post Oak Savannah Groundwater Conservation District, dated January 13, 2009, and granted to Blue Water Systems, LP.

**Amended and Restated Drilling & Operating Permit  
Issued By Direction of the Board of Directors of the  
Post Oak Savannah Groundwater Conservation District**

This Amended and Restated Drilling and Operating Permit ("Permit") is granted to Blue Water Systems, L.P., ("Permittee"), successor to Layne Water Development of Texas, LLC ("Layne"), to authorize Permittee to drill and operate forty-one (41) water wells within the Post Oak Savannah Groundwater Conservation District ("District"), for the purpose of producing water for Municipal Use. The name, location, maximum annual production and maximum gallons of production permitted per minute for each of the forty-one wells is listed in Exhibit "A". The individual wells listed in Exhibit "A" are referred to herein as the "Well" or "Wells" and the forty-one Wells are collectively referred to as the "Well System". This Permit is conditioned upon and subject to Permittee complying with the Rules of the District ("Rules"), the orders of the Board, the Management Plan of the District, as amended, and the laws, rules and regulations of the State of Texas, as amended, applicable to drilling, operating and maintaining water wells within the District. This Permit confers only the right to drill and operate the Wells and Well System in compliance with and subject to the Rules and requirements of this Permit. The terms, conditions and authorizations of this Permit may be modified or amended under the Rules.

The Wells are registered with the District and the State of Texas. The Wells are approved for production in the aggregate as a Well System. The Permittee is authorized to drill and operate the Wells at the locations and maximum GPM production set forth in Exhibit "A", and the maximum annual production of the Well System shall not exceed 70,993 acre feet per year.

The Rules are incorporated herein in their entirety by reference, as if set forth herein verbatim, including but not limited to the Rules providing for reducing permitted production. The Permittee shall comply with the Rules and each requirement thereof in operating, maintaining, repairing and altering each of the Wells and the Well System. All application(s) pursuant to which the related original permits and prior amended permits, and this Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Permit. This Permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s), agreements and acknowledgments on file with the District. A finding that false information was supplied to the District in the permitting process for the Wells is grounds for revocation of this Permit.

The issuance of this Permit does not grant Permittee the right to use any public or private property, interfere with any personal or property rights, or violate any federal, state, or local law, rule or regulation. The District makes no representations and has no responsibility with respect to the availability or quality of the water authorized to be produced under this permit.

The term of the Permit, both the Drilling and the Operating Permit, is for a period of forty years from the original issuance date of September 11, 2004, subject to review every fifth year and modification during any such review to conform this Permit with intervening changes in the Management Plan or state law. Unless waived by the Board of the District for a specific review period, applications for review shall be submitted to the District 90 days prior to the fifth anniversary of the issuance date and each subsequent scheduled review date following the fifth anniversary date, until the date of expiration of this Permit. The Board may waive any review if no material change has been made to the Management Plan, or if the changes made do not require modification of this Permit.

The Permit is issued and effective as of January 13, 2009.

Post Oak Savannah Groundwater Conservation District

By: 

Name: Gary Westbrook  
Title: General Manager

Permit No. POS-D&O/A & M-0001

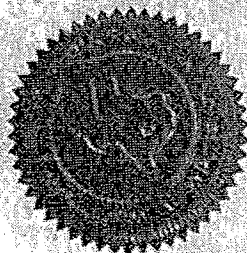




Exhibit "A"  
 Blue Water, L.P. Permitted Water Wells  
 List for Permit issued January 13, 2009

Well Designation	Location	Max. GPM
CW-1	30.44108N 96.81247W	1200gpm
CW-2	30.43564N 96.80366W	1200gpm
CW-3	30.42803N 96.80739W	1200gpm
CW-4	30.43169N 96.81623W	1200gpm
CW-5	30.43037N 96.82592W	1200gpm
CW-6	30.42724N 96.83412W	1200gpm
CW-7	30.41233N 96.81705W	1200gpm
CW-8	30.42325N 96.81969W	1200gpm
CW-9	30.42052N 96.81123W	975gpm
CW-10	30.41916N 96.80507W	750gpm
CW-11	30.41392N 96.7928W	750gpm
CW-12	30.41116N 96.79682W	750gpm
CW-13	30.44583N 96.76865W	1200gpm
CW-14	30.40421N 96.7786W	750gpm
CW-15	30.41001N 96.78026W	750gpm
CW-16	30.40794N 96.77606W	750gpm
CW-17	30.41709N 96.77139W	750gpm
CW-18	30.42121N 96.77545W	975gpm
CW-19	30.41838N 96.7668W	750gpm
CW-20	30.43605N 96.76393W	1200gpm
CW-21	30.43899N 96.77173W	1200gpm
PW-1	30.5069N 96.82059W	2800gpm
PW-2	30.5032N 96.8128W	2800gpm
PW-3	30.51464N 96.81067W	2800gpm
PW-4	30.49953N 96.80459W	2800gpm
PW-5	30.508N 96.8054W	2800gpm
PW-6	30.49522N 96.79645W	2900gpm
PW-7	30.51578 N 96.79897W	3000gpm
PW-8	30.50739N 96.79584W	3000gpm
PW-9	30.44138N 96.801233W	3000gpm
PW-10	30.43638N 96.80358W	3000gpm
PW-11	30.42851N 96.80668W	3000gpm
PW-12	30.42113N 96.811W	3000gpm
PW-13	30.42394N 96.82004W	3000gpm
PW-14	30.41266N 96.81705W	2500gpm
PW-15	30.42723N 96.83449W	3000gpm
PW-16	30.43059N 96.82576W	3000gpm
PW-17	30.43181n 96.981632w	3000gpm
PW-18	30.41998N 96.7752W	3000gpm
PW-19	30.41001N 96.77979W	3000gpm
PW-20	30.41145N 96.79644W	1800gpm

**Exhibit B**

PERMIT TO TRANSPORT GROUNDWATER

Attached hereto is the Amended Permit to Transport Groundwater from within the Post Oak Savannah Groundwater Conservation District of the State of Texas by Direction of the Board of Directors of the Post Oak Savannah Groundwater Conservation District, dated September 14, 2004, amended effective September 14, 2010, and granted to Blue Water Systems, LP.



Amended Permit to Transport Groundwater From within the  
Post Oak Savannah Groundwater Conservation District  
Of the State of Texas

By Direction of the Board of Directors of the  
Post Oak Savannah Groundwater Conservation District

This amended permit is granted to; Blue Water Systems, LP (Permittee), c/o La Ross Cummings, Stonebridge Plaza 1, 2606 N. Meigs, Suite 125, Austin, Travis County, Texas 78759, successor to Layne Water Development of Texas, LLC ("Layne"), for the purpose of transporting groundwater from a system of water wells (wells) within the Post Oak Savannah Groundwater Conservation District (District), to locations outside the District for the non-wasteful purposes of Municipal Use in the counties of Bastrop, Bell, Burnet, Caldwell, Hays, Lee, Travis, Williamson, Central, Guadalupe, and Bexar, in the State of Texas ("Amended Permit"). The groundwater permitted herein must be put to beneficial use at all times.

The location of each well from which water is authorized to be transported under this Amended Permit is listed in Exhibit "A". The Permittee has leased the water rights that will be produced. In addition, the names and mailing addresses of the owners of the land from which the wells are authorized to produce water are set forth in the application filed by Permittee for this Amended Permit, and otherwise in the records of the District.

Upon issuance of this Amended Permit, the Permittee agrees to abide by the Rules, orders of the Board and Management Plan of the District, as amended, and the Laws and Rules of the State of Texas, as amended, in transporting groundwater from the water wells to locations outside the District. This permit confers only the right to use the permit under the provisions of the District rules and according to its terms. The permit terms may be modified or amended as provided in the District rules.

These wells are registered with the District and the State of Texas. The amount of groundwater to be transported from the District shall not exceed 63,374 (63 million gallons during any 24 hour period). The total amount of groundwater to be transported from the District on an annual basis shall not exceed 70,993 acre feet.

This Amended Permit confers only the right to transport groundwater and its terms may be modified or amended. The operation of the wells for the authorized withdrawal must be conducted in a non-wasteful manner.

All transport and storage facilities must be accessible to District representatives for inspection, and the Permittee agrees to cooperate fully in any reasonable inspection of these facilities by the District representatives.

All application(s) pursuant to which the related original permits and the prior amended permits, and this Amended Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Amended Permit, which is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s). A finding that false information as been supplied is grounds for revocation of the Amended Permit.

Violation of the terms, conditions, requirements, or special provisions of this Amended Permit is punishable by civil penalties as provided by the District Rules and by law.

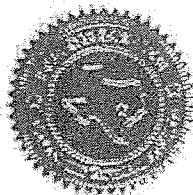
On or before February 15 of each year, the owner of this Amended Permit must submit an annual report to the District describing the amount of groundwater transported under this Amended Permit. This report shall be filed on a form provided by the District, stating the following: (1) the name of the Permittee; (2) the well numbers of each well for which the Permittee holds a transport permit; (3) the total amount of groundwater transported from each well and well system during the immediately preceding calendar year; (4) the total amount of groundwater transported from each well and well system during each month of the immediately preceding calendar year; (5) the purpose for which the water was transported; (6) any other information related to the operation and production of the wells or transport of water requested by the District.

The issuance of this Amended Permit does not grant to the Permittee the right to use private property, or public property, for the production or conveyance of water. Neither does this Amended Permit authorize the invasion of any personal rights nor the violation of federal, state, or local laws, or any regulations.

The District makes no representations and shall have no responsibility with respect to the availability or quality of water authorized to be transported under this Amended Permit.

Special Terms:  
This Amended Permit expires on September 15, 2010. This Amended Permit is subject to review every fifth year, and during any such review may be modified to conform with intervening changes in the Management Plan of the District or state law. Permittee shall submit to the District 90 days prior to the fifth anniversary of the issuance and each subsequent review, and the date of expiration of the operating permit a full and complete report describing its groundwater transportation system, volumes of water delivered by customer, and the delivery points of groundwater transported, together with such other information that will assist the District's review. The Board may waive any five year review if no material change has been made to the Management Plan, or if the changes made do not require modification of such permits. Despite the term of duration listed in this Amended Permit, the Permittee is authorized to transport groundwater under this Amended Permit only as long as the Permittee holds a valid operating permit issued by the District for the wells listed in this Amended Permit.

This amended permit issued September 14, 2004 is hereby amended effective September 14, 2010.  
This permit expires September 15, 2014.



*[Signature]*  
Gary Westloch - General Manager

No. POS-T-0001

**Acknowledgement of the Parties as to the Groundwater Supply Agreement**

This Acknowledgement is made with respect to the Groundwater Supply Agreement between Blue Water Vista Ridge, LLC (“Blue Water”) and the City of San Antonio, Texas acting by and through the San Antonio Water System Board of Trustees (“SAWS”), dated as of November 4, 2014 (the “Groundwater Supply Agreement”).

The parties hereby acknowledge and agree that:

1. The Groundwater Supply Agreement was delivered to SAWS on October 14, 2014, in trust and subject to the satisfaction of certain conditions as described in the October 14, 2014 cover letter from Ross Cummings, President, Blue Water, to Mark Brewton, Corporate Counsel, SAWS (attached as Attachment A);
2. As of November 4, 2014, all the conditions to the delivery of the Groundwater Supply Agreement have been fully satisfied, except for the condition regarding the full execution and delivery of the Groundwater Lease Conveyance Agreement; and
3. Blue Water waives such condition regarding the full execution and delivery of the Groundwater Lease Conveyance Agreement.


Accordingly, the parties hereby acknowledge and agree that all conditions to the delivery of the Groundwater Supply Agreement have been fully satisfied and the Groundwater Supply Agreement is hereby fully executed, delivered, released and in effect as of November 4, 2014.

All capitalized terms used, but not defined herein, shall have the meanings provided in the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between the City of San Antonio, Texas acting by and through the San Antonio Water System Board of Trustees and Abengoa Vista Ridge, LLC, dated November 4, 2014.

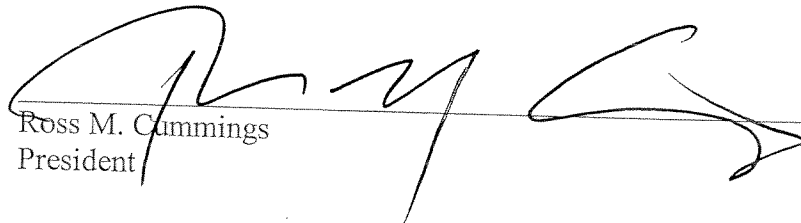
[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Acknowledgement to be executed by their duly authorized representatives as of November 4, 2014.

THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

By:   
\_\_\_\_\_  
Robert R. Puente  
President and CEO

BLUE WATER VISTA RIDGE, LLC

By:   
\_\_\_\_\_  
Ross M. Cummings  
President

[Signature Page to Acknowledgement]

Attachment A



**BLUEWATER**  
SYSTEMS

October 14, 2014

Mark Brewton  
San Antonio Water Systems

Via email @ Mark.Brewton@SAWS.org

Dear Mr. Brewton:

As requested by the San Antonio Water Systems ("SAWS"), enclosed please find the executed "Water Supply Agreement" between Blue Water Vista Ridge LLC and SAWS. Capitalized terms in this letter have the meaning provided in the Water Supply Agreement.

This document is delivered in trust and delivery is subject to the following conditions:

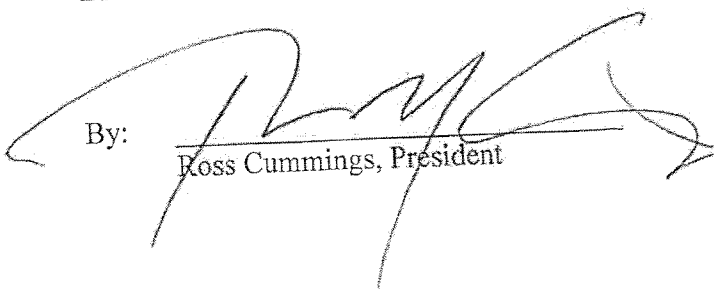
1. the full execution and delivery of the WTPA by the parties thereto;
2. the full execution and delivery of the Lease Conveyance Agreement by the parties thereto;
3. approval of the WTPA and this Agreement by the City Council of the City of San Antonio; and
4. verbal approval of the delivery of the Water Supply Agreement by the undersigned.

Should you have any questions, please contact me.

Very truly yours,

Blue Water Vista Ridge LLC

By:

  
Ross Cummings, President

**TRANSACTION FORM F**  
**OPINION OF COUNSEL TO THE WATER SUPPLY CORPORATION**



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November 2, 2016

San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, Texas 78212

Ladies and Gentlemen:

We have acted as counsel to the Central Texas Regional Water Supply Corporation (the “WSC”) in connection with the negotiation of the Project Real Property Conveyance Agreement between the WSC and the City of San Antonio acting by and through the San Antonio Water System (“SAWS”), a final executed copy of which is attached hereto as Attachment A (the “Agreement”). This letter (“Opinion Letter”) is provided to you at the request of the WSC to satisfy the requirement contained in Section 4.1(B)(22) of the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between Abengoa Vista Ridge, LLC (the name of which is now “Vista Ridge LLC,” the “the Project Company”) and SAWS dated as of November 4, 2014 and as amended as of June 10, 2016 and November \_\_, 2016 (the “WTPA”), for the delivery of an opinion of counsel. This opinion updates our prior opinion to you dated June 10, 2016.

This Opinion Letter is governed by, and shall be interpreted in accordance with, the Legal Opinion Accord (the “Accord”) of the ABA Section of Business Law (1991). As a consequence, it is subject to a number of qualifications, exceptions, definitions, limitations on coverage and other limitations, all as more particularly described in the Accord, and this Opinion Letter should be read in conjunction therewith. The law covered by the opinions expressed herein is limited to the applicable Law of the State of Texas and of the United States in effect on the date of this Opinion Letter. Capitalized terms not defined in this Opinion Letter have the meanings set forth in the Agreement, the WTPA or the Accord.

A. Based on our review of organizational documents of the WSC [being the WSC’s Restated Certificate of Formation (with New Amendments) and Bylaws, dated September 18, 2015] and subject to the qualifications set forth in Paragraph C below, we are of the opinion that the WSC has been duly formed as a water supply corporation pursuant to Chapter 67 of the Texas Water Code and the applicable provisions of the Texas Business Organizations Code (the “BOC”) and that matters of law covered by the legal representations of the WSC contained in Section 2.1 of the attached Agreement, are true and correct. We are of the further opinion that the WSC is authorized and has full power and authority under Texas Law:

00943529;5

(1) to perform its obligations anticipated to be performed by the WSC as set forth in the Agreement, the Water Transportation Agreement (as amended and restated on November \_\_, 2016), the Standby Deed of Trust, the Amended and Restated Public-Private Partnership Agreement dated November \_\_, 2016 among Vista Ridge LLC, the WSC, Garney Companies, Inc., VRRSP Consultants, LLC, Pape-Dawson Engineers, Inc. and Sumitomo Mitsui Banking Corporation and the WTPA;

(2) to enter into a Design Build Contract with Garney Companies, Inc. and the Operating Service Agreement and to perform the obligations to be performed by the WSC under such agreements;

(3) to acquire, by purchase or other lawful means, and to own the Project Real Property (as defined in the WTPA) and, as a Water Supply Corporation formed pursuant to Chapter 67 of the Texas Water Code, to acquire the Project Real Property by eminent domain pursuant to the applicable provisions of Chapter 49 of the Texas Water Code (including Section 49.222) and Texas Property Code Chapter 21;

(4) to mortgage and pledge the Project Real Property owned by the WSC as security for the Senior Debt (as such term is defined in the WTPA), to mortgage and pledge the Project Real Property owned by the WSC as security for its conveyance obligations under the Agreement pursuant to the Standby Deed of Trust and to convey all Project Real Property to SAWS pursuant to its obligations under the WTPA and under the Agreement; and

(5) to assign and convey the Project Real Property owned by the WSC on the Expiration Date or upon the Termination Date of the WTPA as a liquidating distribution to SAWS subject to compliance with Section 22.301-22.305 of the BOC.

B. In addition we are of the opinion that: based on the WSC's status as a not-for-profit Water Supply Corporation formed pursuant to Chapter 67 of the Texas Water Code and the applicable provisions of the Texas Business Organization Code and owner of Project Real Property, no ad valorem property tax will be payable on the Project Improvements owned by the WSC because conforming dissolution provisions are included in the Water Supply Corporation's organizational documents in accordance with Texas Tax Code Section 11.30; and, based on the certification by the Texas Commission on Environmental Quality ("TCEQ") of the WSC as a regional provider of water services pursuant to Texas Water Code Section 15.001(13) and Texas Tax Code Section 151.355(5), no Texas state or local sales tax will be payable by or on behalf of the WSC on the cost of constructing the Project Improvements.

C. Qualifications. Because the foregoing opinions are subject to the "General Qualifications" set forth in the Accord, please note that (i) no opinion is expressed as to the application of the Texas Fraudulent Transfer Act in Chapter 23 of the Texas Business and Commerce Code upon the exercise of any purchase or put options in the Agreement; (ii) no opinion is expressed as to factual matters affecting the availability of equitable remedies to enforceability of the Agreement (or any of the agreements referenced in Paragraph A above), including whether the Agreement or such other agreements would be deemed by a court of competent jurisdiction to be fair within the meaning of BOC Section 22.230; and (iii) the opinions set forth in Paragraph A

regarding Section 2.1 (7) of the Project Real Property Conveyance Agreement and in Paragraph A(3) above relate to the general authority of the WSC to exercise the power of eminent domain and, as contemplated by Section 17.5 of the Accord, no opinion is expressed as to the outcome of any litigation regarding the Project, including, but not limited to, litigation relating to acquisition of Project Real Property by eminent domain proceedings. Please also note that with respect to the WSC's acquisition of Project Real Property: (A) formal action will be required by the WSC's Board of Directors for voluntary purchases of land and for the initiation and adjudication of condemnation litigation; and (B) pursuant to Chapter 49 of the Texas Water Code, the WSC does not have the power of eminent domain to acquire rights to underground water, or of water or water rights and may not have the power of eminent domain to acquire property of a cemetery or burial place.

This Opinion Letter may be relied upon by you only in connection with the transactions contemplated by the WTPA and the Agreement and may not be used or relied upon by you for any other purpose, or by any other person for any purpose whatsoever, without in each instance our prior written consent.

Very truly yours,

  
BICKERSTAFF HEATH DELGADO ACOSTA LLP

Attachment A  
to  
Opinion Letter  
of  
Bickerstaff Heath Delgado Acosta LLP  
Final Executed Project Real Property Conveyance Agreement between WSC and SAWS

**VISTA RIDGE  
PROJECT REAL PROPERTY CONVEYANCE AGREEMENT**

This **PROJECT REAL PROPERTY CONVEYANCE AGREEMENT** (this "Project Real Property Conveyance Agreement") is entered into on the 10<sup>th</sup> day of June, 2016 (the "Effective Date"), between the City of San Antonio, Texas, acting by and through the San Antonio Water System Board of Trustees, an agency of the City established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("SAWS"), and Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation (the "Water Supply Corporation"), and acknowledged, consented to and joined by Project Company.

**RECITALS**

WHEREAS, SAWS and the Project Company have entered into the WTPA (as hereinafter defined) for the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, which WTPA provides, in part, that the Project Assets will be assigned and conveyed to SAWS (subject to certain exclusions as provided in Appendix 12 to the WTPA) upon the Termination Date or Expiration Date (as hereinafter defined);

WHEREAS, the Water Supply Corporation has been duly formed to participate with the Project Company in the development and operation of a regional water supply system, and has contracted with the Project Company to transport groundwater from certain groundwater wells to SAWS for use by SAWS as a portion of its water supply for the public;

WHEREAS, the Water Supply Corporation and the Project Company entered into a Water Transportation Agreement pursuant to Section 67.010 of the Texas Water Code (the "Transportation Agreement") that requires the Water Supply Corporation, in part, to acquire certain easements and real property, and to construct infrastructure and other facilities necessary to enable the Water Supply Corporation to transport water supplied by the Project Company for use by SAWS in accordance with the provisions of the WTPA;

WHEREAS, as part of the consideration received by the Water Supply Corporation from the Project Company under the Transportation Agreement and as further inducement for SAWS to enter into the WTPA with Project Company, the Water Supply Corporation has agreed with the Project Company to convey to SAWS the Project Assets owned by the Water Supply Corporation on the earlier of the Expiration Date or Termination Date when the Project Company is required to assign and convey the Project Assets to SAWS under the WTPA; and

WHEREAS, SAWS has requested confirmation from the Water Supply Corporation that it has agreed with the Project Company in the Transportation Agreement to perform the acquisition, construction, transportation obligations under the WTPA and further assurances pursuant to Section 13.2 of the WTPA that the Water Supply Corporation will perform the conveyance obligations under the WTPA, and in further elaboration of such conveyance obligations, and the Water Supply Corporation has agreed to enter into this Project Real Property Conveyance Agreement with SAWS pursuant to Section 67.010 of the Texas Water Code.

NOW THEREFORE, in consideration of the mutual covenants herein, the sum of \$100.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

1.1 Recitals. The Recitals set forth above are fully incorporated into this Project Real Property Conveyance Agreement as if fully set forth herein.

1.2 Definitions. As used in this Project Real Property Conveyance Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are also defined within the body of this Project Real Property Conveyance Agreement. Defined terms not otherwise defined in this Project Real Property Conveyance Agreement shall have the meanings ascribed to them in the WTPA.

**“Business Day”** means a day other than a Saturday, Sunday or an official SAWS holiday.

**“City”** means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

**“Collection Pipelines”** means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project) of the WTPA.

**“Collection Pipeline Rights-of-Way”** means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

**“Encumbrance”** means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

**“Expiration Date”** means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.7 (Extension of Term) of the WTPA.

**“Financial Closing Date”** has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date) of the WTPA.

**“High Service Pump Station”** means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project) to the WTPA.

**“High Service Pump Station Site”** means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

**“Other Project Assets”** has the meaning set forth in Section 12.4 of Appendix 12 (Project Assets and Liabilities) of the WTPA.

**"Permitted Encumbrances"** means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves in accordance with GAAP;

(2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or the Water Supply Corporation to construct the Project or operate the Project;

(3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(4) Those items which (i) are servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements, or (ii) any other Encumbrance arising (a) in the ordinary course of business during construction, (b) in connection with worker's compensation or unemployment insurance or social security or pension obligations, (iii) the Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) any liens or other encumbrances subordinate to the Water Transmission and Purchase Agreement, (vi) any statutory landlord's liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or the Water Supply Corporation;

(5) Applicable zoning and building bylaws and ordinances, and municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(6) Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;

(7) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or the Water Supply Corporation has established appropriate reserves or bonded



against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or the Water Supply Corporation established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(10) Exceptions to title, of record, listed in a Title Insurance Policy being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(11) Encumbrances granted under any Senior Debt Financing Agreements, including the rights of the Senior Debt Creditors or to secure obligations owed by the Water Supply Corporation to the Project Company;

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness; and

(13) Encumbrances created as a result of a Change-in-Law.

**"Project"** means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, Project Improvements, and Other Project Assets, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System or the SAWS Interconnection Improvements.

**"Project Assets"** means the Project Real Property, Project Improvements and the Other Project Assets.

**"Project Assets Purchase Price"** means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options) of the WTPA.

**"Project Company"** means Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

**“Project Company Portion of the Transmission Pipeline Terminus Site”** has the meaning set forth in Section 4.1(B)(10)(conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site) of the WTPA.

**“Project Company Storage Tank”** means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Transmission Pipeline Terminus Site for the storage of Product Water prior to SAWS taking delivery, as more particularly described in the Design Requirements. The Project Company Storage Tank includes the pipe between the Project Company Storage Tank and the SAWS Storage Tanks up to the Product Water Delivery Point; the portion of such pipe between the Product Water Delivery Point and the SAWS Storage Tanks shall constitute part of the SAWS Storage Tanks. The Project Flow Meter and related totalizer shall be located on the Project Company Storage Tank side of the Product Water Delivery Point and constitute part of the Project Company Storage Tank.

**“Project Improvements”** means the Well Field Facilities and the Transmission Pipeline System.

**“Project Real Property”** means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is ancillary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Project Real Property Conveyance Agreement”** means this Project Real Property Conveyance Agreement entered into by and between SAWS and the Water Supply Corporation.

**“Project Site Conveyance Instruments”** means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

**“Project Sites”** means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

**“Right-Of-Way Easement Form”** means the form set forth in Transaction Form D (Right-Of-Way Easement Form) in the WTPA.

**“SAWS”** means the San Antonio Water System, an agency of the City established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

**“SAWS Distribution System”** means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project.

**“State”** means the State of Texas.

**“TCEQ”** means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

**“Term”** has the meaning set forth in Section 3.1 (Effective Date and Term) of the WTPA.

**“Termination Date”** means the date of termination of the WTPA provided in Sections 21.3, 22.1(D), 23.1, or 23.2 (Termination Date) of that agreement.

**“Transaction Form”** means any of the Transaction Forms appended to the WTPA or to this Project Real Property Conveyance Agreement and identified as such in the Table of Contents.

**“Transmission Pipeline”** means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Project Company Storage Tank, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications) of the WTPA. The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

**“Transmission Pipeline Alignment”** means the real property over or within which the Transmission Pipeline is to be constructed.

**“Transmission Pipeline Easements”** means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

**“Transmission Pipeline Pumping Stations”** means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project) of the WTPA, including, but not limited to, the High-Service Pump Station.

**“Transmission Pipeline System”** means the Transmission Pipeline and the Project Company Storage Tank.

**“Transmission Pipeline System Real Property Interests”** means (1) a fee simple absolute in the Project Company Portion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

**“Transmission Pipeline Terminus Site”** means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline on which the Project Company Storage Tank is to be constructed as part of the Project and SAWS Storage Tanks are to be constructed as part of the SAWS Interconnection Improvements, as described in Appendix 1 (Description of the Project) of the WTPA.

**“Water Supply Corporation”** means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code, and its permitted successors and assigns.

**“Water Supply Corporation Other Project Assets”** means the Other Project Assets owned by the Water Supply Corporation.

**“Water Supply Corporation Project Improvements”** means the Project Improvements owned by the Water Supply Corporation, including without limitation, Water Supply Corporation Well Field Facilities and the Transmission Pipeline System.

**“Water Supply Corporation Project Assets”** means the Water Supply Corporation Project Real Property, Water Supply Corporation Project Improvements and the Water Supply Corporation Other Project Assets.

**“Water Supply Corporation Project Real Property”** means the Project Real Property owned by the Water Supply Corporation, including without limitation, (1) the Water Supply Corporation Well Field Facilities Site Real Property Interests, and (2) the Transmission Pipeline System Real Property Interests. Water Supply Corporation Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Water Supply Corporation Well Field Facilities”** means the facilities and roads on the Well Field Facilities Site owned by the Water Supply Corporation for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Collection Pipelines and the High Service Pump Station.

**“Water Supply Corporation Well Field Facilities Sites”** means the real property owned by the Water Supply Corporation upon which the Water Supply Corporation Well Field Facilities are to be constructed, within the area of approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project) of the WTPA.

**“Water Supply Corporation Well Field Facilities Site Real Property Interests”** means (1) a fee simple absolute interest in the Well Sites owned by the Water Supply Corporation (if any), (2) permanent easements for the Collection Pipelines Right-of-Way, and (3) a fee simple absolute interest in the High Service Pump Station Site.

**“Wells”** means wells, casings, related pumping equipment and appurtenant facilities to be constructed in the Well Field for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project) of the WTPA.

**“Well Sites”** means each of the sites of approximately two-acres upon which the Wells are to be constructed, owned by the Water Supply Corporation (if any).

**“WTPA”** means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement executed on November 4, 2014 (as amended effective on ~~May~~ <sup>June 10</sup>, 2016), by and between SAWS and Abengoa Vista Ridge, LLC and includes all attached Transaction Forms and Appendices as it exists on the Effective Date hereof.

1.3 Interpretation. This Project Real Property Conveyance Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Real Property Conveyance Agreement otherwise require.

(1.) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(2.) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3.) Headings. The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Project Real Property Conveyance Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4.) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Project Real Property Conveyance Agreement.

(5.) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(6.) References to Including. The words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively.

(7.) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(8.) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(9.) References to All Reasonable Efforts. The expression "commercially reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

(10.) Entire Agreement. This Project Real Property Conveyance Agreement contains the entire agreement, as between SAWS and the Water Supply Corporation, with respect to the transactions contemplated hereby and thereby. There are no other agreements, oral or written, prior or contemporaneous, as between the Water Supply Corporation and SAWS.

(11.) Assignment. This Project Real Property Conveyance Agreement shall not be assigned, hypothecated or transferred in any manner whatsoever, directly or indirectly, by the Water Supply Corporation without the prior written consent of SAWS, except to secure any Permitted Debt or indebtedness owed by the Water Supply Corporation to the Project Company.

(12.) Counterparts. This Project Real Property Conveyance Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Real Property Conveyance Agreement.

(13.) Governing Law. This Project Real Property Conveyance Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas ("Applicable Law").

(14.) Severability. Each provision of this Project Real Property Conveyance Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Real Property Conveyance Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this as nearly as possible to its original intent and effect.

(15.) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Real Property Conveyance Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(16.) Delivery of Documents in Digital Format. In this Project Real Property Conveyance Agreement, the Water Supply Corporation may be obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Water Supply Corporation agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS' request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Project Real Property Conveyance Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(17.) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its "discretion" by the express terms hereof. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Real Property Conveyance Agreement. When a party does not have "discretion" it means that the party shall act reasonably.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES.

2.1 Representations and Warranties: The Water Supply Corporation hereby represents and warrants to the City and SAWS, as follows:

(1.) The Water Supply Corporation is a Texas non-profit water supply corporation and was duly formed on September 25, 2014, pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code ("BOC") and is a validly existing Texas non-profit water supply corporation in good standing under the laws of the State of Texas. The Water Supply Corporation has the authority to do business in the State of Texas, with the full legal right, power and authority to undertake, carry out and perform all of the obligations anticipated to be undertaken, carried out and performed by the Water Supply Corporation as described in and provided under this Project Real Property Conveyance Agreement and under the applicable provisions of the WTPA.

(2.) The Restated Certificate of Formation with New Amendments of the Water Supply Corporation in the form attached hereto as Schedule A, and the bylaws of the Water Supply Corporation, in the form attached hereto as Schedule B, all in the form thereof approved by SAWS, constitute the "Governing Documents" of the Water Supply Corporation as of the Effective Date of this Project Real Property Conveyance Agreement, and there are no other documents governing the formation, organization, operation, and dissolution of the Water Supply Corporation.

(3.) The Water Supply Corporation is governed by a board of directors duly designated or elected in accordance with its Governing Documents.

(4.) The Water Supply Corporation, acting by and through its board of directors, has the authority to enter into this Project Real Property Conveyance Agreement.

(5.) This Project Real Property Conveyance Agreement has been duly authorized, executed and delivered by all necessary action of the Board of Directors of the Water Supply Corporation and constitutes a legal, valid and binding obligation of the Water Supply Corporation, enforceable against the Water Supply Corporation in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(6.) The Water Supply Corporation may encumber any project or improvement, and encumber any income, fees, rents and other charges derived from the operation of the Project or, as well as issue bonds, notes or warrants to secure payment of funds received in accordance with the provisions of Section 67.010 of the Texas Water Code.

(7.) The Water Supply Corporation is authorized and has full power and authority, under Texas law, to acquire, by purchase or other lawful means, and to own the Water Supply Corporation Project Real Property, and to acquire property by eminent domain in accordance with the provisions of Section 49.222 of the Texas Water Code and Chapter 21 of the Texas Property Code.

(8.) The Water Supply Corporation has the full power and authority to mortgage and pledge the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets as security for the Senior Debt, Water Transportation Agreement and Project Construction Loan

Agreement.

(9.) The Water Supply Corporation has the full power and authority to assign and convey the Water Supply Corporation Project Assets to SAWS upon the Expiration Date or upon the Termination Date of the WTPA, as applicable.

(10.) Based on the Water Supply Corporation's status as a not-for-profit water supply corporation and owner of the Water Supply Corporation Project Real Property, no *ad valorem* property tax will be payable on the Water Supply Corporation Project Real Property and Water Supply Corporation Project Improvements thereon because conforming dissolution provisions are included in the Water Supply Corporation's Governing Documents in accordance with the provisions of Texas Tax Code Section 11.30.

(11.) Subject to (i) obtaining a certification from the TCEQ or SAWS pursuant to Texas Tax Code Section 151.355(5) or 151.355(6), respectively, or (ii) to obtaining a private letter ruling from the Texas Comptroller regarding qualification for exemption under Texas Tax Code Section 151.311, no Texas state sales tax will be payable by or on behalf of the Water Supply Corporation on the cost of constructing the Water Supply Corporation Project Improvements. Nothing in this paragraph shall be construed to obligate SAWS to make such tax certification.

(12.) Neither the execution nor delivery by the Water Supply Corporation of this Project Real Property Conveyance Agreement nor the performance by the Water Supply Corporation of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Water Supply Corporation of the terms or conditions hereof:

(a) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of formation applicable to the Water Supply Corporation; or

(b) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Water Supply Corporation is a party or by which the Water Supply Corporation or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(13.) No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Real Property Conveyance Agreement by the Water Supply Corporation except as such have been duly obtained or made.

2.2 Breach of Representation or Warranty. If, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation becomes aware of any material change or inaccuracy in any of the matters referred to in the representations and warranties of the Water Supply Corporation under this Project Real Property Conveyance Agreement, then the Water Supply Corporation will have the same obligation to notify SAWS of the event, as the Project Company has to notify SAWS under the WTPA with regard to the Project Company's representations and warranties. In the event that (a) the Water Supply Corporation notifies SAWS of such a change or inaccuracy or (b) SAWS discovers that any representation or warranty of Water Supply Corporation made in this Project Real Property Conveyance Agreement has changed or is inaccurate and notifies Water Supply Corporation of the same, and such change or inaccuracy would constitute a remediable breach under Section 20.1 (b)(5) of the WTPA, then the Water Supply Corporation shall have all of the rights to notice and cure, and SAWS shall have all of the remedies as are provided in Section 20.3 of the WTPA.



## ARTICLE 3

### PROJECT REAL PROPERTY OBLIGATIONS DURING THE TERM.

3.1 Acquisition of Transmission Pipeline System Real Property Interests. The Project Company has made an election under the WTPA that the Water Supply Corporation (rather than Project Company) shall acquire the Project Real Property Interests, including the Transmission Pipeline System Real Property Interests, in accordance with the terms of the WTPA. On or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests (or binding and enforceable options to acquire such Transmission Pipeline System Real Property Interests) sufficient to commence construction of substantially all of the Transmission Pipeline System. In acquiring easements, the Water Supply Corporation shall comply with Section 26.1(A) (Right-of-Way Easements). For any other parcels, the Water Supply Corporation shall (except as SAWS may otherwise approve, acting reasonably) have acquired a valid right-of-way entry to construct, shall have initiated an eminent domain proceeding, or shall have obtained a right of entry if the acquisition of such parcel is not material to the completion of the Transmission Pipeline System within the Project Schedule. As between the Project Company and the Water Supply Corporation, the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements. The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire indefeasible, fee simple absolute title in the Project Company Portion of the Transmission Pipeline Terminus Site, and Transmission Pipeline Pumping Stations pursuant to and in accordance with the provisions of the WTPA. Nothing contained herein shall be construed to relieve the Project Company from its obligations to SAWS under the WTPA to cause the acquisition of the Project Real Property to occur under the time frames, terms and conditions set forth in the WTPA nor shall any provision of this Agreement be construed to relieve the Project Company from any other obligations under the WTPA, except to the extent such obligations have been modified, clarified or extrapolated in greater detail in this Agreement (but not to the extent any obligations have been delegated to the Water Supply Corporation pursuant to the Project Company's election under the WTPA).

3.2 Terms of Transmission Pipeline Easements. The Water Supply Corporation has agreed under the terms of the Transportation Agreement, and hereby agrees to SAWS, to acquire Transmission Pipeline Easements pursuant to and in accordance with the provisions of the WTPA.

3.3 Acquisition of Well Field Facilities Site Real Property Interests. Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation shall acquire the Well Field Facilities Site Real Property Interests pursuant to and in accordance terms of the WTPA. Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed that on or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Water Supply Corporation Well Field Facilities Site Real Property Interests, including, but not limited to: (i) fee simple absolute title to all Well Sites acquired by the Water Supply Corporation, if any, (ii) fee simple absolute title to the High Service Pump Station Site; and (iii) permanent easements for the Collection Pipeline Rights-of-Way from Collection Pipeline Rights-of-Way grantors conforming to Section 3.4 below.

The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire indefeasible, fee simple absolute title in all Well Sites that it acquires and in

the High Service Pump Station Site pursuant to and in accordance with the terms of the WTPA.

**3.4 Terms of Easements for Collection Pipelines.** Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire easements for the Collection Pipeline Rights of Way, pursuant to and in accordance with the WTPA. Without limiting the foregoing, all easements for the Collection Pipeline Rights-of-Way shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof as more particularly set forth in Article 4 below, and shall not contain any indemnity provisions that would apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements.

**3.5 Acquisition of Other Project Real Property.** Under the Transportation Agreement, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire any other Project Real Property Interests required to be acquired pursuant to and in accordance with the WTPA. The vesting instruments for such other Project Real Property Interests shall not contain any indemnity provisions that would apply to SAWS, if acquired in fee simple shall be acquired in indefeasible, fee simple absolute, and shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof.

**3.6 SAWS' Rights to Tie-In to Transmission Pipeline.** The Water Supply Corporation shall grant and convey to SAWS from time to time during the Term of the WTPA such permanent easement, temporary construction easements and other rights as necessary to allow for the interconnection of pipelines into the Transmission Pipeline as necessary to allow SAWS to convey Product Water to any other person, in accordance with and as necessary to effectuate the intent of and purposes of Section 26.5 (Opportunities Expressly Reserved) of the WTPA. All of the rights of SAWS to interconnect with the pipelines into the Transmission Pipeline, as set out in this Section shall be subject to all of the obligations and limitations relating to SAWS undertaking or the Project Company or Water Supply Corporation undertaking any such interconnection activities, set out in the WTPA, including but not limited to those set out in Section 12.3 in the WTPA for a SAWS-Requested Capital Modification.

**3.7 Covenant Against Sale or Encumbrance of the Water Supply Corporation Project Assets.** During the Term of the WTPA, the Water Supply Corporation shall not (i) sell, assign, convey, move or otherwise transfer its ownership or other interests in the Water Supply Corporation Project Assets without the consent of SAWS given in its sole discretion (except in the event of a final, non-appealable judgment of condemnation by an unrelated third party entity with the power of eminent domain; provided, however, that Water Supply Corporation shall use good faith and diligent efforts to contest such condemnation and/or harmonize the interests in the Water Supply Corporation Project Assets with the condemned interest such that both interests may co-exist), or (ii) lease, sublease or license any interest in the Water Supply Corporation Project Assets in a manner which would materially and adversely affect the operations of the Project or SAWS' rights to obtain a conveyance of the Water Supply Corporation Project Assets in the manner set out in Article 4 below. During the term of this Project Real Property Conveyance Agreement, there shall be no Encumbrances registered or recorded on the Water Supply Corporation Project Assets which are in violation of the terms of the WTPA. Notwithstanding the above, the Water Supply Corporation shall have the right to mortgage or pledge any Water Supply Corporation Project Assets, provided that such mortgage or pledge is allowed (as to the Water Supply Corporation or the Project Assets) under the terms of the WTPA, or under Section 3.12 of this Project Real Property Conveyance Agreement.

**3.8 Single-Purpose Entity Covenant.** During the Term of the WTPA, the Water Supply Corporation shall not engage in any other business or activity other than the businesses or activities conducted for the purposes of the Project without the consent of SAWS, given (or withheld) in its sole discretion.

**3.9 Independence of Water Supply Corporation.** During the Term of the WTPA, the Water Supply Corporation shall not take or cause to be taken, or omit to take or omit to cause to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, the execution by the Water Supply Corporation (of the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, the EPC Agreement, or the Operating Service Agreement), or the exercise or failure to exercise of any of its rights or powers under any such agreement), the effect of which, individually or as a whole, is or would be to cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, this Project Real Property Conveyance Agreement, or the WTPA.

**3.10 Governing Documents.** During the Term of the WTPA, the Water Supply Corporation (i) shall provide to SAWS advanced written notice of all modifications to its Governing Documents (sufficient for SAWS to make a determination of whether or not SAWS' consent pursuant to subclause (ii) below is required), and (ii) shall not modify its Governing Documents, without the prior written consent of SAWS, given (or withheld) in its sole discretion, in a manner that will change its purpose, or adversely affect SAWS' rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents. The above notwithstanding, to the extent SAWS determines that any such modification to the Governing Documents does not change the purpose of the Water Supply Corporation or adversely affect SAWS' rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents, SAWS will not unreasonably withhold its consent. If the Water Supply Corporation makes a written request for consent from SAWS hereunder and SAWS does not raise an objection to the matter for which the consent is requested within twenty (20) days after receipt of the written request for the consent by SAWS, the consent shall be deemed given by SAWS.

**3.11 Performance of Contract Obligations.** Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed to (i) acquire the Project Real Property, (ii) construct the Project Improvements, (iii) operate and maintain all of the Water Supply Corporation Project Assets, (iv) transport the Product Water, and (v) maintain Required Insurance, all in compliance with the provisions of the WTPA. The foregoing responsibilities may be further delegated by the Water Supply Corporation to the Project Company or other entity pursuant to the terms of the Transportation Agreement and the WTPA; provided, however, that the Water Supply Corporation shall remain responsible for the performance of such responsibilities. In addition, the Water Supply Corporation shall indemnify SAWS with respect to the Water Supply Corporation Project Assets owned by it in the same manner and upon the same terms, provisions and conditions as the Project Company is obligated to indemnify SAWS as set forth in Article 25 (Indemnification) of the WTPA. Notwithstanding anything contained in this Project Real Property Conveyance Agreement to the contrary, SAWS' remedies with respect to the Water Supply Corporation's indemnity shall be limited to those afforded to it under the terms of Article 25 of the WTPA, and shall be exercisable against the Water Supply Corporation only if the Project Company has also failed to respond to the applicable claim or otherwise cause the Contract Obligations to have been met.

**3.12 Obligation to Mortgage.**

(1) During the Term of the WTPA, the Water Supply Corporation shall provide to Project Company a deed of trust mortgage establishing a lien on the Water Supply Corporation Project Assets, securing the Water Supply Corporation's payment obligations under the Water Transportation Agreement (as defined in the WTPA) and the Water Supply Corporation's performance obligations with respect to the conveyance of the Water Supply Corporation Project Assets, upon dissolution, which such deed of

trust mortgage shall be subordinate to the mortgage securing the Senior Debt, and subordinate to the Standby Deed of Trust (hereinafter defined).

(2) In addition, on or before the Financial Closing Date, the Water Supply Corporation shall provide a deed of trust mortgage to SAWS (or, if required by the Creditors Remedies Agreement, to the Project Company with a collateral assignment to SAWS), establishing a lien on the Water Supply Corporation Project Assets, as an accommodating pledge of the Water Supply Corporation Project Assets (the "Standby Deed of Trust") to further assure the Water Supply Corporation's obligations to convey the Water Supply Corporation Project Assets to SAWS as required in this Real Property Conveyance Agreement. The Standby Deed of Trust shall also provide that in the event the Project Company and the Water Supply Corporation fail to timely convey the Water Supply Corporation Project Assets in accordance with the WTPA and this Agreement then SAWS shall have such step-in rights, cure rights and other interim rights as are reasonably necessary to allow SAWS to protect the Water Supply Corporation Project Assets and SAWS' interests under the WTPA prior to any conveyance of the Water Supply Corporation Project Assets. The Standby Deed of Trust shall provide that the beneficiary's right to exercise its non-judicial right to foreclose on the Water Supply Corporation Project Assets under the terms of the Standby Deed of Trust would arise only at such time as:

(a) the Water Supply Corporation Project Assets are required to be conveyed to SAWS under the terms of the WTPA, and SAWS shall have tendered to, or on behalf of, the Project Company all sums payable to the Project Company (if any) and the Senior Debt Creditors under the WTPA in connection with such conveyance;

(b) SAWS has filed a suit against the Water Supply Corporation and the Project Company for breach of the provisions of this Agreement and the WTPA, respectively, requiring such conveyance in which suit the Project Company and Water Supply Corporation have each been properly served at least thirty (30) days prior to any exercise of its non-judicial right to foreclose (the "Conveyance Litigation"), provided, however, that if a Project Company Bankruptcy-Related Event shall have occurred then upon SAWS' submission to the jurisdiction of the applicable court and assertion of a breach as described above in a manner sufficient to preserve the court's jurisdiction for a Project Company claim pursuant to subsection 6 below, the Conveyance Litigation shall be deemed to have been filed; and

(c) the Project Company or Water Supply Company have failed to timely convey (or cause the conveyance of) the Water Supply Corporation Project Assets to SAWS in accordance with the WTPA.

(3) The Stand-By Deed of Trust shall:

(a) secure liquidated damages for failure to convey the Water Supply Corporation Project Assets in an amount equal to (i) if such foreclosure occurs prior to the earlier of the Commercial Operations Date (as defined in the WTPA) or the end of thirty six (36) months from the Effective Date, a sum equal to the following: \$225,000,000 if such foreclosure occurs between the Effective Date and twelve (12) months thereafter; \$450,000,000 if such foreclosure occurs following twelve (12) months from the Effective Date through twenty four (24) months from the Effective Date; and \$675,000,000 if such foreclosure occurs following twenty four (24) months from the Effective Date through thirty six (36) months from the Effective Date, or (ii) if such foreclosure occurs after the earlier of the Commercial Operations Date or thirty six (36) months from the Effective Date, the amount of \$900,000,000, which amount shall be increased by the increase in CPI from the earlier of such two dates to the date of foreclosure; and

(b) provide that recourse to the Water Supply Company and the Project Company for payment of the amount secured and any damages for a failure to convey shall be limited to the recovery of the Water Supply Corporation Project Assets obtained pursuant to such foreclosure and no further recovery or damages shall be obtainable from the Water Supply Company or the Project Company for the failure to so convey, provided, however, that such limitation shall not apply to or affect such other claims as SAWS may have under the WTPA or this Agreement relating to alleged breaches or defaults thereunder other than a failure to convey Water Supply Corporation Project Assets and SAWS shall be entitled to assert any such claims in the Conveyance Litigation or otherwise in its sole discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(4) The parties agree that the liquidated damage amounts to be secured by the Standby Deed of Trust are a reasonable estimate, solely for purposes of the Standby Deed of Trust, of SAWS' actual damages for failure to timely convey the Water Supply Corporation Project Assets as required under the WTPA and this Agreement, given the difficulty, inconvenience and uncertainty of ascertaining actual damages, and such liquidated damage amounts are not and shall not be construed as a penalty.

(5) In the event the Water Supply Corporation or the Project Company disputes that the Water Supply Corporation Project Assets were required to be conveyed to SAWS as asserted in the Conveyance Litigation then the Water Supply Corporation and the Project Company reserve their rights in respect of such dispute and assert a claim under the terms of this Agreement or the WTPA, as the case may be, against SAWS in the Conveyance Litigation and each does hereby preserve their claims in respect of such dispute and to litigate such claims.

(6) In the event the Water Supply Corporation or the Project Company obtains a final unappealable judgment determining that the Water Supply Corporation Project Assets were not required to be conveyed to SAWS under the terms of the WTPA at the time of the foreclosure, then such foreclosure shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 of the WTPA, and the Project Company shall be entitled as its sole and exclusive remedy and damages to (i) the payment of the difference between (A) the amount payable to the Project Company pursuant to Section 23.1(B) of the WTPA (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (B) any amounts previously paid by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company's behalf in respect of the Senior Debt) plus (ii) interest on the amount in clause (i) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate for pre-judgment interest. In no event shall the Water Supply Corporation be entitled to any further or additional claim in connection with its conveyance of the Water Supply Corporation Project Assets and upon payment of the amount set forth above to the Project Company all liability of SAWS to the Project Company and the Water Supply Corporation in respect of the conveyance shall be discharged.

(7) The Standby Deed of Trust shall survive foreclosure of any lien securing the Senior Debt but shall remain subject to payment of the Senior Debt. The applicable provisions of the Standby Deed of Trust and the priority of the lien created thereunder and of the exercise of the parties' respective step-in rights and other interim remedies will be more specifically addressed in that certain Creditors' Remedies Agreement to be executed by and between the Project Company, SAWS and the Senior Debt Creditors.

(8) The parties agree that under the WTPA SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of the WTPA and payment of the amounts provided for thereunder, which amounts are to be determined solely as provided in the WTPA. Accordingly, the parties further agree that any disputes relating to any conveyance are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance

Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company or the Water Supply Corporation seeks an injunction or other judicial action to prevent foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Subsection 3(b) above against the party taking such action shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.

**3.13 Reporting Requirements.** On or before the Financial Closing Date, the Water Supply Corporation shall provide to SAWS (i) a report of all Project Assets acquired or held by the Water Supply Corporation and copies of the contracts, agreements, and modifications or amendments thereto entered into by the Water Supply Corporation with respect to the Project and (ii) copies of all documents in the Water Supply Corporation's possession which are of a material nature to the use and operation of that tract of land for the Project, including but not limited to title policies, surveys, soils reports; feasibility studies; environmental reports, studies, assessment; engineering studies, all of which shall be delivered without representation or warranty as to the content set out therein. After the Financial Closing Date, the Water Supply Corporation shall provide SAWS with a report on all of the Project Assets acquired by the Water Supply Company for which acquisition was pending but not completed on the Financial Closing Date. Thereafter, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation will report to SAWS the acquisition of any Project Assets, which report shall be due to SAWS within 90 days after acquisition of such Project Assets. At the request of the SAWS, the Water Supply Corporation shall provide copies of any contracts or agreements, and modifications and amendments thereto, with respect to the Project and copies of all documents described in (ii) above to the extent not previously provided to SAWS. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall also provide SAWS with not less than seventy-two (72) hours' advanced written notice of the date and location of the meetings of its Board of Directors, and, promptly following any such meetings, shall provide to SAWS copies of all resolutions or other indicia of Board action or consent (and upon request, all contracts, agreements or other documents approved or authorized at such Board meetings). Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall annually provide to SAWS an audited financial statement for the Water Supply Corporation, beginning with the financial audit for 2015. Additionally, throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall promptly provide written notice to SAWS of all events which, in Water Supply Corporation's reasonable determination, have a materially adverse effect on Water Supply Corporation's ability to perform its obligations under this Agreement, or which, through the passage of time, would have such materially adverse effect, to the same extent that the Project Company is required to do so under the WTPA. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall also provide to SAWS copies of such additional information as reasonably requested by SAWS to enable SAWS to monitor the Water Supply Corporation's compliance with the terms, provisions and conditions of this Real Property Conveyance Agreement. Except as may be required by Applicable Law, SAWS agrees not to disclose information provided to SAWS by the Water Supply Corporation and specifically identified by written notation as "Confidential and Proprietary" at the time provided to SAWS. If a request is received by SAWS for such Water Supply Corporation information, SAWS shall request an opinion from the Texas Attorney General and promptly provide the Water Supply Corporation with notice pursuant to Texas Government Code Section 552.305 so that the Water Supply Corporation at its own expense may present its legal position regarding confidentiality of its information to the Texas Attorney General. If a decision of the Attorney General is received indicating that the requested

information is required by law to be released, SAWS will refrain from releasing the information for seven (7) calendar days to afford the Water Supply Corporation the opportunity to file suit pursuant to Section 552.325 of the Texas Government Code, and will not release the requested information during the pendency of such litigation, provided however, that SAWS, by this Real Property Conveyance Agreement, will not be precluded from complying with any order of the court of competent jurisdiction.

**3.14 Notice of Defaults.** In the event of a material default by any party under the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, or any other agreement between Water Supply Corporation and Project Company, including, without limitation, the EPC Agreement and/or the Operating Service Agreement, or any other agreement to which the Water Supply Corporation is a party, the Water Supply Corporation shall notify SAWS of the occurrence, and details, of any such default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a material default, in either case promptly on the Water Supply Corporation becoming aware of its occurrence, to the same extent that the Project Company is required to provide this information under the terms of the WTPA. It shall not be a violation of this Section if the Water Supply Corporation fails to provide this notice, however, if SAWS has received notice of the default from the Project Company or another person.

**3.15 Uncontrollable Circumstances.** In the event that the Water Supply Corporation is unable to fulfill its obligations, in whole or in part, as described in this Real Property Conveyance Agreement, including those described in Sections 3.1 through 3.6 and/or 3.11, but expressly excluding, except as otherwise expressly provided in Section 4.8 hereinbelow, all obligations under Article 4 of this Real Property Conveyance Agreement, due to Uncontrollable Circumstances (as defined in the WTPA, but as if written to apply to the Water Supply Corporation rather than the Project Company), then the Water Supply Corporation shall have the same rights and defenses as are provided to the Project Company in the WTPA under Article 16 (Uncontrollable Circumstances) of the WTPA, as if written to apply to the Water Supply Corporation rather than the Project Company.

#### ARTICLE 4

### ASSIGNMENT AND CONVEYANCE OF THE WATER SUPPLY CORPORATION PROJECT ASSETS

**4.1 Obligation to Assign and Convey.** The Water Supply Corporation shall assign and convey to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in the Water Supply Corporation Project Assets when, and to the same extent, that the Project Company is obligated to convey or cause to be conveyed the Project Assets to SAWS under the WTPA upon either (i) the termination date as provided in Section 22.1(A) of the WTPA resulting from the exercise by SAWS of its rights under Article 23 (SAWS Project Assets Purchase Options) of the WTPA, (ii) the termination date as provided in Section 22.1(B) in the event that the Project Company terminates the WTPA for cause prior to the Expiration Date, and requires purchase of the Project Assets by SAWS as provided in Article 21 of the WTPA, or (iii) the Expiration Date of the WTPA. Such assignment and conveyance shall assign and convey to SAWS the Water Supply Corporation Project Real Property and the Water Supply Corporation Other Project Assets, free and clear of all Encumbrances, other than (a) the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances and (b) such additional exceptions to title, of record, listed in a Title Insurance Policy or Title Commitment, being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used (collectively, the "Permitted Encumbrances on Conveyance"). Notwithstanding the foregoing or the other provisions of this Article 4, the Water Supply Corporation

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shall also convey to SAWS the Water Supply Corporation Project Assets as required by and pursuant to the terms of Section 4.4(B) of the WTPA.

4.2 Notice of Exercise of Project Asset Purchase Option. In the event that SAWS exercises its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, then, SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the terms of the WTPA.

4.3 Project Asset Conveyance on Expiration Date. SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the WTPA.

4.4 Due Diligence by SAWS prior to Assignment and Conveyance. Promptly following the Water Supply Corporation's receipt of a written notice from SAWS to exercise its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, as provided in Section 4.2 above, or, at least 180 days prior to the Expiration Date, as applicable, the Water Supply Corporation shall, at its expense, provide to SAWS, with respect to each tract of land comprising a portion of the Water Supply Corporation Project Real Property the following items (collectively, the "Due Diligence Materials"):

(1) the Water Supply Corporation's existing surveys of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, which shall have been prepared by a registered professional land surveyor licensed in the State of Texas, and certified to SAWS when such surveys are obtained by the Water Supply Corporation (or, if and to the extent such surveys were previously obtained by the Water Supply Corporation prior to the Effective Date, such previously obtained surveys shall be accompanied by a certificate from the surveyor certifying to SAWS those matters which were certified to the Water Supply Corporation in such surveys) (collectively, the "Surveys");

(2) All environmental reports in the possession of the Water Supply Corporation for the Water Supply Corporation Project Real Property;

(3) A title commitment for each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites, the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site, from Chicago Title Insurance Company or such other reputable title company selected by SAWS (the "Title Company") to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Water Supply Corporation's purchase price (on a per square foot allocation), free and clear of all Encumbrances other than the Permitted Encumbrances on Conveyance, provided that SAWS shall be solely responsible for paying for all policies of title insurance that it obtains; and

(4) Copies of all documents in the Water Supply Corporation's possession pertaining to the development, ownership, or operation of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including but not limited to soils reports; feasibility studies; environmental reports, studies, assessments, and notices; any documentation regarding water, sanitary sewer, gas and other utilities serving each such tract of land; utility information pertaining to each such tract of land; engineering studies; and ad valorem tax notices and receipts for the prior three calendar



years.

(5) The Water Supply Corporation shall, prior to the assignment and conveyance described in Section 4.6 below, cure and cause to be removed from the title commitment those title defects which would be deemed to be Encumbrances, other than those which are the standard printed exceptions for a Texas form of Title Insurance and Permitted Encumbrances on Conveyance, which such items the Water Supply Corporation shall have no obligation to cure. In the event that an environmental report recommends that further action be taken, then the Water Supply Corporation shall, as a condition precedent to closing of the assignment and conveyance to SAWS, cause all such necessary remediation to be performed such that SAWS can qualify as an "innocent landowner" or "bona fide prospective purchaser"; provided, however, that notwithstanding the above, the Water Supply Corporation shall only be responsible for remediating environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow for the continued use of the Water Supply Corporation Project Assets in the manner contemplated, and not otherwise.

4.5 Notice in Event of Conveyance due to SAWS Default. In the event that the Project Company terminates the WTPA due to a default by SAWS and requires SAWS to purchase the Project Assets in accordance with Article 21 of the WTPA, the Water Supply Corporation, at the request of either the Project Company or SAWS shall provide to SAWS, or cause to be provided to SAWS, the Project Assets Purchase Price for the Project Assets owned by the Water Supply Corporation that will be assigned and conveyed to SAWS. SAWS will provide the Water Supply Corporation with notice of the closing date for the assignment and conveyance of the Project Assets by the Water Supply Corporation in accordance with the provisions of Section 21.3 of the WTPA, and the provisions of Section 21.3 of the WTPA shall apply to the procedures for closing, provided that payment of the Project Asset Purchase Price shall be payable to the Project Company as provided in the WTPA.

4.6 Assignment and Conveyance Requirements. Each assignment and conveyance provided for under this Project Real Property Conveyance Agreement shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument in accordance with the provisions of the WTPA, including but not limited to Section 23.4 of the WTPA, and said instrument shall be recordable and shall be otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Water Supply Corporation shall indemnify and defend SAWS. The Water Supply Corporation shall pay all Taxes required to be paid by any party in connection with any such transfers, including any recording fees. The assignment and conveyance documents shall include the following:

(1) Assignment of Easements. All easements comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, the permanent easements for the Collection Pipeline Rights-of-Way, the Transmission Pipeline Easements (including those obtained via the Cross Country Easement Agreement), shall be assigned by the Water Supply Corporation to SAWS in accordance with the provisions of the WTPA and this Agreement.

(2) Conveyance of Land. All land owned by the Water Supply Corporation (other than the easement interests addressed in Section 4.6(1) above) comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites (if any) , the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site (together with any and all Water Supply Corporation Project Improvements and all other rights and benefits attributable to such land, shall each be conveyed

by the Water Supply Corporation to SAWS, in the manner provided in the WTPA and this Agreement.

(3) Conveyance of Water Supply Corporation Other Project Assets. All other interests in the Water Supply Corporation Project Assets, including, but not limited to, the Project Improvements, which include the Well Field Facilities and the Transmission Pipeline System, to the extent the same do not convey as a fixture to the Water Supply Corporation Project Real Property, shall be conveyed by the Water Supply Corporation to SAWS via a bill of sale, in the manner provided in the WTPA and this Agreement.

(4) Non-Foreign Affidavit. The Water Supply Corporation shall provide a non-withholding statement that will satisfy the requirements of Section 1445 of the Internal Revenue Code on such form as may be required by the IRS.

(5) Affidavit as to Debts, Liens and Possession and Other Title Company Documents. If SAWS elects in its sole discretion to obtain an Owner's Policy of Title Insurance ("Title Policy"), then the Water Supply Corporation shall provide (a) an affidavit certifying that there are no debts or liens affecting the Water Supply Corporation Project Real Property that will not be released prior to conveyance, nor any rights of parties or tenants in possession except for the Permitted Encumbrances on Conveyance, in a form reasonably acceptable to SAWS, the Water Supply Corporation and the Title Company, and (b) such other documents and miscellaneous forms as are reasonably necessary for the Title Company to issue a Title Policy on the standard form in use in Texas as long as the same do not impose any additional cost or liability upon the Water Supply Corporation beyond its obligations under this Project Real Property Conveyance Agreement.

(6) Evidence of Authority. The Water Supply Corporation shall provide such evidence or other documents as may be reasonably required by SAWS or the Title Company evidencing the status and capacity of the Water Supply Corporation and the authority of the person or persons who are executing the various documents on behalf of the Water Supply Corporation in connection with the assignment and conveyance of the Water Supply Corporation Project Real Property.

(8) Other Documents. The Water Supply Corporation shall provide such other documents as the Title Company and SAWS may reasonably require to consummate the assignment and conveyance contemplated by this Project Real Property Conveyance Agreement.

4.7 Further Assurances. The Water Supply Corporation shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for herein, including executing and delivering such further documents or instruments giving or filing such notices, as SAWS may reasonably request.

4.8 Applicability of Related Provisions. The provisions of Sections 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS made pursuant to a purchase option occurring upon the termination of the Water Purchase and Transmission Agreement prior to the Expiration Date. The provisions of Section 11.7 (Project Asset Transfer Condition) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation

upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS. Additionally, to the extent applicable, Article 15 of the WTPA shall apply to the Water Supply Corporation's obligations to convey Project improvements and tangible personal property in the manner required herein and in the WTPA.

4.9 Indemnity for Prior Activities. The Water Supply Corporation hereby agrees to indemnify, defend and hold harmless SAWS from and against any cost or liability asserted against SAWS, as grantee arising out of or resulting from the Water Supply Corporation's failure to perform any duty, responsibility or obligation under this Real Property Conveyance Agreement prior to the effective date of the assignment or conveyance to SAWS of the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets, and/or any environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow the for the continued use of the Water Supply Corporation Project Assets in the manner contemplated. This paragraph 4.9 shall survive the termination or expiration of this Project Real Property Conveyance Agreement.

## ARTICLE 5

### REMEDIES OF THE PARTIES

5.1 Dispute Resolution. The provisions of Article 18 (Dispute Resolution) of the WTPA shall apply to any dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to any such dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, rather than to a dispute between the Project Company and SAWS pursuant to the WTPA.

5.2 Remedies for Breach. Subject to the provisions of Sections 2.2. and 3.12 of this Real Property Conveyance Agreement, the parties agree that in the event that either party breaches this Project Real Property Conveyance Agreement, the other party may exercise any legal rights it may have under this Project Real Property Conveyance Agreement or under Applicable Law to recover damages or to secure specific performance, subject to the waiver of special, consequential or punitive damages set out in Section 19.6 of the WTPA (which is made applicable herein) and the duty to mitigate damages set out in Section 26.4 of the WTPA, and that such rights to recover damages and to secure specific performance shall constitute the sole and exclusive remedies for any such breach. Notwithstanding the foregoing, neither party shall have the right to terminate this Project Real Property Conveyance Agreement.

5.3 Waiver of Remedies. No failure to exercise, and no delay in exercising, any right or remedy under this Project Real Property Conveyance Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Real Property Conveyance Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

5.4 Exercise of Remedies.

(1) Remedies Cumulative. The rights and remedies of the parties are described in Section 5.2 of this Agreement and this Section 5.4.

(2) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(3) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.5 No Duplicative Recovery or Claims Outside Contract. Every right to claim compensation, indemnification or reimbursement under this Project Real Property Conveyance Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Real Property Conveyance Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Real Property Conveyance Agreement.

## ARTICLE 6

### MISCELLANEOUS

6.1 Recording. Upon the Effective Date, a memorandum of this Project Real Property Conveyance Agreement shall be recorded in the land records of the Counties in which Water Supply Corporation Project Real Property is located in order to (i) make of public record the limitations and restrictions on the Water Supply Corporation's ownership and operation of the Water Supply Corporation Project Real Property during the term of this Project Real Property Conveyance Agreement, and (ii) preserve SAWS' assignment and conveyance rights under Article 4 and make the same of public record. Notwithstanding the foregoing, (a) as reasonably promptly following the Effective Date upon the availability of specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement, (b) upon the Financial Closing Date, and (c) thereafter from time-to-time, at SAWS cost and expense, upon written request from SAWS to the Water Supply Corporation, the Water Supply Corporation shall execute and record in the land records of the Counties in which Water Supply Corporation Project Real Property is located, further memorandums hereof or amendments thereto to attach specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement.

6.2 Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate this Project Real Property Conveyance Agreement or any portion or provision hereof, or would limit the time during which this Project Real Property Conveyance Agreement or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty one (21) years after the death of the last survivor of the now living descendants of the members of Congress of the United States of America (including the House of Representatives and the Senate) who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

6.3 Relationship of the Parties. The Water Supply Corporation is an independent contractor of SAWS with regard to the obligations owed to SAWS under this Real Property Conveyance Agreement, and a subcontractor with regard to the obligations owed by the Water Supply Corporation to the Project Company under the terms of the Transportation Agreement, and the relationship between SAWS and the

Water Supply Corporation shall be limited to performance of this Project Real Property Conveyance Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Real Property Conveyance Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Real Property Conveyance Agreement or the performance thereof.

6.4 No Other Business; No Public Utility.

(1) No Other Business. The Water Supply Corporation shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder without the prior consent of SAWS.

(2) No Public Utility Regulation. The Water Supply Corporation is not and will not by reason of this Project Real Property Conveyance Agreement be providing "retail water utility service" as that term is defined by Section 13.002(20) of the Texas Water Code. This Project Real Property Conveyance Agreement is not a "wholesale water service" agreement as that term is defined by Section 13.002(25) of the Texas Water Code.

6.5 Binding Effect; Term. This Project Real Property Conveyance Agreement shall inure to the benefit of and shall be binding upon SAWS and the Water Supply Corporation and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control) of the WTPA. The term of this Project Real Property Conveyance Agreement shall commence on the Effective Date and shall expire upon the full assignment and conveyance of the Project Assets to SAWS as contemplated herein, except for such provisions as expressly survive such assignment and conveyance..

6.6 Notices, Consents and Approvals.

(1) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Project Real Property Conveyance Agreement shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(a) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(b) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(c) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon

the commencement of business hours on the next Business Day following confirmation of the transmission; and

(d) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(2) SAWS Notice Address. Notices required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(3) Water Supply Corporation Notice Address: Notices required to be given to the Water Supply Corporation shall be addressed as follows:

Central Texas Regional Water Supply Corporation  
P.O. Box 160573  
Austin, Texas 78716  
Attention: President  
Fax No.: 512 732-2252  
Email: secretary@ctrwsc.org

with a copy to:

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway, Building One, Suite 300  
Austin, TX 78746  
Attention: Manuel Mendez  
Fax No.: 512-320-5638  
Email: mmendez@bickerstaff.com  
Phone: 512 472-8021

Section 26.8 of the WTPA is incorporated herein, as applicable, to apply to approvals and consents requested by the Water Supply Corporation in the same manner as requests made by the Project Company under said Section 26.8.

6.7 Notice of Litigation. In the event the Water Supply Corporation or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

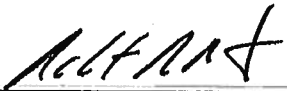
6.8 Further Assurances. The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Real Property Conveyance Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Real Property Conveyance Agreement.

6.9 Commissions. Each party hereby represents and warrants that it has not entered into any agreements which could give rise to a real estate commission being owed as a result of this Project Real Property Conveyance Agreement, and each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost or expense (including reasonable attorneys' fees) resulting to the other party by reason of any brokerage fees or claims by brokers, arising out of any agreement entered into by such party in connection with the Water Supply Corporation Project Real Property.


[Signature Page Follows]

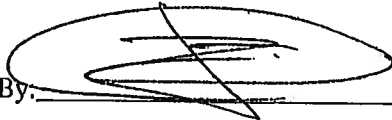
This Project Real Property Conveyance Agreement is executed by the parties below to be effective as of the Effective Date.

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By:   
Name: Robert R. Puente  
Title: President and CEO  
Date: 6/10/16

Central Texas Regional Water Supply Corporation,  
a Texas non-profit water supply corporation

By:   
Name: \_\_\_\_\_  
Title: President  
Date: 5/13/16

By:   
Name: Jordan W. Abauer  
Title: Secretary  
Date: 5/13/16

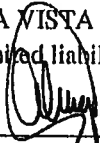


**CONSENT AND JOINDER OF  
PROJECT COMPANY**

By its execution of this Consent and Joinder, Project Company hereby approves this Project Real Property Conveyance Agreement, and consents to its terms, including but not limited to the provisions of Section 3.12, and agrees that, to the extent Project Company is the party acquiring any Project Assets instead of the Water Supply Corporation, Project Company shall acquire, hold, convey, convey in trust and assign such Project Assets in the manner set forth in this Project Real Property Conveyance Agreement, and the applicable terms, provision and conditions of this Project Real Property Conveyance Agreement pertaining thereto shall be interpreted as if written to apply to the Project Company.

**PROJECT COMPANY:**

ABENGOA VISTA RIDGE, LLC,  
a Texas limited liability company

By:   
Name: Pedro Alvarez  
Title: President

SCHEDULE A

WATER SUPPLY CORPORATION FORMATION DOCUMENTS

*See attached*

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Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Carlos H. Cascos  
Secretary of State

**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**Central Texas Regional Water Supply Corporation  
802071610**

The undersigned, as Secretary of State of Texas, hereby certifies that a Restated Certificate of Formation for the above named domestic nonprofit corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 09/18/2015

Effective: 09/18/2015



A handwritten signature in black ink, appearing to read "Cascos".

Carlos H. Cascos  
Secretary of State

**Form 414**  
**(Revised 09/13)**

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709

**Filing Fee: See Instructions**



**Restated Certificate of  
Formation  
With New Amendments**

This space reserved for office use.

**FILED**  
In the Office of the  
Secretary of State of Texas

**SEP 18 2015**

**Corporations Section**

**Entity Information**

The name of the filing entity is:

Central Texas Regional Water Supply Corporation

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- |   |   |
|---|---|
| <input type="checkbox"/> For-profit Corporation           | <input type="checkbox"/> Professional Corporation               |
| <input checked="" type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association          | <input type="checkbox"/> Professional Association               |
| <input type="checkbox"/> Limited Liability Company        | <input type="checkbox"/> Limited Partnership                    |

The file number issued to the filing entity by the secretary of state is: 802071610

The date of formation of the filing entity is: 09/25/2014

**Statement of Approval**

Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the certificate of formation and the restated certificate of formation have been approved in the manner required by the Code and by the governing documents of the entity.

**Required Statements**

The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, and as further amended by the restated certificate of formation. The attached restated certificate of formation does not contain any other change in the certificate of formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity.

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

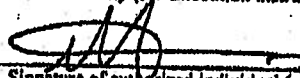
The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: 9/18, 2015

Central Texas Regional Water Supply Corporation  
Name of entity (see Execution instructions)

  
Signature of authorized individual (see instructions)

Michael Irlbeck, President  
Printed or typed name of authorized individual

Attach the text of the amended and restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

**RESTATED CERTIFICATE OF FORMATION  
OF  
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION  
(WITH NEW AMENDMENTS)**

1. The Corporation's Certificate of Formation as amended is hereby restated in its entirety and reads as set forth below:

**ARTICLE ONE**

The name of the Corporation is Central Texas Regional Water Supply Corporation (the "Corporation").

**ARTICLE TWO**

The Corporation is a non-profit corporation organized and operating under Chapters 67 and 49 of the Texas Water Code and Chapter 22, Texas Business Organizations Code, as amended (collectively, the "Acts"). The Corporation is authorized to exercise all powers, privileges and rights conferred on a corporation by the Acts for the purpose of providing water supply, and all powers and rights incidental in carrying out the water supply purpose for which the Corporation is formed, including acquiring, producing, treating, transporting, storing and distributing water, except such powers and rights as are inconsistent with the express provisions of the Acts.

**ARTICLE THREE**

The period of the Corporation's duration is perpetual.

**ARTICLE FOUR**

The Corporation is organized for the exclusive purposes of providing, acquiring, constructing, reconstructing, replacing, extending, improving, expanding, owning, operating, repairing and maintaining water supply pumping, transportation and storage facilities, and appurtenances thereto or property interests related thereto, which may be used for the delivery of water to the San Antonio Water System and its customers, as well as the central Texas region, being a service area of at least four counties, and all matters relating thereto as may be determined by the Board of Directors of the Corporation, from time to time. All of the facilities which may be used for the delivery of water to the San Antonio Water System and its customers, owned by the Corporation shall be transferred to the San Antonio Water System as may be provided by any agreements between the Corporation and the San Antonio Water System or upon dissolution of the Corporation.

**ARTICLE FIVE**

The street address of the registered office of the Corporation is 1999 Bryant Street, Suite 900, Dallas, Texas 75201-3136, and the name of its initial registered agent at that address is CT Corporation System.

**ARTICLE SIX**

The Corporation shall have members. The classes, designations, manner of election or appointment of the Members and the qualifications and rights of the Members shall be as set forth in the bylaws.

**ARTICLE SEVEN**

The number of directors constituting the Board of Directors of the Corporation is four (4). The names and addresses of the persons who are to serve as the directors are:

<u>Name</u>	<u>Address</u>
Richard Morgan	P. O. Box 160573 Austin, TX 78716
Jorge A. Arroyo	129 Kingwood Dr. Elgin, TX 78621
Joaquín Abaurre Benjumea	P. O. Box 160573 Austin, TX 78716
Michael Irlbeck	P. O. Box 160573 Austin, TX 78716

**ARTICLE EIGHT**

The initial bylaws of the Corporation shall be adopted by its Board of Directors and the power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the Board of Directors.

**ARTICLE NINE**

The Corporation is and shall continue to be a Corporation without capital stock.

**ARTICLE TEN**

No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, to the Corporation for monetary damages caused in any way by an act or omission occurring in the Director's capacity as a Director of the Corporation, to the extent provided by Sections 22.221(b), 22.226(b), 22.227 or 22.28, Texas Business Organizations Code, as amended, and shall be entitled to contribution as provided in Section 22.229, Texas Business Organizations Code, as amended. A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in the Director's capacity as a Director, except to the extent a statute of the State of Texas expressly precludes elimination or limitation of such personal liability. Any repeal or modification of this provision of the Certificate of Formation shall be prospective only and shall not adversely affect any limitation of the personal liability of a Director of the Corporation existing at the time of the repeal or modification.

**ARTICLE ELEVEN**

In accordance with the provisions of Section 67.008 of the Texas Water Code, the Corporation will pay annually to political subdivisions, private corporations or other persons that have transacted business with the Corporation during the previous year any profits in direct proportion to the amount of business the Corporation transacts with such person or entity during the year; provided, that the Corporation may not make any such distribution if the Corporation has unpaid indebtedness.

**ARTICLE TWELVE**

The Corporation shall be wound-up, dissolved and terminated in the event a "Termination Date" or "Expiration Date" (as such terms are defined in that certain "Vista Ridge Project Real Property Conveyance Agreement" to be entered into between the City of San Antonio, Texas, acting by and through the San Antonio Water System, an agency of the City of San Antonio, and the Corporation) has occurred. Upon such event requiring winding-up (as such term is used in Section 11.051(3) of the Texas Business Organizations Code), after all liabilities and obligations of the Corporation are paid, satisfied, discharged or provided for, the remaining assets of the Corporation shall be transferred to the San Antonio Water System in accordance with the provisions of Section 11.30 of the Texas Tax Code because the San Antonio Water System provides water supply and wastewater service and is exempt from ad valorem taxation.



**SCHEDULE B**

**WATER SUPPLY CORPORATION BYLAWS**

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*See attached*

**AMENDED AND RESTATED BYLAWS (WITH NEW AMENDMENTS)  
of the  
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION**

These Amended and Restated Bylaws of Central Texas Regional Water Supply Corporation (the "Corporation"), having been presented to the Board of Directors of said Corporation and duly adopted as follows:

**ARTICLE I**

The Corporation may have such officers as the Board of Directors determines and appoints from time to time including, without limitation, a President, Vice President, Secretary and Treasurer. One person may hold two or more offices; provided, however, that President and Secretary shall not be the same person. Terms of any officers elected after the organizational meeting shall commence on the date of the annual meeting following their election by the Board and shall end on the date of the annual meeting of the Members that is two (2) years subsequent.

**ARTICLE II**

The President shall preside at all meetings of the Members and Directors. The President may, and upon demand of any Member shall, call a special meeting of the Members or the Directors. Such special meetings shall be held upon giving the notice required in Article VII of these Bylaws. The President shall also have such authority and duties as usually pertain to such office and such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

**ARTICLE III**

The Vice President shall, in case of the absence or disability of the President, perform the duties of the President. The Vice President shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

**ARTICLE IV**

The Secretary shall keep minutes of all meetings of the Members and the Directors. The Secretary shall have custody of the seal of the Corporation and affix it as directed hereby or by resolution passed by the Board of Directors. The Secretary shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy secretary to assist the Secretary in all official duties pertaining to the office of the Secretary.

**ARTICLE V**

The Treasurer shall have the custody of all the monies and securities of the Corporation. The Treasurer shall keep regular books. All monies of the Corporation shall be deposited by the Treasurer in such depository as shall be selected by the Board of Directors. All checks or demands for money and notes of the Corporation shall be signed by the Treasurer or such other officer or officers as the Board of Directors may from time to time designate. The Treasurer

shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy treasurer to assist the Treasurer in all official duties pertaining to the office of the Treasurer.

The position of the Treasurer and other positions entrusted with receipt and disbursement of funds shall be placed under a fidelity bond in an amount which shall be set from time to time, but not less than once each year, by the Board of Directors.

## ARTICLE VI

Section 1. The Board of Directors shall initially consist of four (4) Directors, a majority of whom shall constitute a quorum. Each Director shall be a Member and shall satisfy all other applicable requirements of Chapter 67 of the Texas Water Code and other applicable law. The number of Directors may be increased or decreased from time to time by an amendment to these Bylaws, provided that the number of Directors may not be decreased to fewer than three (3) or increased to more than twenty-one (21). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Upon formation of the Corporation, and annually thereafter at the time of the annual meeting of the Members, the Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer. The initial Board of Directors shall serve until replaced by the subsequent Directors that are elected or appointed as herein provided.

Section 2. At the first annual meeting of the Members (and at subsequent annual meetings to the extent necessary), the Directors shall be divided into three (3) classes, each class to be as near as equal in number as possible. The terms of the Directors of the first class shall expire at the first annual meeting of the Members after their election; the terms of the Directors of the second class shall expire at the second annual meeting of the Members after their election; and the terms of the Directors of the third class shall expire at the third annual meeting of the Members after their election. At each annual meeting after such classification, the number of Directors equal to the number of class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting. The Directors may receive such directors' fees (not to exceed \$5,000 per year) as the Directors may approve by majority vote and shall be reimbursed for actual expenses incurred in their duties as directors. Any vacancy occurring in the Board of Directors, whether due to death, resignation, removal or otherwise, may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of the previous Director. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election by the Members at an annual meeting or at a special meeting of the Members, called for that purpose. Any Director may be removed from office at any time, with or without cause, by vote of a majority of the Members.

Section 3. The Directors may meet by video conference as permitted by Chapter 6, Texas Business Organizations Code, as amended (the "BOC"), but only in the manner and to the extent permitted by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended (the "Open Meetings Act"). The Board may appoint committees to act on behalf of the Board as authorized by the BOC or to act in an advisory or fact-finding capacity.

## ARTICLE VII

Section 1. All meetings of the Board of Directors shall be held at such time and place as the President or the Board may determine and the conduct and notice of said meeting shall comply with any applicable provisions of the Open Meetings Act. Each Director shall be given 72 hours prior notice or shall sign a waiver of notice.

Section 2. The Board of Directors shall provide access for the public, new service applicants, or the Members to the meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

## ARTICLE VIII

The Directors of the Corporation shall establish and maintain, in an institution insured by the State or Federal Government, or invested in readily marketable securities backed by the full faith and credit of the United States of America, all funds of the Corporation.

## ARTICLE IX

Section 1. The Corporation shall have Members. Members shall consist of those persons who are elected to serve on the Corporation's Board of Directors, but only so long as such person continues to serve as a director. If a Director resigns, is removed or dies, such director shall automatically cease to be a Member of the Corporation. The initial Members shall be the four persons designated as Directors in the Corporation's Certificate of Formation. Members shall each have one vote in the election of Directors. Members shall have no other voting rights and shall not be required to approve any transactions by the Corporation (or any amendments to the Corporation's Certificate of Formation or Bylaws) that are approved by the Board of Directors.

Section 2. The Members shall elect the Directors at any annual or special meeting of the Members. Each Member shall have one vote in such election and the action of a majority of the Members shall be required to elect Directors.

Section 3. Membership rights of Members shall not be assignable or transferable, either voluntarily or involuntarily.

## ARTICLE X

There shall be a regular meeting of the Members held annually to transact all business that may be properly brought before it on such date and at such time as the Board of Directors shall fix and set forth in the notice of meeting. The Secretary shall give at least fifteen (15) days' written notice of such annual meeting to the Members indicating the time, place and purpose of such meeting, and shall address and mail the notice to each of the Members at the address last known to the Corporation. Failure to hold or call an annual or special meeting in accordance with these Bylaws shall give the Members the right to compel the Board of Directors to properly hold an annual or special meeting of the Members.

**ARTICLE XI**

Prior to convening any special meeting of the Members, the President shall request in writing that the Secretary give at least ten (10) days' notice to the Members, and that such special meeting is otherwise noticed as provided under Article VII of these Bylaws. Such notice shall specify the time, place and purpose of the meeting, and shall be addressed and mailed to each Member at the address last known to the Corporation.

**ARTICLE XII**

The business of the Corporation may be handled under the direction of the Board of Directors by a manager to be elected by a majority of the Board. The manager shall serve with or without compensation. The manager, with the approval of the Board of Directors, may employ, with or without compensation, such supervisory, clerical or other employees as may be required to effectively operate the business of the Corporation.

**ARTICLE XIII**

Upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation remaining after discharge of the indebtedness of the Corporation shall be transferred to SAWS in accordance with the provisions of Section 11.30 of the Texas Tax Code because SAWS provides water supply and wastewater service and is exempt from ad valorem taxation.

**ARTICLE XIV**

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

**ARTICLE XV**

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Members, Board of Directors, and committees, and shall keep a record of the names and addresses of its Members at its registered office or principal office in Texas.

Annually, the Board of Directors shall prepare or cause to be prepared a report of the financial activity of the Corporation for the preceding year, including a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses and balance sheets for all funds. Such reports shall be submitted for approval to the Board of Directors.

With prior written request, corporate records, books and annual reports, subject to exceptions provided by law, shall be available for public inspection and copying by the public or their duly authorized representatives during normal business hours subject to a reasonable charge for the preparation of copies.

## ARTICLE XVI

The Corporation shall not provide retail water or sewer service as such terms are used in Sections 67.0052-67.007 of the Texas Water Code. Accordingly, under Section 67.0075 of the Texas Water Code, annual meetings and election of directors shall be conducted in compliance with Chapter 22 of the BOC. Annual meetings, as well as all other meetings held by the Corporation, are also subject to the Open Meetings Act. If any provision of these Bylaws is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of these Bylaws. In the event that the Texas Water Code or any other applicable statute is hereafter amended to change any governance requirements applicable to the Corporation, these Bylaws and, if necessary, the Corporation's Certificate of Formation, shall be amended to comply with such new governance requirements.

## ARTICLE XVII

The Corporation (i) shall make distributions at a time and in a manner as not to subject it to tax under Section 4942 of the Internal Revenue Code (the "Code"); (ii) shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; (iii) shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; (iv) shall not make any investments which would subject it to tax under Section 4944 of the Code; and (v) shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code.

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under the Code and related regulations, rulings and procedures. Regardless of any other provision in these Bylaws or state law, the Corporation may not:

1. Engage in activities or use its assets in manners that do not further one or more exempt purposes, as set forth in these Bylaws and defined by the Code and related regulations, rulings and procedures, except to an insubstantial degree.
2. Serve a private interest other than one clearly incidental to an overriding public interest.
3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Code and related regulations, rulings and procedures.
4. Participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include publishing or distributing statements and any other direct or indirect campaign activities.
5. Have objectives characterizing it as an "action organization" as defined by the Code and related regulations, rulings and procedures.
6. Distribute its assets on dissolution other than for one or more exempt purposes. On dissolution, the Corporation's assets remaining after payment of the

indebtedness of the Corporation will be distributed to SAWS as set forth in Article XIII hereof, to be used to accomplish the general purposes for which the Corporation was organized.

7. Permit any part of the Corporation's net earnings to inure to the benefit of any private individual.
  8. Carry on an unrelated trade or business, except as a secondary purpose related to the Corporation's primary, exempt purposes.
- 

#### **ARTICLE XVIII**

These Bylaws may be altered, amended or repealed by a majority vote of the Board of Directors at a meeting of the Board of Directors or by a vote of the Members present at any regular meeting of the Corporation, or at any special meeting of the Corporation called for that purpose, except that neither the Board of Directors nor the Members shall have the power to change the purpose of the Corporation so as to decrease its rights and powers under the laws of the State, or to waive any requirements of bond or other provisions for the safety and security of the property and funds of the Corporation or its Members, or to deprive the Members of rights and privileges then existing, or so to amend these Bylaws as to effect a fundamental change in the policies or purposes of the Corporation. Notice of any amendment must be given to all members of the Board of Directors and the Members at least ten (10) days before such meeting and must set forth the amendments to be considered.

#### **ARTICLE XIX**

The seal of the Corporation shall consist of a circle within which shall be inscribed "CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION."

#### **ARTICLE XX**

The Corporation pledges its assets for use in performing the organization's non-profit functions.

**ARTICLE XXI**

The above Amended and Restated Bylaws and regulations were unanimously adopted by the Board of Directors of the CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, at a meeting held on the 18th day of September, 2015.

CENTRAL TEXAS REGIONAL WATER  
SUPPLY CORPORATION

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By: 

Joaquín Abaurré Benjumea

Vice President, Secretary and Treasurer



**TRANSACTION FORM G**

**TRANSFER AND ASSIGNMENT OF LETTER OF INTENT RELEASING PROJECT COMPANY  
UNDER GREENBRIDGE TRANSACTION**

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**TRANSFER AND ASSIGNMENT OF LETTER OF INTENT**

This Transfer and Assignment of Letter of Intent (this “Agreement”), dated as of June 10, 2016, is made and entered into by and between Abengoa Greenbridge, S.A.U. (“Greenbridge”), a Spanish company, Abeinsa Abeinsa Teyma General Partnership (“Abeinsa”), a Delaware general partnership, and Abengoa Vista Ridge, LLC (“AVR”), a Delaware limited liability company (each a “Party” and collectively the “Parties”).

*Recitals*

WHEREAS, AVR and the City of San Antonio (the “City”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), have entered into that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement dated as of November 4, 2014 (the “WTPA”);

WHEREAS, pursuant to and in accordance with the WTPA, Abeinsa was named as the “EPC Contractor” under the terms of the WTPA for the construction of the Project (as defined in the WTPA);

WHEREAS, Abeinsa, as the EPC Contractor, was to execute, among other tasks, certain engineering work and other studies to provide technical certainty about the project design, feasibility and environmental circumstances relating to the Project before setting a construction price with AVR for the Project (the “Abeinsa Obligations”);

WHEREAS, AVR and Abeinsa entered into that certain Letter of Intent dated December 12, 2014 (“LOI”), whereby (i) AVR agreed to provide advance funding to Abeinsa to enable Abeinsa to perform the Abeinsa Obligations as the EPC Contractor, and (ii) agreed to pay Abeinsa Sixty Two Million Five Hundred Thousand United States Dollars (\$62,500,000) for the future performance of the Abeinsa Obligations (“Initial EPC Payment”);

WHEREAS, AVR and Greenbridge entered into that certain Contrato de Credito Reciproco dated December 17, 2014, which was amended January 1, 2015 (the “Reciprocal Credit Agreement”) for the purpose of providing funds to AVR for the payment to Abeinsa of the Initial EPC Payment;

WHEREAS, on or about December 18, 2014, Greenbridge advanced to AVR an amount equal to the Initial EPC Payment under the terms of the Reciprocal Credit Agreement (the “Sole Advance”), which funds were subsequently paid to Abeinsa as the Initial EPC Payment;

WHEREAS, Garney P3, LLC, Garney Companies, Inc., Garney Holding Company, Abengoa Water USA, LLC, Abengoa S.A., and AVR subsequently entered into that certain Membership Interest and Purchase Agreement originally dated March 21, 2016 and amended on June 2, 2016 (as amended, the “MIPA”), whereby Abengoa Water USA, LLC (“Abengoa Water”) agreed to sell, and Garney P3, LLC (“Garney P3”) agreed to purchase, 80% of Abengoa Water’s membership interest in AVR;

WHEREAS, under the terms of the MIPA the following are conditions to Closing (as defined in the MIPA) (among others): (i) an assignment by AVR of all its rights and obligations under the LOI to Greenbridge and a mutual release between Abeinsa and AVR from the obligations owed to each other thereunder and (ii) that the Reciprocal Credit Agreement will be terminated;

WHEREAS, under the terms of the MIPA it has been agreed that (i) Abeinsa will be removed as the EPC Contractor under the terms of the WTPA, (ii) as of the Closing, AVR will assign all its rights and

obligations under the LOI to Greenbridge in full satisfaction of the obligations owed by AVR to Greenbridge under the terms of the Reciprocal Credit Agreement;

WHEREAS, AVR and Abeinsa have agreed to allow the LOI to be modified to allow Greenbridge to cause Abeinsa to provide to Greenbridge or its assigns the Abeinsa Obligations in connection with a future project or projects to be designated by Greenbridge, subject to the mutual agreement of Abeinsa and Greenbridge with regard to the terms and conditions of such future project;

WHEREAS, based upon the totality of the agreements entered into in connection with the MIPA, including the agreements among Greenbridge, Abengoa S.A., Abeinsa, CTRWSC and AVR, and the benefits provided thereby to each of the parties thereto, Greenbridge has agreed to accept, in full satisfaction of the obligations that AVR owes to Greenbridge under the Reciprocal Credit Agreement, the assignment of AVR's rights under the LOI, which exchange Greenbridge and AVR each agree and acknowledge, after reasonable diligence and negotiation, constitutes an exchange of reasonably equivalent value.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Greenbridge, Abeinsa and AVR hereby agree as follows:

#### *TERMS*

1. Modification of the Letter of Intent. Effective as of the Closing Date (as defined in the MIPA), the LOI, a copy of which is attached hereto as Exhibit "A", is hereby modified to allow Greenbridge, its successor or assigns to call upon Abeinsa under the terms of the LOI to provide to Greenbridge or its assigns the Abeinsa Obligations relating to a future project or projects to be designate by Greenbridge (the "Substitute Project"), provided the Substitute Project is approved by Abeinsa, which approval may not be unreasonably withheld, conditioned or delayed.

2. Assignment. Effective as of the Closing Date, AVR hereby transfers, assigns and conveys to Greenbridge all of its rights under the LOI to Greenbridge, and Greenbridge accepts the assignment and transfer all of AVR's rights under the LOI, as a full payment of the entire debt and interest under the Reciprocal Credit Agreement and all of AVR's obligations thereunder. In connection with such transfer, assignment and conveyances Greenbridge and AVR hereby terminate the Reciprocal Credit Agreement, together with any and all rights, duties and obligations of AVR thereunder.

3. Consent to Assignment. Effective as of the Closing Date, Abeinsa hereby approves the modifications to the LOI as set out in Section 1, above, and consents to the assignment of the LOI to Greenbridge.

4. Verification of Fair Value. Greenbridge and AVR do hereby agree, acknowledge and confirm that, in the context of the various agreements being entered into in connection with the MIPA, the value of AVR's rights under the LOI, as amended and as assigned to Greenbridge hereunder, (a) have a value to Greenbridge that is reasonably equivalent to the value of the claims that Greenbridge has against AVR in connection with the Reciprocal Credit Agreement, which claims are being released pursuant to Section 6 hereof, and (b) have a value to AVR that is reasonably equivalent to the value of the obligations that AVR owes to Greenbridge under the Reciprocal Credit Agreement that are being released pursuant to Section 6 hereof.

5. Ratification of Duties. Effective as of the Closing Date, Abeinsa hereby ratifies and confirms its continued obligation under the terms of the LOI and accepts its obligation to perform the

Abeinsa Obligations and services thereunder to or for the benefit of Greenbridge, its successor or assigns, as approved by Abeinsa, which approval shall not be unreasonably withheld, conditioned or delayed.

6. Release. Effective as of the Closing Date, Greenbridge hereby releases AVR, together with all of its respective prior or current employees, managers, directors, officers, agents, legal representatives and affiliates, successors and assigns, as well as the employees, managers, directors and officers of such entities who served in any such capacities at any time prior to the Closing (excluding Abeinsa) (the "AVR Parties"), from and against any and all claims, actions, suits, demands, payment obligations or other obligations or liabilities of any nature whatsoever, at law or in equity, whether now or in the future existing, known or unknown, ("Claims") arising under, in connection with or in relation to (i) the Reciprocal Credit Agreement, and (ii) the use, delivery and/or payment of the Initial EPC Payment. Greenbridge hereby expressly releases the AVR Parties from any Claim for repayment or reimbursement of the sums due under the Reciprocal Credit Agreement and agrees to accept the assignment from AVR of all of AVR's rights under the LOI as a full payment and discharge of all obligations owed by AVR to Greenbridge under the Reciprocal Credit Agreement.

7. Certain Defenses. In the event a Party files an action to avoid or otherwise set aside the release contained herein or an indemnity provided for herein, or in connection with a filing in a bankruptcy there is a filing by any affiliate of a Party, as defined in 11 U.S.C. Section 101(2), or a trustee or other estate representative of such Party or affiliate of such Party (any of which shall be referred to as a "Challenger Party") to avoid or otherwise set aside the release or an indemnity contained herein for a Party, then the releases and indemnities contained in this Agreement in favor of such Challenger Party shall be void and of no effect and the Party against whom the release or indemnity has so been challenged shall continue to have all claims, rights and defenses against the Challenger Party and its affiliates that such non-Challenger Party had as of the date of this Agreement.

8. GENERAL PROVISIONS.

- a. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
- b. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter.
- c. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same agreement. Any signature page to any such counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto, except having attached to it such additional signature pages. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all parties required to bind any party, appear on each counterpart
- d. Fax or electronic signatures of any party to this Agreement will be accepted by each of the parties hereto as originals.
- e. This Agreement is to be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without regard to its rules of conflict of laws.

- f. This Agreement shall be binding upon each of the parties hereto, as well as their successor and assigns.
- g. Should any party to this Agreement file suit to enforce this Agreement or its alleged breach, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs.


*[Remainder of Page Left Intentionally Blank – Signature Page to Follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**ABENGOA GREENBRIDGE, S.A.U.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABEINSA ABEIMA TEYMA GENERAL PARTNERSHIP**

By:  \_\_\_\_\_  
Name: Leonardo B. Maccio  
Title: Authorized Representative

**ABENGOA VISTA RIDGE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Transfer and Assignment of Letter of Intent]*

KCP-4697437

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.


**ABENGOA GREENBRIDGE, S.A.U.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABEINSA ABEIMA TEYMA GENERAL PARTNERSHIP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABENGOA VISTA RIDGE, LLC**

By:   
Name: Pedro Almagro Gantán  
Title: Resident

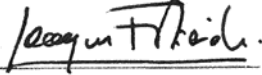
*[Signature Page to Transfer and Assignment of Letter of Intent]*

KCP-4697437



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

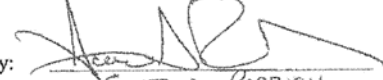
**ABENGOA GREENBRIDGE, S.A.U.**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABEINSA ABEIMA TEYMA GENERAL PARTNERSHIP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABENGOA VISTA RIDGE, LLC**

By:   
Name: SCOTT A. PARRISH  
Title: SENIOR V.P.

*[Signature Page to Transfer and Assignment of Letter of Intent]*

KCP-4697437

**TRANSACTION FORM H**  
**CREDITORS' REMEDIES AGREEMENT**

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**CREDITORS' REMEDIES AGREEMENT**

This Creditors' Remedies Agreement (the "Agreement") is made and entered into as of November 2, 2016, by and among THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, an agency of the City of San Antonio, Texas, established pursuant to the provisions of SAWS Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("SAWS"); VISTA RIDGE LLC (f/k/a Abengoa Vista Ridge, LLC), a limited liability company organized and existing under the laws of the State of Delaware ("Vista Ridge"); CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, a not for profit water supply corporation organized under Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code ("CTRWSC"); and SUMITOMO MITSUI BANKING CORPORATION, as Collateral Agent under the Depositary Agreement (as defined below) (the "Creditors' Agent").

**RECITALS**

**WHEREAS**, SAWS and Vista Ridge have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended pursuant to an Consent to the Garney Change of Control and Conforming Amendments to the Water Transmission and Purchase Agreement, dated as of June 10, 2016 (as further amended, amended and restated, supplemented or otherwise modified from time to time, the "WTPA"), in connection with the design, installation, operation and maintenance of a water supply project consisting of the production, treatment, delivery and sale to SAWS of up to 50,000 acre feet per year of potable water and as more particularly described in the WTPA (the "Project");

**WHEREAS**, SAWS and CTRWSC (as acknowledged, consented to and joined by Vista Ridge) have entered into the Vista Ridge Project Real Property Conveyance Agreement, dated as of June 10, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "RPCA"), in connection with (i) acquisition of easements, rights of way and other Project Real Property necessary to construct the Project Improvements, (ii) construction, operation and maintenance of the Project Improvements, and (iii) conveyance of the Project Real Property and Project Improvements owned by CTRWSC to SAWS on the Expiration Date or the Termination Date as provided in the WTPA and the RPCA;

**WHEREAS**, the Creditors' Agent is appointed by the Secured Parties (as defined in the Depositary Agreement) as the collateral agent for the Secured Parties (in such capacity, together with its successors and assigns, the "Collateral Agent") under the Collateral Agency and Depositary Agreement, dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Depositary Agreement"), by and among Vista Ridge, CTRWSC, the Creditors' Agent, and Sumitomo Mitsui Banking Corporation as administrative agent ("Administrative Agent") and depositary bank; and

**WHEREAS**, it is a requirement under the Credit Agreement dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the,

“Credit Agreement”), among Vista Ridge, CTRWSC, the lenders and DSRA L/C Issuing Banks (as defined therein) party thereto from time to time, and Administrative Agent, that the parties hereto execute and deliver this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

### **ARTICLE 1**

#### **DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

##### **Section 1.01 Definitions**

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in the WTPA, and if not set forth therein, in the RPCA. In addition, the following terms have the meanings specified below:

**Actual Knowledge** means, with respect to SAWS, actual knowledge of, or receipt of written notice by, the SAWS Representative, or any officer or manager to whom the SAWS Representative reports and whose responsibilities include the oversight of the Project.

**Assigned Agreement** means the WTPA and/or the RPCA, as the context requires.

**Assignor** means Vista Ridge and/or CTRWSC, as the context requires.

**Designated Account** means (a) prior to the receipt by SAWS of a written notice from the Creditors’ Agent that COD (as defined in the Credit Agreement) has occurred, Citibank, N.A., New York (ABA No. 021000089), for the account of Sumitomo Mitsui Banking Corporation, New York Branch, Account No. 36023837, Ref: Account No. 334960 Account Name: Construction Account, (b) on and after the receipt by SAWS of a written notice from the Creditors’ Agent that COD (as defined in the Credit Agreement) has occurred, Citibank, N.A., New York (ABA No. 021000089), for the account of Sumitomo Mitsui Banking Corporation, New York Branch, Account No. 36023837, Ref: Account No. 334942 Account Name: Revenue Account, or (c) such other account as may be agreed upon by Vista Ridge pursuant to the Senior Debt Financing Agreements and specified from time to time by the Creditors’ Agent to SAWS in writing.

**Discharge Date** means the date on which all of the monetary obligations of each Assignor under the Senior Debt Financing Agreements have been irrevocably discharged in full to the satisfaction of the Creditors’ Agent.

**Lien Priority Agreement** means the Lien Priority Agreement, dated as of the date hereof, by and between SAWS and the Collateral Agent.

**Property** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

**Qualified Substitute Project Company** means a Person who:

- (a) is a special purpose entity that has the legal capacity, power and authority to become a party to, and perform the obligations of the Assignor under the applicable Assigned Agreement;
- (b) employs or has subcontracted with persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Assignor under the applicable Assigned Agreement;
- (c) is not a Restricted Person or an Affiliate of a Restricted Person;
- (d) is no less creditworthy than the Assignor under the applicable Assigned Agreement as of the date of this Agreement;
- (e) the designation of whom as the Substitute is not reasonably likely to result in a material adverse effect on SAWS or the Project; and
- (f) with respect to the any successor to or transferee of CTRWSC under the RPCA, has the same powers and immunities as CTRWSC, including but not limited to any governmental and quasi-governmental rights, powers and immunities, an exemption from real property taxes and other *ad valorem* or similar taxes, charges and assessments, exemption from state and federal income tax (if applicable), and power of eminent domain.

**SAWS Notice** has the meaning given to it in Section 2.02(a).

**Senior Debt Financing Agreements** has the meaning given to the term Financing Documents (as defined in the Credit Agreement).

**Senior Debt Financing Agreements Event of Default** has the meaning given to the term Event of Default in the Senior Debt Financing Agreements.

**Substitute** has the meaning given to it in Section 5.01.

**Substitute Accession Agreement** has the meaning given to it in Section 6.01.

**Substitution Effective Date** has the meaning given to it in Section 6.01.

**Substitution Notice** has the meaning given to it in Section 5.01(a).

## **Section 1.02 Order of Precedence**

In the event of any conflict, ambiguity or inconsistency between the provisions of the WTPA or the RPCA, on the one hand and the provisions of this Agreement, on the other hand, the provisions of this Agreement shall prevail.

## **ARTICLE 2**

### **CONSENT TO SECURITY AND NOTICES**

#### **Section 2.01 Consent to Security**

Notwithstanding anything to the contrary in any Assigned Agreement:

(a) SAWS acknowledges notice and receipt of and consents to:

(i) the collateral assignment by Vista Ridge to the Creditors' Agent of all of Vista Ridge's interests in each Assigned Agreement pursuant to the Senior Debt Financing Agreements;

(ii) the collateral assignment by CTRWSC to the Creditors' Agent of all of CTRWSC's interests in the RPCA pursuant to the Senior Debt Financing Agreements;

(iii) the mortgage and security interest granted by each Assignor to the Creditors' Agent of all of the assets of such Assignor, including the Project, and including the assignment and security interest in all permits and Project Contracts to which such Assignor is a party; and

(iv) the grant by each member of Vista Ridge to the Creditors' Agent of a security interest in its respective limited liability company interests in Vista Ridge, in each case pursuant to the Senior Debt Financing Agreements;

(b) the granting of the security interests referred to in Section 2.01(a) does not:

(i) constitute (or with the giving of notice or lapse of time, or both, could constitute) either a breach of the WTPA or the RPCA, a Project Company Remediable Breach or a Project Company Event of Default; or

(ii) require any consent of SAWS that is either additional or supplemental to those granted pursuant to this Section 2.01 as a condition to or requirement for the creation of the liens, pledges and security interests identified in Section 2.01(a);

(c) until the Discharge Date, SAWS shall not, without the prior written consent of the Creditors' Agent:

(i) consent (to the extent, if any, SAWS has such right to consent) to any assignment, transfer, pledge or hypothecation of (x) any Assigned Agreement or any

interest therein by Vista Ridge, other than as specified in this Agreement or as may be required of SAWS under such Assigned Agreement or (y) the RPCA or any interest therein by CTRWSC, other than as specified in this Agreement or as may be required of SAWS under the RPCA;

(ii) enter into any consensual cancellation or termination of any Assigned Agreement except pursuant to the terms of such Assigned Agreement;

(iii) assign, novate or otherwise transfer (by operation of law or otherwise) any of its right, title or interest under any Assigned Agreement, except to another Governmental Body to which all or substantially all of the revenues, assets and liabilities constituting the SAWS municipal utility water enterprise are transferred as contemplated in Section 24.4 of the WTPA;

(iv) petition, request or take any other legal or administrative action which seeks, or may reasonably be expected, to rescind, terminate or suspend or amend or modify any Assigned Agreement except in furtherance of actions permitted under this Agreement; or

(v) enter into or agree to any material written amendment, material written supplement or other material written modification to any Assigned Agreement, provided that, in the case of the WTPA, the foregoing shall not be construed as affecting Contract Administration Memoranda pursuant to Section 26.6 of the WTPA.

## **Section 2.02 Notice Requirements**

(a) SAWS shall deliver to the Creditors' Agent, concurrently with the delivery thereof to Vista Ridge, a copy of each (i) notice of any Project Company Event of Default, Project Company Remediable Breach or acceptance or non-acceptance of Vista Ridge's remedial program with respect thereto, (ii) direction pursuant to Section 5.8 of the WTPA to make a SAWS-Requested Design Requirement Change reasonably expected to increase design and construction costs by more than \$1,000,000, and (iii) request pursuant to Section 12.4(B) of the WTPA for a Capital Modification.

(b) SAWS shall deliver to the Creditors' Agent, concurrently with the delivery thereof to CTRWSC or Vista Ridge, a copy of any notice of breach or default of the RPCA given by SAWS, and of any notice of SAWS' exercise of its option to purchase the Water Supply Corporation Project Assets (as defined in the RPCA).

(c) SAWS shall give the Creditors' Agent written notice, concurrently with the delivery thereof to Vista Ridge or CTRWSC, as applicable, of the occurrence of any Default (as defined below) (a "SAWS Notice").

(d) A SAWS Notice shall contain a reasonable summary of the facts relating to the relevant event, including, to the extent of SAWS's Actual Knowledge, amounts due and payable to SAWS by the applicable Assignor under any applicable Assigned Agreement. Upon written requests from the Creditors' Agent, which may be delivered from time to time at reasonable



intervals, SAWS shall update any SAWS Notice based upon its Actual Knowledge at the time of the request. No failure or delay in giving any SAWS Notice or in responding to an update request, or the omission of any information from any SAWS Notice, shall constitute a waiver of or otherwise impair SAWS's right to payment or performance of any obligation of any Assignor under the applicable Assigned Agreement. No such update, shall be construed as entitling the Creditors' Agent to any extension of any cure period or any additional cure period, except to the extent that any update asserts the occurrence of a new Default.

(e) The Creditors' Agent shall notify SAWS of any Senior Debt Financing Agreements Event of Default and of any decision to accelerate amounts outstanding under the Senior Debt Financing Agreements or to exercise any enforcement remedies under the Senior Debt Financing Agreements, in each instance contemporaneously with notification thereof to the Assignors.

(f) The Creditors' Agent shall notify SAWS of: (i) any proposed amendment to: (A) the definition of Operating and Maintenance Expenses in the Credit Agreement, if such proposed amendment would affect clause (k) of such definition and (B) the inclusion of amounts payable as Operating and Maintenance Expenses in clause (B) of Section 3.03(a)(iii) and in clause (B) of Section 3.03(b)(i) of the Depositary Agreement; and (ii) (A) any proposed increase in the aggregate principal amount of the Loans (other than (x) treating overdue amounts as principal and (y) capitalizing interest during the construction period by increasing the principal amount on each interest payment date by the amount of the applicable interest payment) including, without limitation, the advancing of funds pursuant to the Credit Agreement in excess of the principal amount of the initial Loans and the re-lending of principal that has been repaid, (B) any proposed restructuring of the principal amortization of the Loans (including by use of hedging arrangements), in either case which proposed increase or restructuring would have the effect of increasing the portion of the Project Assets Purchase Price attributable to the Loans or (C) any other amendment, modification or action otherwise has the effect of increasing the portion of the Project Assets Purchase Price attributable to Senior Debt.

### **ARTICLE 3**

#### **RIGHTS AND OBLIGATIONS UNTIL END OF CURE PERIOD**

##### **Section 3.01 No Termination until end of Cure Period**

(a) SAWS will not terminate any Assigned Agreement or suspend performance of its services under any Assigned Agreement on account of any default or breach of Vista Ridge or CTRWSC, as applicable, under such Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under any Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, entitle SAWS to terminate or suspend performance under such Assigned Agreement (such default, breach, event or condition, a "Default"), without written notice to the Creditors' Agent and first providing to the Creditors' Agent one hundred eighty days (180) days (or, in the case of the WTPA, thirty (30) days if such Default is a Project Company Event of Default under Section 20.1(B)(4), Section 20.1(B)(5)(a) or Section 20.1(B)(7) of the WTPA if a substantially similar Project Company Event

of Default occurred under Section 20.1(B)(4), Section 20.1(B)(5)(a) or Section 20.1(B)(7) of the WTPA, as applicable, within the immediately preceding two years (the “Public Safety Default”) from the later of (i) the date notice of Default is delivered to the Creditors’ Agent to cure such Default and (ii) the date the cure period of Vista Ridge or CTRWSC, as applicable, set forth in the such Assigned Agreement expires, to cure such Default, so long as the Creditors’ Agent shall have commenced to cure the Default within such one hundred eighty (180)-day period (or, in the case of the WTPA, such thirty (30)-day period if such Default is a repeated Public Safety Default with two (2) years of the occurrence of such prior Public Safety Default) and thereafter diligently pursues such cure to completion and continues to perform any monetary obligations under such Assigned Agreement, and all other obligations under such Assigned Agreement are performed by Vista Ridge or CTRWSC, as applicable, or the Creditors’ Agent, provided that, in each instance nothing herein shall impair SAWS’s right to exercise such remedies as it may have under such Assigned Agreement other than termination or suspension of performance, including but not limited to rights of deduction or setoff and the right to seek such legal or equitable remedies as may be available under such Assigned Agreement or otherwise. If possession of the Project is necessary to cure such Default, and the Creditors’ Agent declares Vista Ridge or CTRWSC, as applicable, in default and commences foreclosure proceedings, the Creditors’ Agent will be allowed a reasonable period to complete such proceedings. If the Creditors’ Agent is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition.

(b) No cancellation, suspension or termination of any Assigned Agreement by SAWS shall be binding upon the Creditors’ Agent without the expiration of the applicable cure period under Section 3.01(a). Any dispute that may arise under any Assigned Agreement notwithstanding, SAWS shall continue performance under such Assigned Agreement, subject to and until the expiration of the applicable cure period provided under Section 3.01(a).

(c) The Creditors’ Agent shall be entitled to (but shall have no obligation to), at its sole option and discretion, in respect of any Assignor under any applicable Assigned Agreement, perform or arrange for the performance of any act, duty, or obligation required of such Assignor under such Assigned Agreement, remedy any breach of such Assignor under such Assigned Agreement at any time, or exercise any other right of such Assignor, in each instance if the Creditors’ Agent is entitled to take such action under the Senior Debt Financing Agreements and in accordance with the applicable requirements and standards of such Assigned Agreement, which performance or remedy by or on behalf of the Creditors’ Agent shall be accepted by SAWS in lieu of performance by such Assignor, and in satisfaction of the obligations of such Assignor under such Assigned Agreement. In such event SAWS shall continue to perform its obligations under such Assigned Agreement, pursuant to the terms thereof. To the extent that any breach of any Assignor under any Assigned Agreement is remedied and/or any payment liabilities or obligations of any Assignor are performed by the Creditors’ Agent under this Section 3.01(c), such action shall discharge the relevant liabilities or obligations of such Assignor to SAWS. No such performance by or on behalf of the Creditors’ Agent under this Section 3.01(c) shall be construed as an assumption by the Creditors’ Agent, or any person acting on the Creditors’ Agent’s behalf, of any of the covenants, agreements or other obligations of any Assignor under any applicable Assigned Agreement. The foregoing shall not be construed as limiting or impairing any rights of SAWS under any Assigned Agreement except as

expressly provided in this Agreement. Except as expressly provided in this Agreement, SAWS shall have no obligation to deal with the Creditors' Agent in effecting any cure on behalf of any Assignor.

(d) In the event the Creditors' Agent elects to perform an Assignor's obligations under any applicable Assigned Agreement as provided in Section 3.01(a) above or to enter into a new contract as provided in Section 8.01 below, the Creditors' Agent and the Senior Debt Creditors shall not have any personal liability to SAWS pursuant to such Assigned Agreement, or this Agreement for the performance of such obligations, and the sole recourse of SAWS in seeking the enforcement of such contractual obligations shall be to such parties' interest in the Project (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto except as may be expressly provided in such new agreement).

(e) Notwithstanding any other provision of this Agreement to the contrary, (i) nothing in this Agreement shall prohibit, delay or impair SAWS's right to (A) exercise such remedies as are available under the WTPA upon the occurrence of a Project Company Event of Default under Section 20.1(A)(3), (4) or (6) of the WTPA, or (B) exercise its right to purchase the Project Assets and terminate the WTPA pursuant to Section 4.4, 23.1 or 23.2 of the WTPA, and (ii) such rights, if any, that SAWS may have as a dual obligee with the Secured Parties on any payment or performance bond issued in connection with the Senior Debt shall be subject to this Agreement and to the rights of the Secured Parties.

#### **ARTICLE 4**

##### **ARRANGEMENTS REGARDING PAYMENTS**

SAWS shall, unless directed otherwise by the Creditors' Agent, deposit all amounts payable by it to Vista Ridge under the WTPA, from and after the date hereof and until the date that the Senior Debt Creditors' lien in the WTPA is released pursuant to the terms of the Senior Debt Financing Documents, into the Designated Account, and Vista Ridge agrees that any payment made in accordance with this Article 4 shall constitute a complete discharge of SAWS's relevant payment obligations under the WTPA. SAWS shall not, without the prior written consent of the Creditors' Agent, make any payments to or for the benefit of Vista Ridge other than as contemplated pursuant to the first sentence of this Article 4.

#### **ARTICLE 5**

##### **SUBSTITUTION NOTICE**

###### **Section 5.01 Notice of Substitute**

(a) To the extent that during the occurrence and continuance of a Senior Debt Financing Agreements Event of Default, (x) an Assignor's rights and obligations under any applicable Assigned Agreement to which it is a party and (y) this Agreement are assigned to a person (a "Substitute") designated by the Creditors' Agent (whether by mutual agreement or enforcement of rights under the Senior Debt Financing Agreements) that meets the requirements

of a “Qualified Substitute Project Company”, the effectiveness of such assignment shall be conditional upon:

- (i) the Creditors’ Agent issuing a notice (a “Substitution Notice”) to SAWS designating the Substitute;
- (ii) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01; and
- (iii) payment of all amounts then due to SAWS pursuant to such Assigned Agreement.

(b) Upon receipt of information pursuant to Section 5.02(a), SAWS shall have sixty (60) days to verify that the qualifications of any proposed Substitute comply with those required under the definition of “Qualified Substitute Project Company” and may only reject a proposed Substitute if it reasonably determines that the qualifications of such Substitute do not comply with such requirements. If SAWS does not respond to a Substitution Notice within such sixty (60)-day period, the Creditors’ Agent may issue a second Substitution Notice, which shall (i) include a copy of the original Substitution Notice and all information provided under Section 5.01(a), and (ii) bear the following legend on the front of the envelope and on the first page in capital letters of 14 point or larger type face “THIS IS A TIME-SENSITIVE NOTICE GIVEN PURSUANT TO SECTION 5.01 OF THE CREDITORS’ REMEDIES AGREEMENT WITH RESPECT TO THE VISTA RIDGE REGIONAL SUPPLY PROJECT. A FAILURE TO RESPOND WITHIN THIRTY (30) DAYS MAY RESULT IN A DEEMED APPROVAL AND OTHERWISE ADVERSELY AFFECT THE SAN ANTONIO WATER SUPPLY CORPORATION.” In the event that SAWS shall have failed to respond within thirty (30) days after receipt of such second Substitution Notice then the proposed Substitute named in the Substitution Notice shall be deemed to comply with the requirements set forth in the definition of “Qualified Substitute Project Company” set forth herein.

## **Section 5.02 Provision of Information**

(a) The Creditors’ Agent shall, as soon as practicable, provide to SAWS such information in relation to the designated Substitute and any person who, it is proposed, will enter into a material subcontract with the designated Substitute in relation to the Project, as SAWS shall reasonably require, including:

- (i) the name and address of the designated Substitute;
- (ii) a copy of the proposed Substitute’s organizational documents;
- (iii) details of the designated Substitute’s plan to employ or subcontract with persons having the appropriate qualifications, experience and technical competence available to them that are sufficient to enable it to perform the obligations of the applicable Assignor under each applicable Assigned Agreement; and

(iv) the names of the designated Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

## ARTICLE 6

### SUBSTITUTION

#### **Section 6.01 Substitution Effective Date**

Any designated Substitute shall execute a duly completed substitute accession agreement substantially in the form set out in Annex 1 to this Agreement ("Substitute Accession Agreement") and submit it to SAWS (with a copy of it to the other parties to this Agreement). Subject to Section 5.01, such accession shall become effective on and from the date on which SAWS countersigns the Substitute Accession Agreement or the date that is fifteen (15) days after the date SAWS receives the completed Substitute Accession Agreement if SAWS fails to countersign the Substitute Accession Agreement (the "Substitution Effective Date").

#### **Section 6.02 Effectiveness of Substitution**

On and from the Substitution Effective Date, in respect of any Assigned Agreement:

(a) such Substitute shall become a party to, and shall be deemed to have assumed, such Assigned Agreement, this Agreement and, in the case of CTRWSC, the Standby Deed of Trust, in place of the substituted Assignor, who shall be immediately released from its obligations arising under, and cease to be a party to, such Assigned Agreement and this Agreement from that Substitution Effective Date;

(b) such Substitute shall exercise and enjoy the rights and perform the obligations of the substituted Assignor, under such Assigned Agreement and this Agreement, including, without limitation, any undischarged obligations, uncured defaults, damages arising under such Assigned Agreement prior to the Substitution Effective Date, and any documented costs reasonably incurred by SAWS in connection with such Substitution and in accordance with Section 24.5 of the WTPA, which shall be deemed applicable to any transfer of the Assignor's interest in, or Change in Control with respect to, the RPCA;

(c) SAWS shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the substituted Assignor prior to the Substitution Effective Date) under such Assigned Agreement to such Substitute in place of the substituted Assignor; and

(d) such Substitute shall have no obligations greater than the obligations of the substituted Assignor had under such Assigned Agreement.

### **Section 6.03 Facilitation of Transfer**

SAWS shall use its commercially reasonable efforts, at the Substitute's sole cost and expense, to facilitate the transfer to the Substitute of the obligations of the substituted Assignor under the applicable Assigned Agreement and this Agreement.

### **Section 6.04 Consequences of Substitution**

On and from the Substitution Effective Date, in respect of any Assigned Agreement:

(a) any right of termination or any other right suspended by virtue of Section 3.01(a) shall be of no further effect and SAWS shall not be entitled to terminate such Assigned Agreement and this Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date, provided that, within the remaining cure period provided for in Section 3.01(a), such Substitute thereafter cures (x) in the case of the WTPA, any still-uncured Project Company Event of Default (except for a Project Company Bankruptcy-Related Event relating to the prior Project Company) and (y) in the case of the RPCA, any still-uncured breach of the RPCA by CTRWSC or Vista Ridge; and

(b) SAWS shall enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that Vista Ridge or CTRWSC, as applicable, shall be replaced as a party by the Substitute.

## **ARTICLE 7**

### **REINSTATEMENT OF REMEDIES**

If SAWS has delivered to the Creditors' Agent a SAWS Notice in respect of any Assigned Agreement, the grounds for that notice are continuing and have not been remedied or waived by SAWS, and no Substitute becomes a party to such Assigned Agreement and this Agreement prior to the expiration of the applicable cure period set forth under Section 3.01(a), then, upon expiration of the applicable cure period, SAWS shall be entitled to:

(i) act upon any and all grounds for termination available to it in relation to such Assigned Agreement in respect of, in the case of the WTPA, Project Company Events of Default under the WTPA that have not been remedied or waived by SAWS, and in the case of the RPCA, breach of the RPCA by CTRWSC or Vista Ridge that have not been remedied or waived by SAWS;

(ii) pursue any and all claims and exercise any and all remedies against any applicable Assignor in accordance with the terms of such Assigned Agreement; and

(iii) if and to the extent that it is then entitled to do so under such Assigned Agreement, take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of any applicable Assignor, or for the composition or readjustment of debts of such Assignor, or any similar insolvency procedure in relation to such Assignor, or for the appointment of a receiver, trustee,

custodian, sequestrator, conservator, liquidator, administrator or similar official for such Assignor or for any part of Property of such Assignor.

## ARTICLE 8

### **IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS**

#### **Section 8.01 Rejection of the Assigned Agreements**

(a) If any Assigned Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving any applicable Assignor, and, within ninety (90) days after such rejection or termination, the Creditors' Agent shall so request and shall certify in writing to SAWS that the Creditors' Agent or the Creditors' Agent's permitted designee or assignee (i) solely if such Assigned Agreement is the WTPA, is a Qualified Substitute Project Company, and (ii) intends to perform the obligations of such Assignor, as and to the extent required under such Assigned Agreement, SAWS will execute and deliver to the Creditors' Agent (or any Substitute satisfying the requirements of this Agreement if directed to do so by the Creditors' Agent) a new Assigned Agreement. The new Assigned Agreement shall be for the balance of the remaining term under the original Assigned Agreement, and shall contain conditions, agreements, terms, provisions and limitations which are substantially the same as those of the original Assigned Agreement, except for any obligations that have been fulfilled by such Assignor, any party acting on behalf of or stepping-in for such Assignor or the Creditors' Agent prior to such rejection or termination. References in this Agreement to an Assigned Agreement shall be deemed also to refer to any such new Assigned Agreement.

(b) The effectiveness of any new Assigned Agreement referred to in Section 8.01(a) above will be conditional upon the Creditors' Agent first reimbursing SAWS in respect of all of its reasonably documented costs and expenses, including reasonable legal fees and expenses, incurred in connection with the execution and delivery of such new Assigned Agreement.

## ARTICLE 9

### **TERMINATION OF THIS AGREEMENT**

This Agreement shall remain in effect until the earliest to occur of:

- (a) the Discharge Date;
- (b) the time at which all of the parties' respective obligations and liabilities under the WTPA, RPCA and this Agreement have expired or have been satisfied in accordance with the terms of the WTPA, RPCA and this Agreement; and
- (c) any assignment of the rights and obligations of each of Vista Ridge and CTRWSC under the Assigned Agreements and this Agreement to each respective Substitute has occurred under Article 6 and SAWS shall have entered into an equivalent direct agreement on

substantially the same terms as this Agreement, save that each of Vista Ridge and CTRWSC has been replaced as a party by each respective Substitute.

## **ARTICLE 10**

### **GENERAL PROVISIONS**

#### **Section 10.01 Representations and Warranties**

(a) The undersigned signatory for Vista Ridge hereby represents and warrants that he or she is an officer of Vista Ridge and that he or she has full and complete authority to enter into this Agreement on behalf of Vista Ridge.

(b) Vista Ridge hereby represents and warrants that Vista Ridge has full power, right and authority to execute and perform each and all of its obligations under this Agreement, the WTPA and the RPCA. These representations and warranties are made for the purpose of inducing SAWS and the Creditors' Agent to enter into this Agreement.

(c) Vista Ridge represents and warrants that each of this Agreement, the WTPA and the RPCA has been duly authorized, executed and delivered by Vista Ridge and constitutes a valid and legally binding obligation of Vista Ridge, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) Vista Ridge represents and warrants that there is no Project Company Event of Default or breach by Vista Ridge under the RPCA or, to the best of its knowledge, no SAWS Event of Default or breach by SAWS of the RPCA, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Project Company Event of Default or a breach by Vista Ridge of the RPCA or, to the best of its knowledge, a SAWS Event of Default or a breach by SAWS of the RPCA, and no such Project Company Event of Default or breach by Vista Ridge of the RPCA or, to the best of its knowledge, SAWS Event of Default or breach by SAWS of the RPCA has occurred prior to the date hereof.

(e) Vista Ridge represents and warrants that neither the WTPA nor the RPCA has not been amended, modified or supplemented in any manner.

(f) The undersigned signatory for CTRWSC hereby represents and warrants that he or she is an officer of CTRWSC and that he or she has full and complete authority to enter into this Agreement on behalf of CTRWSC.

(g) CTRWSC hereby represents and warrants that CTRWSC has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the RPCA. These representations and warranties are made for the purpose of inducing SAWS and the Creditors' Agent to enter into this Agreement.

(h) CTRWSC represents and warrants that each of this Agreement and the RPCA has been duly authorized, executed and delivered by CTRWSC and constitutes a valid and legally



binding obligation of CTRWSC, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(i) CTRWSC represents and warrants that there is no breach by CTRWSC under the RPCA, or, to the best of its knowledge, no breach by SAWS of the RPCA, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute a breach by CTRWSC of the RPCA or, to the best of its knowledge, a breach by SAWS of the RPCA, and no such breach by CTRWSC or, to the best of its knowledge, no such breach by SAWS has occurred prior to the date hereof.

(j) CTRWSC represents and warrants that the RPCA has not been amended, modified or supplemented in any manner.

(k) The undersigned signatory for SAWS hereby represents and warrants that he or she is an officer of SAWS and has full and complete authority to enter into this Agreement on behalf of SAWS.

(l) SAWS represents and warrants that it is an agency of the City created by City Ordinance 75686 as a public utility, validly existing and in good standing under the laws of the State, and has the authority to do business in the State and in any other state in which it conducts its activities with full legal right, power and authority to execute, deliver and perform its obligations under the WTPA, RPCA and this Agreement.

(m) SAWS represents and warrants that each of this Agreement, the WTPA and the RPCA has been duly authorized, executed and delivered by SAWS, and constitutes a legal, valid and binding obligation of SAWS, enforceable against SAWS in accordance with its terms, except to the extent that its enforceability may be limited by the law of sovereign or governmental immunity, bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect, and equitable principles of general application.

(n) SAWS represents and warrants that no SAWS Event of Default or any breach by SAWS under the RPCA has occurred and is continuing. SAWS represents and warrants that to its Actual Knowledge, there is no Project Company Event of Default or any breach by CTRWSC under the RPCA that has occurred and is continuing. SAWS represents and warrants that, to its Actual Knowledge there exists no event or condition that would, with the giving of notice or passage of time or both, enable any of SAWS, Vista Ridge or CTRWSC to exercise any remedies under the WTPA or the RPCA, as applicable.

(o) SAWS represents and warrants that it has not entered into any written amendment, modification or supplement to the WTPA or the RPCA except as provided to Creditors' Agent.

(p) Creditors' Agent represents and warrants that it is authorized to deliver and receive the notices provided for under this Agreement, and take such other actions as may be provided for herein, on behalf of and at the direction of the Senior Debt Creditors.

### **Section 10.02 SAWS Agreement and Covenants**

(a) SAWS hereby acknowledges and agrees that (i) the Senior Debt Financing Agreements will provide the Creditors' Agent with rights with respect to the enforcement of Project Contracts, including the right to cause such Project Contracts be assigned to third parties (or replacement contracts entered into with third parties), subject to the applicable provisions of the WTPA and (ii) except in connection with the occurrence of the Expiration Date (as defined in the WTPA), no assignment and conveyance to SAWS of any Water Supply Corporation Project Assets pursuant to Section 4.1 of the RPCA shall be made unless the Senior Debt Discharge Date (as defined in the WTPA) shall have occurred. In connection with the foregoing, SAWS is authorized to tender payment of the Senior Debt directly to the Creditors' Agent.

### **Section 10.03 Amendments and Waivers**

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

### **Section 10.04 Successors and Assigns**

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder or under the WTPA or the RPCA (except to another Governmental Body to which all or substantially all of the revenues, assets and liabilities constituting the SAWS municipal utility water enterprise are transferred) without the prior written consent of the other parties; provided, however, that the Creditors' Agent may assign or transfer its rights and obligations hereunder to a successor Creditors' Agent in accordance with the Senior Debt Financing Agreements, which successor shall be deemed to have made the representation provided for in Section 10.01(k). In connection with any such assignment or transfer, SAWS agrees to enter into a new direct agreement with the successor Creditors' Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **Section 10.05 Severability**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not

in any way be affected or impaired thereby, and the parties hereto shall negotiate in good faith to replace such invalid, illegal or unenforceable provisions.

### **Section 10.06 Prior Contracts Superseded**

This Agreement constitutes the sole agreement of SAWS and the Creditors' Agent with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

### **Section 10.07 Notices and Communications**

Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, all notices and other communications provided for hereunder or thereunder shall be given or made in writing (including, without limitation, by facsimile or other electronic transmission) delivered to the intended recipient at the address specified below or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by facsimile or other electronic transmission or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid. Any notice or other communication delivered by email to the Creditors' Agent must be contained in a scanned or imaged attachment (such as .pdf or similar widely used format).

#### If to SAWS:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

#### If to Vista Ridge:

Vista Ridge LLC  
c/o Garney Construction  
1333 NW Vivion Road  
Kansas City, MO 64118

Attention: Scott Parrish

with a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Attention: Charles G. Renner  
Fax No.: (816) 983-8080  
Email: charles.renner@huschblackwell.com

If to CTRWSC:

Central Texas Regional Water Supply Corporation  
c/o Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attention: Weir Labatt III  
Facsimile: 512.320.5638  
Telephone: 512.472.8021  
Email: president@ctrwsc.org

with a copy to:

Bickerstaff, Heath Delgado Acosta LLP  
3711 S. Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attn.: Manuel Mendez/Emily Rogers  
Facsimile: 512.320.5638  
Telephone: 512.472.8021  
Email: mmendez@bickerstaff.com / erogers@bickerstaff.com

If to the Creditors' Agent:

Sumitomo Mitsui Banking Corporation  
277 Park Avenue, 4th Floor  
New York, NY 10172  
Attention: Raymond DiPrinzio/Wunda Pangu  
Facsimile: 212.918.1633  
Tel: 212.224.5266/212-224-4352  
Email: rdiprinzio@smbc-lf.com/ wunda\_pangu@smbcgroup.com/  
agencyservices@smbcgroup.com

### **Section 10.08 Effect of Breach**

Without prejudice to any rights a party may otherwise have, a breach of this Agreement shall not give rise to a right to terminate the WTPA or the RPCA.

### **Section 10.09 Counterparts**

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means using electronic signatures shall be as effective as delivery of a manually executed counterpart of this Agreement.

### **Section 10.10 No Third-Party Beneficiaries**

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, provided that, each of Vista Ridge and CTRWSC is executing this Agreement solely to evidence its agreement to the arrangements between SAWS and the Creditors' Agent provided for herein and shall have no rights of enforcement hereunder.

### **Section 10.11 No Partnership**

Nothing contained in this Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 10.11.

### **Section 10.12 No Interference**

Each of Vista Ridge and CTRWSC joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

### **Section 10.13 Creditors' Agent**

(a) Notwithstanding anything to the contrary in this Agreement, except in the case of bad faith, willful misconduct or gross negligence, the Creditors' Agent shall not have any liability to SAWS under this Agreement unless the Creditors' Agent expressly assumes such liability in writing or to the extent it undertakes to exercise its cure rights hereunder.

(b) SAWS acknowledges and agrees that the Creditors' Agent shall not be obligated or required to perform any of the obligations of any Assignor under any applicable Assigned Agreement except to the extent the Creditors' Agent or any of its Affiliates becomes a Substitute in accordance with Section 5.

### **Section 10.14 Governing Law; Submission to Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without resort to any jurisdiction's conflict of laws rules, laws or doctrines. Any claims arising out of this Agreement shall be submitted to the courts of the State of Texas in Bexar County or of the United States for the Western District of Texas. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assignees) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

### **Section 10.15 SAWS Obligations**

(a) Nothing in this Agreement shall be construed as imposing any obligation on SAWS for payment of interest or principal in respect of the Senior Debt. Except in respect of any liability of SAWS for any breach of this Agreement, as to which actual damages (but not consequential, special, incidental, punitive or similar damages) or equitable relief may be sought by the Creditors' Agent in accordance with applicable law, neither the Creditors' Agent nor any Senior Debt Creditor shall be entitled to seek damages or other amounts from SAWS, whether for the Senior Debt or any other amount.

(b) Except as specifically and expressly provided for in this Agreement, SAWS has no obligations (whether express, implied, collateral or otherwise) to the Creditors' Agent or the Senior Debt Creditors in connection with the WTPA or the RPCA, or the Project. All of the obligations and liabilities given, undertaken or arising on the part of SAWS under this Agreement are given solely to the Creditors' Agent on behalf of the Senior Debt Creditors and do not confer any rights on or in favor of Vista Ridge or CTRWSC or any Affiliate of Vista Ridge or CTRWSC or any other person. Without limiting the foregoing, SAWS may in its sole discretion, but shall not be obligated to, provide to the Creditors' Agent such notices and information in addition to those required under this Agreement as SAWS may elect from time to time.

(c) The foregoing provisions of this Section 10.15 shall not preclude a claim in respect of the Project Assets Purchase Price arising from an election by SAWS to purchase the Project Assets pursuant to Article 23 of the WTPA in connection with a termination of the WTPA under Section 22.1(A) of the WTPA.

(d) In no event will SAWS at any time be responsible for delivering possession of the Project to any Substitute.

### **Section 10.16 SAWS's Rights Not Prejudiced**

The parties acknowledge that nothing in the Senior Debt Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Creditors' Agent of a notice hereunder) will affect the rights of SAWS under the WTPA or the RPCA, except as between the Creditors' Agent and SAWS to the extent expressly set forth in this Agreement and the Lien Priority Agreement being entered into contemporaneously with this

Agreement to provide for the survival of SAWS's rights and remedies under the Standby Deed of Trust (as defined in the RPCA) following any foreclosure or other exercise of remedies under the Senior Debt Financing Agreements.

**Section 10.17 No Special, Consequential or Punitive Damages**

IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO ANY OTHER OR OBLIGATED IN ANY MANNER TO PAY TO ANY OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES BASED UPON CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS OR OTHERWISE UNDER THIS AGREEMENT, OR ANY REPRESENTATION MADE IN OR PURSUANT TO THIS AGREEMENT BEING MATERIALLY INCORRECT, WHETHER SUCH CLAIMS ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL THEORY. THIS SECTION SHALL NOT LIMIT THE RECOVERY OF ANY SUCH LOSSES OR DAMAGES PURSUANT TO ARTICLE 25 OF THE WTPA (INDEMNIFICATION) IN RESPECT OF CLAIMS BY THIRD PARTIES OTHER THAN VISTA RIDGE, CTRWSC OR ANY OF THEIR AFFILIATES.

**Section 10.18. Acknowledgments by SAWS and CTRWSC.** SAWS acknowledges and agrees that the provisions of Section 3.1 and 3.3 of the RPCA requiring acquisition of the Transmission Pipeline System Real Property Interests and the Well Field Facilities Site Real Property Interests prior to and as a condition to Financial Close (as defined in the WTPA) have been waived by SAWS and superseded by the provision of the WTPA regarding same, as amended contemporaneously herewith. CTRWSC acknowledges and agrees to comply with the revised provisions of Sections 26.1(E) and (F) of said amended WTPA regarding conveyance of the SAWS Portion of the Transmission Pipeline Terminus Site and the Reciprocal Easement Agreement, respectively.


**Section 10.19 SAWS Consent Rights.** The Creditors' Agent and Administrative Agent shall not permit there to be any amendment referred to in clause (i) of subsection 2.02(f) or for any of the actions referred to in clause (ii) of subsection 2.02(f) to be taken without the prior written consent of SAWS.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.


**THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE SAN  
ANTONIO WATER SYSTEM BOARD OF  
TRUSTEES**

By: \_\_\_\_\_

  
Name: Robert R. Puenle  
Title: President/ CEO



VISTA RIDGE LLC

By:   
Name: Scott Parrish  
Title: Authorized Signatory

**CENTRAL TEXAS REGIONAL WATER  
SUPPLY CORPORATION**

By: Weir Sabatt III  
Name: Weir Sabatt III  
Title: President

**SUMITOMO MITSUI BANKING  
CORPORATION,**

as not in its individual capacity but solely as the  
Creditors' Agent

By: \_\_\_\_\_



Name:

John Kreutz

Title:

Managing Director

**ANNEX 1**

**FORM OF SUBSTITUTE ACCESSION AGREEMENT**

[Date]

To: [SAWS]

From: [Substitute]

**SUBSTITUTE ACCESSION AGREEMENT**

Ladies and Gentlemen:

Reference is made to the [Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended pursuant to an Consent to the Garney Change of Control and Conforming Amendments to the Water Transmission and Purchase Agreement, dated as of June 10, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "WTPA"), between the City of San Antonio, Texas acting by and through the San Antonio Water System Board of Trustees ("SAWS"), and Vista Ridge LLC (f/k/a Abengoa Vista Ridge, LLC), a limited liability company organized and existing under the laws of the State of Delaware ("Vista Ridge")] [Vista Ridge Project Real Property Conveyance Agreement, dated as of June 10, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "RPCA") between the City of San Antonio, Texas acting by and through the San Antonio Water System Board of Trustees ("SAWS"), and Central Texas Regional Water Supply Corporation ("CTRWSC") and acknowledged, consented to and joined by Vista Ridge], and the Creditors' Remedies Agreement, dated as of November 2, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Creditors' Remedies Agreement"), among SAWS, Vista Ridge, CTRWSC and Sumitomo Mitsui Banking Corporation, as Creditors' Agent.

Terms defined not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substitute pursuant to Article 6 of the Creditors' Remedies Agreement.
2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement and the satisfaction of all conditions set forth in Section 5.01 of the Creditors' Remedies Agreement, we will become a party to the [WTPA][RPCA and Standby Deed of Trust] and the Creditors' Remedies Agreement as a Substitute and, accordingly, shall have the rights and powers and assume the obligations of [Vista Ridge under the WTPA][CTRWSC][Vista Ridge] under the RPCA and the Standby Deed of Trust] and the Creditors' Remedies Agreement in accordance with the terms of the Creditors' Remedies Agreement, including, without limitation, any and all payment obligations of [Vista Ridge][CTRWSC] that were otherwise required to be paid by [Vista Ridge][ CTRWSC] prior to the date hereof.

Annex 1

CREDITORS' REMEDIES AGREEMENT  
(VISTA RIDGE)

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

*[contact details of Substitute]*

4. This Substitute Accession Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without resort to any jurisdiction's conflict of laws rules, laws or doctrines. Any claims arising out of this Substitute Accession Agreement shall be submitted to the courts located in Bexar County, Texas. In any action on or related to the terms of this Substitute Accession Agreement, the parties (for themselves and their successors and assignees) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

The terms set forth herein are hereby agreed to:

*[Substitute]*

By: \_\_\_\_\_  
Name:  
Title:

Agreed for and on behalf of:  
THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE SAN ANTONIO  
WATER SYSTEM BOARD OF TRUSTEES

By: \_\_\_\_\_  
Name:  
Title:

**TRANSACTION FORM I**

**DEED TO SAWS PORTION OF THE TRANSMISSION PIPELINE TERMINUS SITE**

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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**WARRANTY DEED, BILL OF SALE AND ASSIGNMENT OF EASEMENT RIGHTS**

THE STATE OF TEXAS     §  
  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF BEXAR       §

THAT THE UNDERSIGNED, CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, a Texas not-for-profit water supply corporation (referred to herein as "Grantor"), for and in consideration of the sum of TEN DOLLARS (\$10.00) cash, and other good and valuable consideration paid to Grantor by the SAN ANTONIO WATER SYSTEM, the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto THE CITY OF SAN ANTONIO, a Texas municipal corporation, for the use, benefit and control of its SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ("Grantee"), as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992, Lot , Block \_\_, NCB \_Vista Ridge Integration, a subdivision in Bexar County, Texas according the plat thereof recorded in Volume \_\_, Page \_\_ of the Official Public Records of Real Property of Bexar County, Texas (the "Land"), together with all water rights and claims of water rights of any nature related to said Land, and together with all of Grantor's right, title and interest in and to all oil, gas and other minerals in and under and that may be produced from said Land, and all improvements, privileges and appurtenances pertaining to the Land, including, but not limited to, strips between the Land and abutting properties, and in any street, highway, alley, easement or right of way, existing or proposed, on, adjacent or appurtenant to the Land, and also including the Assigned Easements as hereinafter defined, and any right of reversion related to the Land and all facilities and fixtures located on or under the Land (collectively, the "Property").

This conveyance is made and accepted subject to those certain matters (the "Permitted Exceptions") set forth on Exhibit "A" attached hereto and made a part hereof for all purposes and the Reserved Easement Interest described below.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind Grantor and Grantor's successors to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, subject to the Permitted Exceptions and the Reserved Easement Interest, when the claim is made by, through or under Grantor, but not otherwise.



Ad valorem taxes for the year of conveyance prorated to the date of conveyance and roll back taxes, if any, assessed against the Land for the current or prior years due to a change in ownership or use occurring prior to the date of this conveyance to Grantee shall remain the responsibility of the Grantor.

[For Lot 3 deed: Notwithstanding the foregoing, Grantor hereby makes a partial assignment and conveyance to Grantee of Grantor's rights under the following non-exclusive easements: (i) access easement reserved in instrument recorded in Volume 15250, Page 1615, Real Property Records, Bexar County, Texas, (ii) ingress and egress easement, 50 feet wide, described as Tract 1 (L.W. Steubing Home Easement) containing 0.364 acres and an ingress and egress easement, 50 foot wide, described as Tract 2 (Dague Easement) containing 1.627 acres both being described in the Conveyance of Easement recorded in Volume 14997, Page 1210 and in Volume 15250, Page 1622, Real Property Records of Bexar County, Texas, (collectively, the "Assigned Easements"). The foregoing assignment is partial in that Grantor retains and reserves the right to use the Assigned Easements (the "Reserved Easement Interest"). Grantor and Grantee shall each have the right to use the easements along with all other persons entitled to use such easements. Grantee shall have no obligation to Grantor to maintain the Assigned Easements or contribute to the maintenance of same.]

[For Lot 2 deed: Grantor hereby makes an assignment and conveyance to Grantee of all of Grantor's interest in the following non-exclusive easements: (i) access easement reserved in instrument recorded in Volume 15250, Page 1615, Real Property Records, Bexar County, Texas, (ii) ingress and egress easement, 50 feet wide, described as Tract 1 (L.W. Steubing Home Easement) containing 0.364 acres and an ingress and egress easement, 50 foot wide, described as Tract 2 (Dague Easement) containing 1.627 acres both being described in the Conveyance of Easement recorded in Volume 14997, Page 1210 and in Volume 15250, Page 1622, Real Property Records of Bexar County, Texas.]

EXECUTED to be effective the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signatures and acknowledgements on following pages

GRANTOR:

Central Texas Regional Water Supply Corporation,  
a Texas non-profit water supply corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by  
\_\_\_\_\_ (name), \_\_\_\_\_(title) of Central  
Texas Regional Water Supply Corporation, a Texas non-profit water supply corporation, on  
behalf of same.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED BY GRANTEE:

City of San Antonio by and through its San Antonio  
Water System Board of Trustees

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by  
\_\_\_\_\_ (name), \_\_\_\_\_(title) of the San  
Antonio Water System Board of Trustees, a municipal utility of the City of San Antonio, on  
behalf of same.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

San Antonio Water System  
Attn: Mark Brewton  
P.O. Box 2449  
San Antonio, Texas 78298

Exhibit "A"

Permitted Exceptions

1. Declaration of Reciprocal Restrictive Covenants recorded in Volume 15250, Page 1628, Real Property Records, Bexar County, Texas, as amended by the Amendment to Declaration of Reciprocal Restrictive Covenants recorded in Volume 18184, Page 1220, Real Property Records, Bexar County, Texas.
2. Variable Width Drainage Easement (0.341 acres), as shown on plat recorded in Volume 9624, Page(s) 94, Deed and Plat Records, Bexar County, Texas. **[if applicable, e.g if Property contains this easement]**
3. Variable Width Drainage as created by plat recorded in Volume \_\_\_\_, Page \_\_\_\_ of the Plat Records of Bexar County, Texas.
4. Reciprocal Easement Agreement by and between Grantor and Grantee dated \_\_\_\_\_, 2017 [if known at time of deed: recorded in Volume \_\_\_\_, Page \_\_\_\_ of the Official Public Records of Real Property of Bexar County, Texas]

**TRANSACTION FORM J**  
**RECIPROCAL EASEMENT AGREEMENT FOR THE TRANSMISSION PIPELINE TERMINUS**  
**SITE**

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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

### **RECIPROCAL EASEMENT AGREEMENT**

This Reciprocal Easement Agreement ("Agreement") is made and entered into by and between CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, a Texas not-for-profit water supply corporation ("WSC") and CITY OF SAN ANTONIO BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ("SAWS"), each being a "Party" to this Agreement and collectively being the "Parties" to this Agreement.

**WHEREAS**, SAWS and the Vista Ridge, LLC (formerly known as Abengoa Vista Ridge, LLC) (the "Project Company") have entered into that Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (as it has heretofore been and may hereafter be amended, the "WTPA") for the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis;

**WHEREAS**, the WSC has been duly formed to participate with the Project Company in the development and operation of the regional water supply system (the "Project") provided for in the WTPA, and has contracted with the Project Company to transport groundwater from certain groundwater wells to SAWS for use by SAWS as a portion of its water supply for the public, and in connection therewith, to acquire and operate certain real property and improvements necessary for the Project;

**WHEREAS**, the WSC has acquired a certain 26.17 acre site in Bexar County (consisting of a 26.009 acre tract and a 0.161 acre "flag" tract), described in the instrument recorded in Volume 18184, Page 1226 of the Official Public Records of Real Property of Bexar County, Texas, to be the Transmission Pipeline Terminus Site (as defined in the WTPA) for the Project;

**WHEREAS**, the WSC has platted a 25.238 acre portion of the 26.009 acre tract as a three lot subdivision called the Vista Ridge Integration subdivision according to the plat thereof recorded in Volume \_\_\_, Page \_\_\_ of the Official Public Records of Real Property of Bexar County, Texas (the "Subdivision");

**WHEREAS**, contemporaneously with this Agreement, the WSC has conveyed a portion of the Transmission Pipeline Terminus Site to SAWS, being Lot 3, Block \_\_\_, NCB \_Vista Ridge Integration, a subdivision in Bexar County, Texas according the plat thereof (the "Plat") recorded in Volume \_\_\_, Page \_\_\_ of the Official Public Records of Real Property of Bexar County, Texas (the "SAWS Portion of the Transmission Pipeline Terminus Site"), and accordingly, has retained for itself the remaining Lots 1 and 2 of said Subdivision (the "WSC Portion of the Transmission Pipeline Terminus Site");

**WHEREAS**, SAWS and the WSC will each be constructing and operating certain water infrastructure on their respective portions of the Transmission Pipeline Terminus Site; and

**WHEREAS**, SAWS and the WSC require certain easements from each other in order to access, construct and operate said water infrastructure;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, WSC and SAWS hereby agree as follows:

1. SAWS Easements.

- a. Access. WSC hereby grants to SAWS an access easement upon, over and across the WSC Portion of the Transmission Pipeline Terminus Site and the above-referenced 0.161 acre “flag” tract (said access easement to the extent over such 0.161 acre “flag” tract to terminate and merge into that certain 0.784 acre Access Easement by and between SAWS, WSC and Dague Ranch Limited Partnership upon execution and recordation of same) for ingress and egress to and from the SAWS Portion of the Transmission Pipeline Terminus Site. This easement shall include, but not limited to, access across all roads and drives (permanent or temporary construction) located now or in the future on the WSC Portion of the Transmission Pipeline Terminus Site. With respect to SAWS ingress and egress over any other non-road, non-drive areas on the WSC Portion of the Transmission Pipeline Terminus Site, SAWS will exercise reasonable care not to disrupt or interfere with the WSC’s operations.
- b. Facilities. The WSC hereby grants to SAWS an easement upon, under, over and across the WSC Portion of the Transmission Pipeline Terminus Site to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace water lines and facilities, and appurtenances thereto (including SAWS-operated SCADA, electrical and telecommunications facilities). SAWS will locate such lines, facilities and appurtenances in locations across the WSC Portion of the Transmission Pipeline Terminus Site so as to minimize interference with WSC’s activities, provided, however, following SAWS initial construction of such lines, facilities and appurtenances, the WSC will not construct or place buildings, structures, water detention facilities, or change the grade over such areas, and SAWS shall have the right to remove any encumbrances or obstructions interfering with SAWS’ easement rights under this Section 1b.



- c. Drainage. The WSC hereby grants to SAWS an easement upon, over and across the WSC Portion of the Transmission Pipeline Terminus Site for drainage of surface water and discharge of water from the SAWS Portion of the Transmission Pipeline Terminus Site. With respect to any increase in volume of water draining or discharged from the SAWS Portion of the Transmission Pipeline Terminus Site as a result of SAWS' improvements or operations on its property, and to the extent not flowing over and across any platted drainage easement dedicated to the public, SAWS agrees that such additional volume shall not damage any facilities or materially disrupt operations on the WSC Portion of the Transmission Pipeline Terminus Site.

The easements granted hereinabove to SAWS are collectively referred to herein as the "SAWS Easements".

2. WSC Easements.

- a. Access. SAWS hereby grants to WSC an access easement upon, over and across all roads and drives (permanent or temporary construction) located now or in the future on the SAWS Portion of the Transmission Pipeline Terminus Site for ingress and egress to and from the WSC Portion of the Transmission Pipeline Terminus Site.
- b. Drainage. SAWS hereby grants to WSC an easement upon, over and across the SAWS Portion of the Transmission Pipeline Terminus Site for drainage of surface water and discharge of water from the WSC Portion of the Transmission Pipeline Terminus Site. With respect to any increase in volume of water draining or discharged from the WSC Portion of the Transmission Pipeline Terminus Site as a result of WSC's improvements or operations on its property, and to the extent not flowing over and across any platted drainage easement dedicated to the public, WSC agrees that such additional volume shall not damage any facilities or materially disrupt operations on the SAWS Portion of the Transmission Pipeline Terminus Site.

The easements granted hereinabove to WSC are collectively referred to herein as the "WSC Easements".

3. Utility Easements. WSC agrees, upon request by SAWS, to grant utility

easements to any utility provider (including but not limited to electrical, gas, telecommunications and data providers) upon, under, over and across defined areas of the WSC Portion of the Transmission Pipeline Terminus Site to serve the SAWS Portion of the Transmission Pipeline Terminus Site. Such easement grants shall be in form and substance acceptable to the applicable utility provider.

4. Non-Exclusive Nature; Use of Easements. All easements granted under this Agreement are non-exclusive and, subject to the express terms of Sections 1 through 3 above, the granting Party reserves all rights to use the applicable easement area to the extent not inconsistent with the applicable easement grants. All easements granted herein may be used by the grantee Party and their respective employees, agents, trustees, invitees, consultants, contractors and subcontractors.
5. Construction, Maintenance and Repair of Joint Facilities. Construction and maintenance of jointly used facilities, including roads and drives, at the Transmission Pipeline Terminus Site shall be in accordance with the provisions of the WTPA, including Appendix 13 of same, as the same may be amended from time to time.
6. Term. The SAWS Easements and WSC Easements shall expire and terminate upon the expiration of the Term (as defined in the WTPA), as same may be renewed and extended, of the WTPA or the earlier termination of the WTPA, provided, however, (i) if at such expiration of the WTPA the WSC Portion of the Transmission Pipeline Terminus Site has not yet been conveyed to SAWS, the SAWS Easements shall remain in full force and effect until such time of conveyance and (ii) if at the time of such earlier termination of the WTPA SAWS has sent notice of exercise of its right under the WTPA to purchase the Project Assets (as defined in the WTPA), which include the WSC Portion of the Transmission Pipeline Terminus Site, but such conveyance has not yet occurred, the SAWS Easements shall remain in full force and effect until such time of conveyance.
7. Title. The grant and use of the WSC Easements and SAWS Easements is made subject to all matters of record that effect the SAWS Portion of the Transmission Pipeline Terminus Site and WSC Portion of the Transmission Pipeline Terminus Site, respectively. Subject to the foregoing, the WSC hereby agrees to warrant and forever defend the SAWS Easements unto SAWS and SAWS' successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof.
8. Liens. Neither Party hereto shall have the right to bind the property of the other for any claim for labor or materials or for any other charge or expense incurred in the construction, installation, replacement, maintenance or removal of any improvements, personal property, equipment or fixtures installed on or

behalf of such Party pursuant to this Agreement (the "Improvements"). If any involuntary liens for labor and materials supplied or claimed to have been supplied to the Improvements shall be filed, the Party by or for whom such Improvements was installed, or who contracted for or performed the installation of such Improvements, shall promptly obtain the release or discharge thereof to the extent such lien(s) purports to cover the property of the other Party.

9. Notices. All notices under this Agreement shall be provided for in the manner set forth in that certain Vista Ridge Project Real Property Conveyance Agreement (as may be amended) by and between SAWS and WSC dated effective June 10, 2016, as the same may be amended from time to time.
10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of WSC and SAWS and their respective heirs, legal representatives, successors and permitted assigns. The SAWS Easements shall run with the SAWS Portion of the Transmission Pipeline Terminus Site and the WSC Easements shall run with the WSC Portion of the Transmission Pipeline Terminus Site.
11. Non-Assignment. This Agreement shall not be assigned, hypothecated or transferred in any manner whatsoever, directly or indirectly, by the WSC without the prior written consent of SAWS, except to secure any Permitted Debt (as defined in the WTPA).
12. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one original Agreement.
13. Amendment Upon Subsequent Conveyance. Under the WTPA, the WSC will be caused to convey to SAWS Lot 2 of the Subdivision, being currently part of the WSC Portion of the Transmission Pipeline Terminus Site, in accordance with the terms of the WTPA. Contemporaneously with such conveyance, SAWS and WSC will execute an amendment to this Agreement acknowledging such conveyance and in which any necessary easements, as determined jointly by the Parties, shall be granted by SAWS to the WSC over Lot 2.

(Signature Pages Follow)

EXECUTED TO BE EFFECTIVE this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

WSC:

Central Texas Regional Water Supply Corporation,  
a Texas non-profit water supply corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by  
\_\_\_\_\_ (name), \_\_\_\_\_(title) of Central Texas  
Regional Water Supply Corporation, a Texas non-profit water supply corporation, on behalf of  
same.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

SAWS:

City of San Antonio by and through its San Antonio  
Water System Board of Trustees

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by  
\_\_\_\_\_ (name), \_\_\_\_\_(title) of the San  
Antonio Water System Board of Trustees, a municipal utility of the City of San Antonio, on  
behalf of same.

[Seal]

\_\_\_\_\_  
Notary Public, State of Texas

After Recording, Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TRANSACTION FORM K**  
**OPINION OF COUNSEL TO SAWS**

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LANGLEY & BANACK

INCORPORATED

Attorneys and Counselors at Law

November 2, 2016

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Spain

Re: The Vista Ridge Regional Supply Project

Ladies and Gentlemen:

We have acted as Special Counsel to the Board of Trustees (the “*Board*”) of the San Antonio Water System (the “*System*”), in connection with the negotiation and execution of (a) the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between The City of San Antonio, Texas Acting By and Through the San Antonio Water System Board of Trustees and Vista Ridge LLC (f/k/a Abengoa Vista Ridge, LLC), a Delaware limited liability company (“*Vista Ridge*”) dated November 4, 2014 as approved by the Board and evidenced by Resolution No. 14-269 duly adopted on September 29, 2014 and Resolution No. 14-274 duly

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adopted on October 15, 2014, further approved by the City Council of the City of San Antonio (“City”) as evidenced by Ordinance No. 2014-10-30-0818 duly adopted on October 30, 2014; amended on June 10, 2016 as approved by the Board and evidenced by Resolution No. 16-138 duly adopted on May 18, 2016; all such amendments incorporated in the Conforming Contract Amendment executed and dated June 10, 2016; further amended on November 2, 2016 as approved by the Board and evidenced by Resolution No. 16-277 duly adopted on November 1, 2016; all such additional amendments further incorporated in the Conforming Contract Amendment No. 2 executed and dated November 2, 2016 (the Board Resolutions and the City Council Ordinance are cumulatively referred to as “*System Board and City Council actions*”); and (b) the other Opinion Documents (as defined below). All other capitalized terms not otherwise defined in this letter have the meanings assigned in the Project Agreement, as amended, described below.

In rendering the opinions expressed below, we have examined and relied on the following:

1. (a) Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between the City of San Antonio, Texas Acting By and Through the San Antonio Water System Board of Trustees and Vista Ridge dated October 14, 2014 (*i.e.*, Initial Project Agreement); as amended on June 10, 2016 (*i.e.*, First Amendment); and as further amended on November 2, 2016 (*i.e.*, Second Amendment with Vista Ridge) (cumulatively the “*Project Agreement, as amended*”);
- (b) Project Real Property Conveyance Agreement between the City of San Antonio, Texas Acting by and Through the San Antonio Water System Board of Trustees and the Central Texas Regional Water Supply Corporation, a Texas not-for-profit water supply corporation, dated June 10, 2016;
- (c) Amendment to the Guaranty Agreement between Garney Holding Company, a Missouri corporation and the City of San Antonio, Texas Acting by and Through the San Antonio Water System Board of Trustees dated November 2, 2016;
- (d) Creditors’ Remedies Agreement between the City of San Antonio, Texas Acting by and Through the San Antonio Water System Board of Trustees, Vista Ridge, the Central Texas Regional Water Supply Corporation and Sumitomo Mitsui Banking Corporation, as the Creditors’ Agent (as defined therein), dated November 2, 2016;
- (e) Standby Deed of Trust, Security Agreement and UCC Financing Statement for Fixture Filing from Central Texas Regional Water Supply Corporation, as Grantee, to John Jennings and its successors in trust, as Trustee

for the benefit of the City of San Antonio, Texas Acting by and Through the San Antonio Water System Board of Trustees, as Beneficiary, dated November 2, 2016; and

- (f) Lien Priority Agreement between the City of San Antonio, Texas Acting by and Through the San Antonio Water System Board of Trustees and Sumitomo Mitsui Banking Corporation, as Collateral Agent (as defined therein), dated November 2, 2016 (collectively known as the "*Opinion Documents*" and individually as "*Opinion Document*").
2. (a) the System Board and City Council actions (b) Ordinance No. 75686 adopted on April 30, 1992; and (c) the laws of the State of Texas and the United States applicable to this opinion.
  3. Such certificates of the City and the Board, such copies certified or otherwise identified to our satisfaction of documents and records of the City and the Board, respectively, such certificates, instruments, and other written communications of other public officials, and such other records, certificates, instruments, agreements and documents, in each case as we have deemed relevant and appropriate as the basis for the opinions expressed herein (collectively, the "*Reference Documents*").

In making our examinations, we have assumed (a) the genuineness and authenticity of all signatures, (b) the legal capacity of each person signatory to any of the documents reviewed by us, (c) the authenticity and completeness of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies, (d) that, as to factual matters, all representations, warranties and other statements made in the documents were and are true, correct and complete, and we have made no independent investigation of such matters, but no facts have come to the attention of the attorneys of this firm directly involved in representing the System in connection with the transaction contemplated by the Opinion Documents which cause us to question the accuracy or completeness of such representations, warranties and other statements. Further, we have assumed that each party to the Opinion Documents (other than the System): (aa) has requisite power and authority to execute and deliver the Opinion Document to which it is a party and to perform its obligations thereunder, (bb) has duly authorized such execution, delivery, and performance of the Opinion Document (cc) has duly executed and delivered the Opinion Document which constitutes the legal, valid, and binding obligations of such party, enforceable against such party in accordance with its terms, and (dd) will perform its obligations under the Opinion Document in compliance with the provisions thereof and all requirements of applicable law.

We express no opinion with respect to any transaction forms, any reference documents or any other agreement(s) referred to in the Opinion Documents.

Based on the foregoing and in reliance thereon, and having due regard for such legal considerations as we have deemed relevant, and subject in all respects to the assumptions, qualifications, limitations, comments and exceptions set forth herein, we are of the opinion that, under the laws of the United States and the State of Texas:

1. The System is (a) an independently managed agency of the City of San Antonio created by City Ordinance 75686, Chapter 1502, as amended, of the Texas Government Code, and Sections 552.141 *et seq.* of the Texas Local Government Code, as a municipally-owned utility, to provide water, wastewater and/or recycled water services, (b) validly existing under the laws of the State of Texas, and (c) has all the requisite power and authority to operate and manage its water, wastewater and recycled water facilities and services as now conducted in the State of Texas and to execute, deliver and perform its obligations under the Opinion Documents.
2. The execution, delivery and performance by the System of such Opinion Documents has been duly authorized by all necessary action of the System.
3. Each Opinion Document has been duly executed and delivered by the System.
4. No authorization, approval or consent of, and no filing or registration with, any Governmental Body is required under any applicable law in each case on the part of the System for the execution or delivery of, and the performance by the System of its obligations under, any Opinion Document.
5. The execution and delivery by the System of, and the performance by the System of its obligations under, each Opinion Document does not violate any constitution, law or governmental regulation applicable to the System or any organizational documents of the System.
6. Each Opinion Document constitutes a legal, valid and binding special obligation of the System enforceable against the System in accordance with its terms, except to the extent that its enforceability may be limited by the law of sovereign or governmental immunity ((except as provided in Section 17.19 (Goods and Services) of the Project Agreement, as amended)).

The opinions expressed herein are further subject to the assumptions, qualifications, limitations, comments and exceptions, hereinafter specified as follows:

1. The enforceability of the Opinion Documents is subject to, and may be limited or affected by, (i) bankruptcy, insolvency, reorganization, liquidation, fraudulent conveyance, fraudulent transfer, preference, conservatorship, rearrangement, moratorium, receivership, and other similar laws (including court decisions) in effect and affecting the rights and remedies of creditors generally or providing for

relief of debtors, (ii) the refusal of a particular court (a) to grant certain equitable remedies, including, without limiting the generality thereof, specific performance, or (b) to grant a particular remedy sought under the Opinion Documents as opposed to another remedy provided for therein or another remedy available at law or in equity, (iii) general principles of equity (regardless of whether such remedies are sought in a proceeding in equity or at law), (iv) judicial discretion, (v) considerations of public policy, and (vi) standards of good faith, fair dealing, materiality, impracticability or impossibility of performance, unconscionability, diligence, reasonableness and care established by applicable law, including, without limitation, those provided in the Uniform Commercial Code, applicable principles of common law, and judicial decisions.

2. We express no opinion as to the availability of equitable remedies, and further, we express no opinion as to the enforceability of any provision of the Opinion Documents that (a) relates to rights of set-off (or the waiver thereof), and we note that rights of set-off may be limited to matured mutual obligations, (b) relates to indemnification or exculpation to the extent any such provisions violate public policy or applicable laws or would purport to require any person to provide indemnification or reimbursement or waive indemnification or reimbursement for losses or expenses caused by fraud, illegality, breach, violation of law, negligence, or willful misconduct of an indemnified or exculpated party, (c) waives, restricts, or denies, or has the effect of waiving, restricting, or denying, any right or defense that cannot be waived, so restricted, or denied as a matter of law, (d) purports to require that all amendments, waivers, and terminations be in writing, (e) purports to make irrevocable the appointment of an agent or attorney in fact, (f) purports to establish, or restrict or otherwise affect, jurisdiction, venue, submission to, or acceptance of, a court's jurisdiction, objections to the laying of venue or submission or acceptance of jurisdiction, limitation periods, or other procedural rights in any proceeding, (g) purports to establish or satisfy evidentiary standards or characterizations, treatments, or effect of payments or rights, (h) negates the effect of any course of dealing or any exercise, or failure or delay to exercise, any right, power, privilege, or remedy, (i) restricts access to legal or equitable remedies, (j) states that the prohibition, illegality, invalidity, or unenforceability of any provision of the Opinion Documents in any jurisdiction shall not (A) invalidate the remaining provisions of the Opinion Documents or (B) affect that provision in any other jurisdiction, (k) permits an action against any person or entity to be brought in the courts of the State of Texas or the federal courts of the United States sitting in the State of Texas, as applicable, (1) if such person has not been served with process in that action in accordance with applicable rules of procedure, or (2) if such court in which the action is brought does not have jurisdiction of the subject matter of the action, or (l) restricts a party's right to transfer its right to receive payments under the Opinion Documents or purports to void the Opinion Documents on any transfer not made

in compliance with their terms; *provided, however*, in our opinion, the unenforceability of the remedial and other provisions referred to in the preceding clauses does not render void or invalid the remaining provisions of the Opinion Documents and does not, subject to the other qualifications, exceptions, limitations, and assumptions set forth herein, make the remedies generally afforded by the Opinion Documents inadequate for the realization of the substantive principal legal benefits purported to be provided by the Opinion Documents (except for the economic consequences resulting from any delay or procedure imposed by applicable law).

3. We express no opinion with respect to compliance with antitrust, environmental, land use, securities, tax, pension, employee benefit, margin, insolvency, fraudulent transfer or investment company laws or regulations of the United States or any jurisdiction thereof, or compliance by any party to the Opinion Documents with its respective fiduciary duties.
4. We express no opinion as to the creation or perfection of any liens or security interests by the Opinion Documents.
5. With respect to references herein to “known to us,” “to our knowledge,” “we are not aware,” or words or phrases of similar import (whether modified by any additional phrases), such references mean the actual, current knowledge of those attorneys of this firm who devoted substantive attention to the transaction to which this opinion letter relates. We have not reviewed the records of any federal, state, county or city governmental entity or court record, other than any Reference Documents, the System Board Resolutions and the City Council Ordinance identified in 2(a) and (b) on page 2 of this opinion, in connection with the execution and delivery of the Opinion Documents.

This opinion letter is delivered as of the date hereof and is based on the facts and circumstances existing as of such date and upon the current state of law. It is possible that future changes or developments of facts, circumstances, or the law of the State of Texas or the United States federal law could alter or affect such opinions, and we undertake no obligation to update or supplement any opinion included herein. Our opinions are limited to matters governed by the laws of the United States and the State of Texas. We assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction.

We call your attention to the fact that our opinions herein are an expression of professional judgment and not a guarantee of a result. The outcome of litigation cannot be predicted with certainty. We note that a court’s decision regarding matters upon which we opine herein will be based upon such court’s own analysis and interpretation of the factual evidence before it and of applicable legal principles, equitable principles, or considerations of public policy. Thus, a different conclusion could be reached and would not necessarily constitute

November 2, 2016

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reversible error. Consequently, this opinion letter is not a prediction of what a particular court (including any appellate court) reaching the issues on the merits would hold, but instead is our opinion as to the proper result to be reached by a court applying existing legal rules as to the facts as properly found (and consistent with the assumptions set forth herein) after appropriate briefing and argument.

The opinions contained herein are given as of the date hereof, and we disclaim any obligation to apprise the addressees of a change in facts, circumstances, or law after the date hereof. These opinions are rendered solely for the benefits of the persons to whom it is addressed and each of their respective successors and assigns in connection with the transactions described in the Opinion Documents and may only be relied upon by such persons. This opinion letter may not be furnished to, or relied upon by, any other person without our prior written consent, except that, without our prior written consent, this opinion letter may (a) be furnished to, but not relied upon, by (i) any governmental, regulatory or other authority or regulators having jurisdiction from time to time over any addressee or its successors and assigns, or (ii) auditors, legal counsel and other professional advisors of any addressee and its successors and assigns who are in each case subject to a duty of professional confidentiality or a similar contractual confidentiality, and (b) furnished pursuant to any order or legal process of any court or in connection with any judicial or arbitration process to which an addressee or any of its successors and assigns is a party arising out of the transactions contemplated under the Opinion Documents and the Credit Agreement.

Very truly yours,

*Langle & Bonack Incorporated*

**APPENDIX 1**  
**DESCRIPTION OF THE PROJECT**

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**ACRONYMS**

CCWSC: Cross Country Water Supply Corporation

HSPS: High Service Pump Station

IPS #1: Intermediate Pump Station, number 1

IPS #2: Intermediate Pump Station, number 2

POSGCD: Post Oak Savannah Groundwater Conservation District

SAWS: San Antonio Water System

TCEQ: Texas Commission on Environmental Quality

MG: Million US Gallons

## **APPENDIX 1**

### **DESCRIPTION OF THE PROJECT**

#### **1. Introduction**

##### **1.1. Purpose**

The purpose of this Appendix is to provide a general overview of the Project. To the extent any provision of this Appendix is addressed differently or more specifically by a provision in any other Appendix or this Water Transmission and Purchase Agreement, such other provision shall take precedence. To the extent any provision of this Appendix is addressed differently or more specifically by the Technical Memorandum in Attachment 3A of Appendix 3 or Appendix 13, the higher standard will govern.

##### **1.2. Prologue**

This Appendix presents the feasibility, conceptual plans, design criteria and the implementation plan for the Project. This Appendix covers the Project Improvements to produce, treat, store, and deliver 50,000 ac-ft/yr water from Well Field Facilities in Burlleson County, Texas, to a delivery point in north Bexar County, Texas. The plan includes sizing and location of the required facilities and a conceptual level plan for implementation. Water quality and integration studies associated with combining the Project source water with SAWS' Edwards aquifer water sources are also analyzed and discussed.

This Appendix has been prepared to be used in the context of a performance-based contract to deliver water to SAWS. This Appendix is not intended to be a final design and construction report. All assumptions are subject to change based on the future detailed engineering design.

##### **1.3. Project Overview**

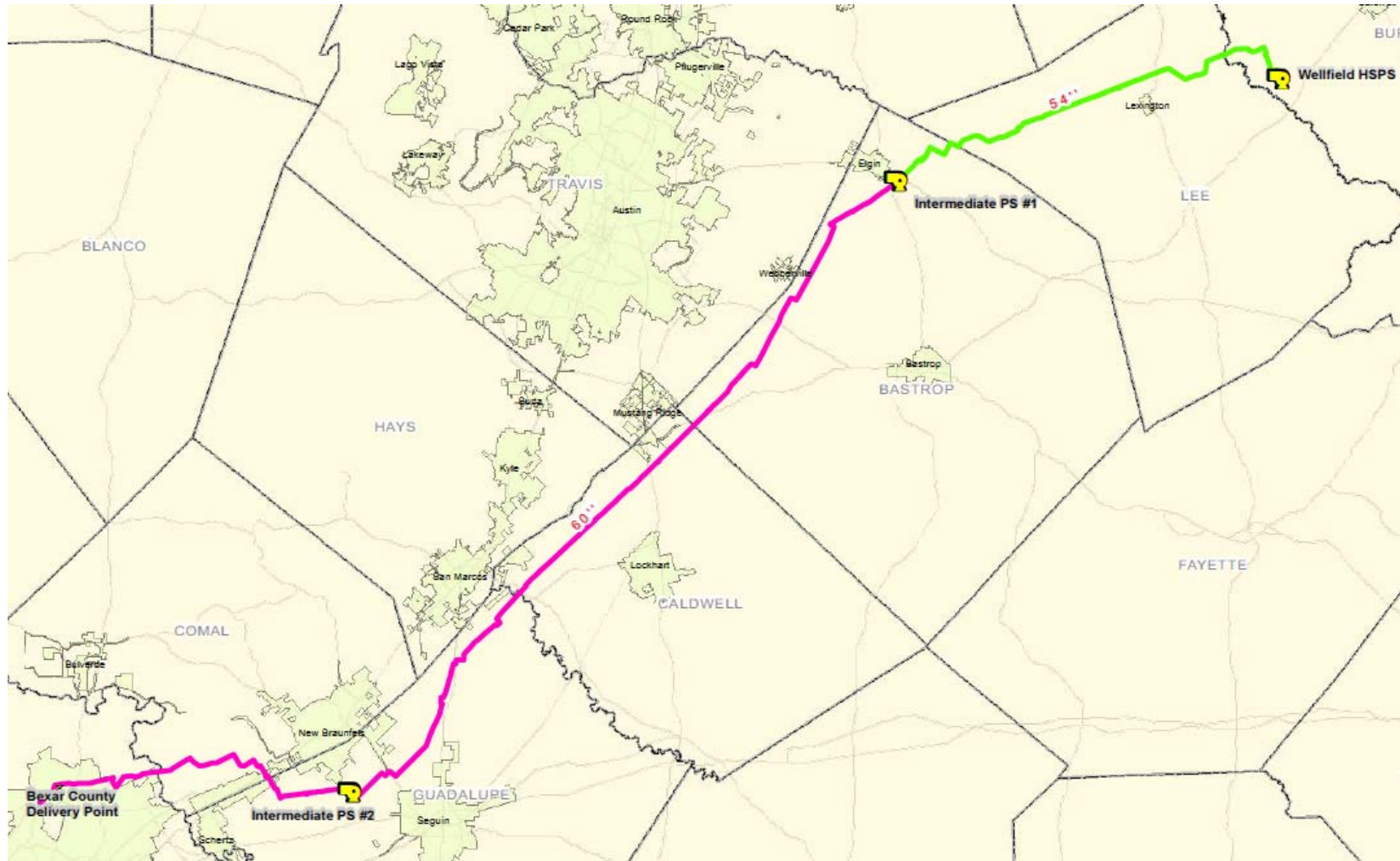
The Project will deliver up to 50,000 ac-ft/yr of potable water. Basic facilities include Wells, Collection Pipelines, treatment facilities, tanks, pump stations, ground storage tanks, and the Transmission Pipeline.

The Well Field Facilities Site will include Wells in the Carrizo-Wilcox Aquifer and Simsboro Aquifer. The Collection Pipelines will convey the Raw Groundwater to the High Service Pump Station (**HSPS**) where the water may be cooled, disinfected and may receive some stabilization treatment. The water will then be pumped through the Transmission Pipeline approximately 140 miles to the Transmission Pipeline Terminus Site in northern Bexar County. The Transmission Pipeline diameters include 54 and 60 inches. The Transmission Pipeline System includes two intermediate pump

stations with storage and, prior to the Notice of Acceptance Date, a Project Company Storage Tank at the Transmission Pipeline Terminus Site.

The Project overview is shown in Figure 1-1.

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**Figure 1-1 Project Overview**

#### **1.4. Planning Factors**

Several factors were taken into consideration in the formulation of the conceptual plans:

- Utilizing fully permitted and vested groundwater rights in Burleson County to meet SAWS water demands
- Location and capacity of the Well Field Facilities
- Engineering design and construction considerations
- Environmental issues (including antiquities)
- Location of the Transmission Pipeline Terminus Site
- Ease of right-of-way acquisition
- Pipeline corridor
- Costs (capital, operation and maintenance)
- Flexibility of integrating additional sources of water

### **2. Project Description**

#### **2.1. Well Field Facilities**

At full capacity, the Project water production facilities will incorporate a Well field with eighteen (18) Wells, an expandable HSPS and approximately 7.5 miles of Collection Pipelines. These Project Improvements are located in Burleson County near the intersection of State Highway (SH) 21 and Farm-to-Market Road (FM) 696, approximately eight miles west of the City of Caldwell, Texas. These facilities and all of their key components, structures and access roads will be constructed on properties for which the Project Company has secured access and appropriate easements.

The Well Field Facilities and individual Wells for the Project were located based on the following:

- Extensive mapping using geophysical logs, geology logs and other tools available defining the character and extent of the aquifer units throughout the central portion of the Carrizo-Wilcox Aquifer
- Known hydraulic characteristics of the aquifer units
- Mapped hydraulic boundaries in the aquifer

- Regional and local groundwater use
- Groundwater conservation district regulations
- Locations of Groundwater Lease property
- Test drilling and production testing

The Simsboro Aquifer and Carrizo-Wilcox Aquifer within Burleson County were selected based on water quality and aquifer hydraulic characteristics. Local groundwater demands are negligible because there is limited irrigation production from these aquifers and municipal usage is low. In Burleson County, most groundwater users obtain their drinking water supplies from shallower aquifers.

### **Well Locations**

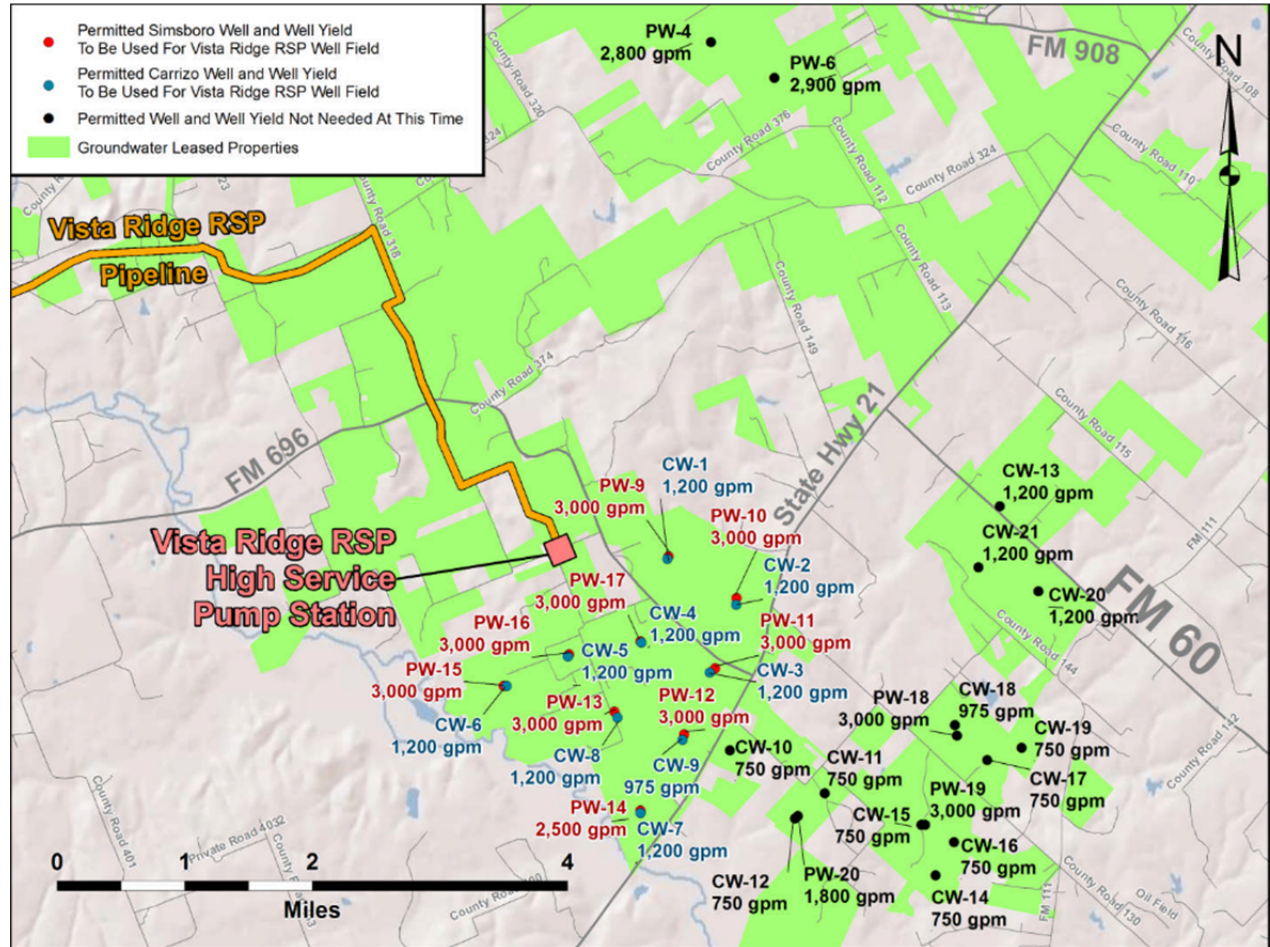
The distribution of Wells and production distribution between the Simsboro and Carrizo members of the Carrizo-Wilcox Aquifer are shown below. Note that the Project includes a total of 18 Wells, with one Well per aquifer included as a backup (16 + 2 configuration).

Figure 2-1 shows the approximate location of the Well Field Facilities Site and individual Wells at the full delivered 50,000 ac-ft/yr capacity, including standby Wells. All drilling sites shown on Figure 2-1 are permitted for drilling and completion by the Post Oak Savannah Groundwater Conservation District (**POSGCD**). The Well locations shown are based on meeting specific POSGCD rules and regulations governing the spacing and locating of Wells.

Per the POSGCD rules, two criteria must be met for locating and spacing of Wells. These criteria are:

- Location and spacing of Simsboro Wells:
  - The spacing of a new Simsboro Well from any Well existing in the Simsboro shall be a minimum distance of 1 foot per gpm of production capacity.
  - The location of a new Simsboro Well shall be a minimum of 1/2 foot per gpm from the property line of a different groundwater right holder.
- Location and spacing of Carrizo Wells:
  - The spacing of a new Carrizo Well from any other Carrizo Well shall be a minimum distance of 2 feet per gpm of production capacity.
  - The location of a new Carrizo Well shall be a minimum of 1 foot per gpm from the property line of a different groundwater right holder.

The Well locations shown on Figure 2-1 meet these criteria. Drilling permits have been approved and all rights to construct Wells at these sites are fully vested for the term of the existing production permits. Figure 2-1 also shows the permitted maximum production for each Well in gallons per minute.



**Figure 2-1 Well Field Location**

The Project Company may change the location of the individual Wells at their discretion, provided the revised location and spacing of the Wells meet the rules and spacing criteria of the POSGCD.

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**Table 2-1 Project Well Field**

<b>Description</b>	<b>Total Number of Wells</b>	<b>Typical Yield per Well (gpm)</b>	<b>Total Production Capacity (ac-ft/yr)</b>	<b>Total Capacity by Permit (ac-ft/yr)</b>
Simsboro Wells	9	3,000 (a)	42,745	39,745
Carrizo Wells	9	1,200 (b)	17,057	14,857
Total	18	NA	59,802	54,602

(a) 8 Wells permitted at 3,000 gpm, 1 Well permitted at 2,500 gpm due to Well spacing and property off-set requirements

(b) 8 Wells permitted at 1,200 gpm, 1 Well permitted at 975 gpm due to Well spacing and property off-set requirements

**Simsboro Wells**

Based on modeling efforts and testing of a pilot production Well, the Simsboro Aquifer is fully capable of producing 3,000 gpm, or higher, long-term Well yields. As shown on Figure 2-1, one of the Simsboro Wells is permitted for a slightly different amount. This reduced permitted Well yield is necessary to comply with the POSGCD Well spacing and property off-set requirements, not due to aquifer production characteristics.

Figure 2-2 shows the preliminary Well design for Simsboro Wells in the Well Field Facilities Site. The Wells will be constructed using standard underreamed, gravel packed, municipal Well construction procedures.

Nominal depth of the Simsboro Wells will be 2,700 feet, with approximately 300 feet of screen.

Actual screen settings, Well depths and screen intervals and lengths will vary based on ground level elevation at each site and site specific hydrogeological conditions.

At this time, water quality data indicates carbon steel casing, liner and column pipe are suitable, with an estimated design life of approximately 50 years

Screens will be carbon steel pipe based, with underbar and stainless steel wire-wrap.

Each Well will be constructed using methods and materials that comply with Texas Commission on Environmental Quality (TCEQ) public water supply system requirements. The Well construction specifications will include the drilling and logging of an initial test hole and test Well to determine water quality, and to provide site-specific information needed for proper selection of material settings, such as casing seat, screen interval, screen slot size and gravel pack grade. In addition, the Well specifications will include appropriate warranties and guarantees from the

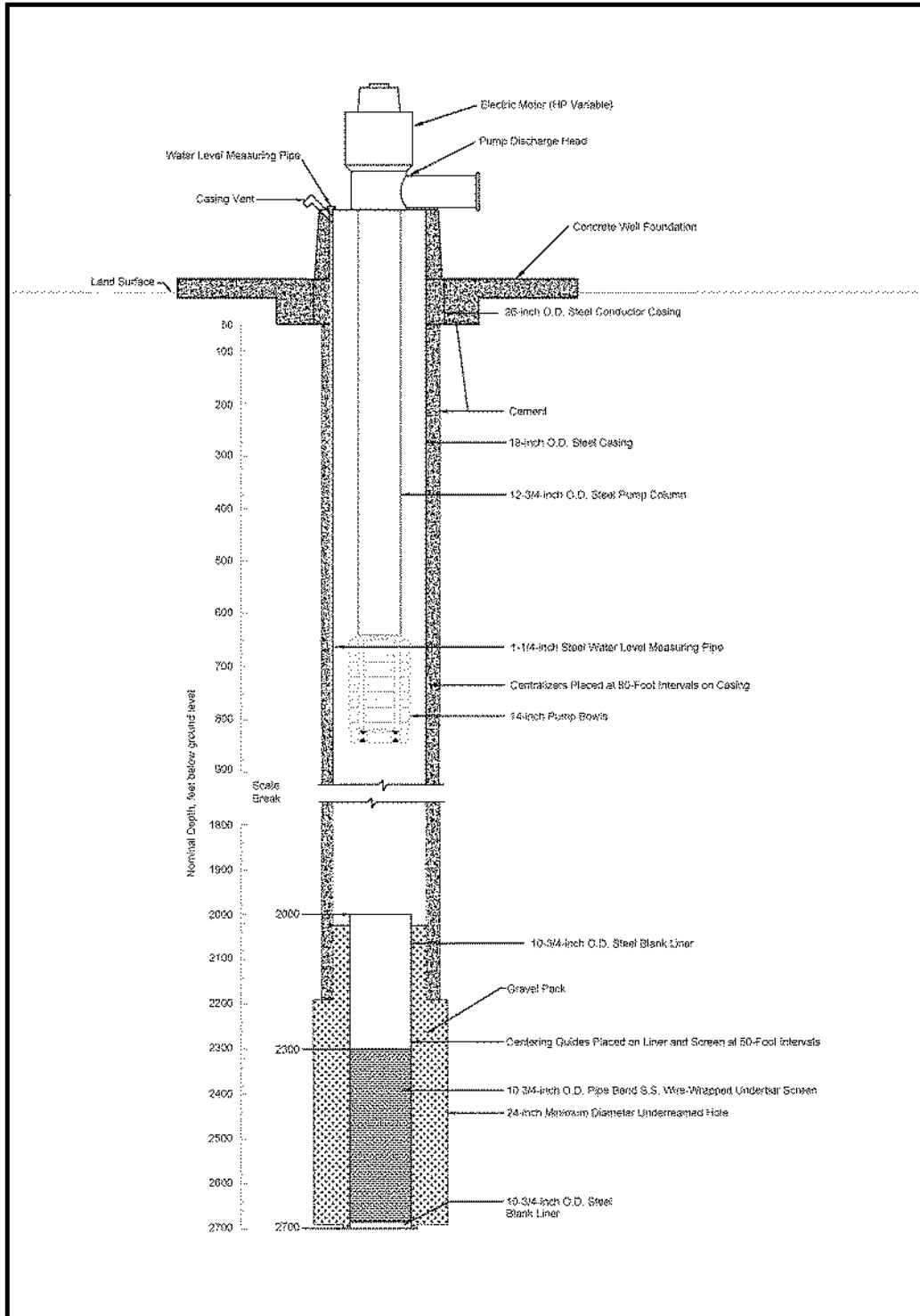


Design Build Contractor governing work completion schedules, finished Well efficiency and sand production.

Well pumps will be vertical line-shaft turbine pumps. Pump settings, total dynamic heads, and the resulting number of pump bowls and electric motor horsepower (HP) will vary depending on site specific conditions, Well characteristics and groundwater levels.

Initially, horsepower requirements for the Simsboro Wells will be about 600 HP each.

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**Figure 2-2 Simsboro Well Design**

### **Carrizo Wells**

Carrizo Well yields will be approximately 1,200 gpm. Carrizo Wells in the Well Field Facilities Site are generally permitted to produce up to 1,200 gpm. As shown on Figure 2-3, one of the Carrizo Wells is permitted for a slightly different amount. This lower permitted Well yield is necessary to comply with the POSGCD Well spacing and property off-set requirements, not due to aquifer production characteristics.

Figure 2-3 shows the preliminary Well design for the Carrizo Wells. The Wells will be constructed using generally accepted underreamed and gravel packed municipal Well construction techniques.

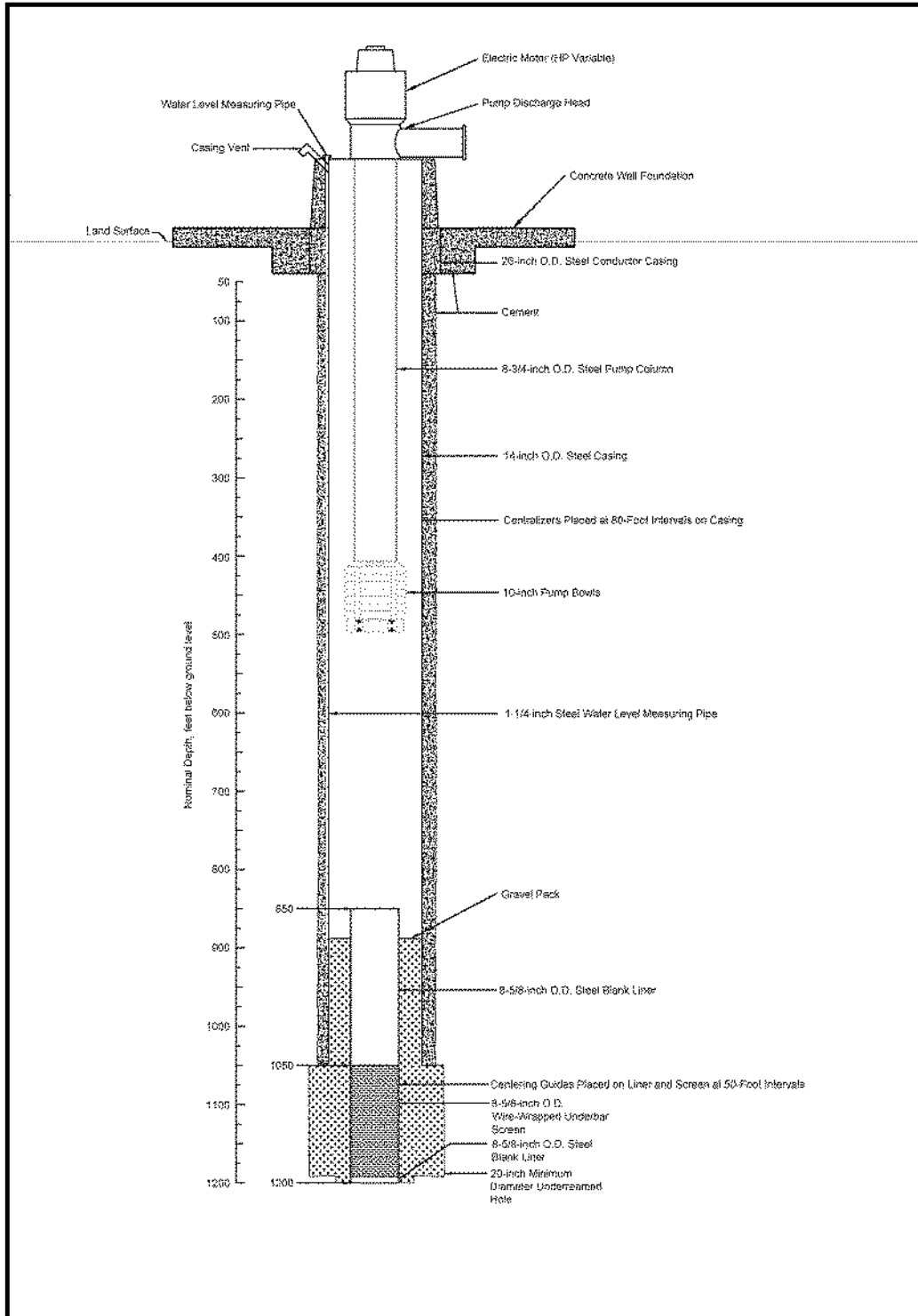
Nominal depth of the Carrizo Wells will be 1,200 feet deep with approximately 150 feet of screen. Actual materials, Well depths and screen setting and lengths will vary based on ground level elevation at each site and site specific hydrogeological conditions encountered during construction.

Available water quality data indicates carbon steel materials for casing, liner and column pipe are suitable, with an estimated design life of approximately 50 years. Screens will be carbon steel pipe based, with underbar and stainless steel wire wrap.

All Well construction methods and materials will meet TCEQ's public water supply requirements. The specifications will include the drilling and logging of an initial test hole and construction of a test Well to determine water quality, and to provide site-specific information needed for the selection of proper material setting such as casing depth, screen interval, screen slot size and gravel pack grade. In addition, the Well specifications will include appropriate warranties and guarantees governing work completion schedules, and finished Well efficiency and sand production.

Pumps used will be vertical line shaft turbine pumps. Pump settings, total dynamic heads and resulting number of pump bowls and electric motor horsepower will vary based on site specific conditions, Well characteristics and aquifer levels. Initial horsepower requirements for the Carrizo Wells are estimated to be about 200 HP each.

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**Figure 2-3 Carrizo Well Design**

### ***Well Head Design***

Each Well will include an airline, a water level measurement pipe, a dedicated water level pressure transducer, isolation valves, check valves, and interactive SCADA capabilities.

Isolation valves, check valves and flowmeters will be incorporated on the discharge piping of each Well and at appropriate locations in the Well field piping to measure the flow and isolate the downstream piping for maintenance. See Figure 2-4 for a typical detail of the Well pump discharge piping.

### ***Collection Pipelines***

A series of 24-inch through 54-inch water mains will be constructed as part of the Collection Pipelines to deliver water from the various Wells to the HSPS. Figure 2-5 illustrates the planned infrastructure piping network. The mains are sized considering peak flows and friction head losses, and providing the most efficient Well motor operations.

The piping network avoids crossing large streams or creeks. Several piping network segments will cross small branch tributaries of an existing unnamed creek north of State Highway (SH) 21. These tributaries have small drainage areas that provide intermittent flows only after localized rainfall events. Preliminary review of available maps and aerial topography suggest that the potential for impacts to waters of the United States is negligible.

### ***Well Field Facilities Site***

The Well Field Facilities will be designed and constructed in accordance with current TCEQ rules and guidelines and recommendations of the American Water Works Association (AWWA). Security provisions recommended under AWWA Guidelines for Physical Security for Water Facilities, December 2006, will be included in all facilities. Those recommendations will include, at a minimum, the following items:

- 8-ft tall security fence with barbwire – intruder strands at the top of the fence of each production Well site and pump station facility
- Separate structures for each Well site hosting a SCADA system
- An all-weather road for access by required vehicles, trucks and repair equipment to each Well site
- One mobile emergency/back-up generator at the Well Field Facilities Site, adequately sized to operate two Well pumps at one of the sites during electrical service interruptions of the primary electrical service, and to maintain SCADA controls

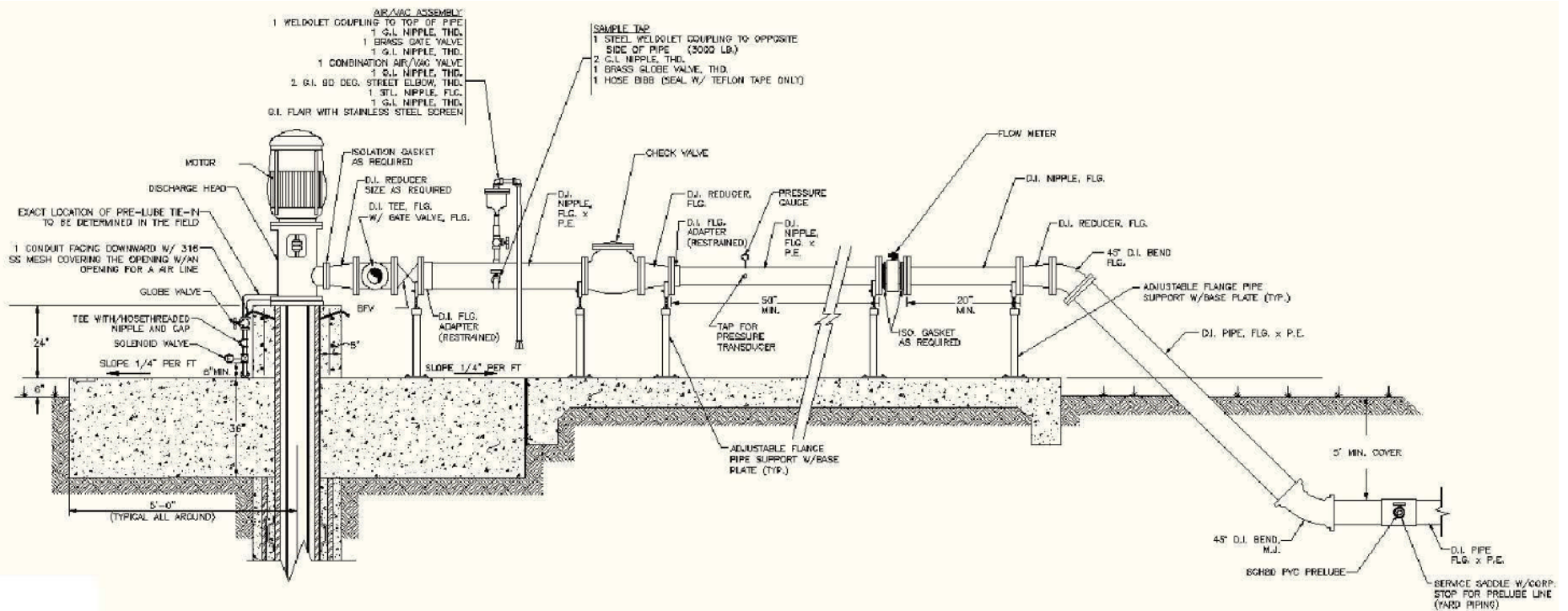


Figure 2-4 Well Pump Discharge Piping



**Figure 2-5 Collection Pipelines**

## **2.2. Transmission Pipeline System - Description**

The Transmission Pipeline System route was developed using many criteria, with a focus on minimizing potential impacts to landowners and businesses along the route, the terrain, and overall length of the route.

Additional parameters considered in developing the Transmission Pipeline Alignment included environmental concerns, endangered species, cultural sites, historical sites, and easement acquisition costs.

The Transmission Pipeline is composed of approximately 140 miles long pipeline and three Transmission Pipeline Pumping Stations:

- HSPS
- Intermediate PS #1 (IPS #1)
- Intermediate PS #2 (IPS #2)

The Transmission Pipeline System includes the Transmission Pipeline and, prior to the Notice of Acceptance Date, the Project Company Storage Tank. The Transmission Pipeline System begins at the HSPS located at the proximity of the Well Field Facilities Site in Burleson County and terminates at the Transmission Pipeline Terminus Site in Bexar County (Refer to Figure 1-1).

Initial construction standards reflect the depth of cover over the top of pipe will be a minimum of 5 feet below natural ground surface and approximately 10 feet under local, county and state roadways. Potential river crossings include the Cibolo River, Guadalupe River, San Marcos River, and the Colorado River. The Transmission Pipeline Alignment will cross railroad and road rights-of-way at several locations.

Pipeline materials will be evaluated during preliminary studies and when design calculations are completed. The selected materials will comply with the applicable codes and standards such as those by the American Water Works Association (AWWA)

### ***High Service Pump Station (HSPS)***

The HSPS will receive the water from the Collection Pipelines and after some temperature, preventive disinfection and stability adjustments, pump it to the IPS #1.

The land needed for the HSPS will be covered under an existing Groundwater Lease. The planned layout for the pump station site is in a grassy field that is mostly clear of trees.

Water arriving from the Well Field Facilities Site will first be chemically treated with sodium hypochlorite before entering the variable frequency drive (VFD) operated



cooling towers. The flow from the cooling towers will be routed to a ground storage tank.

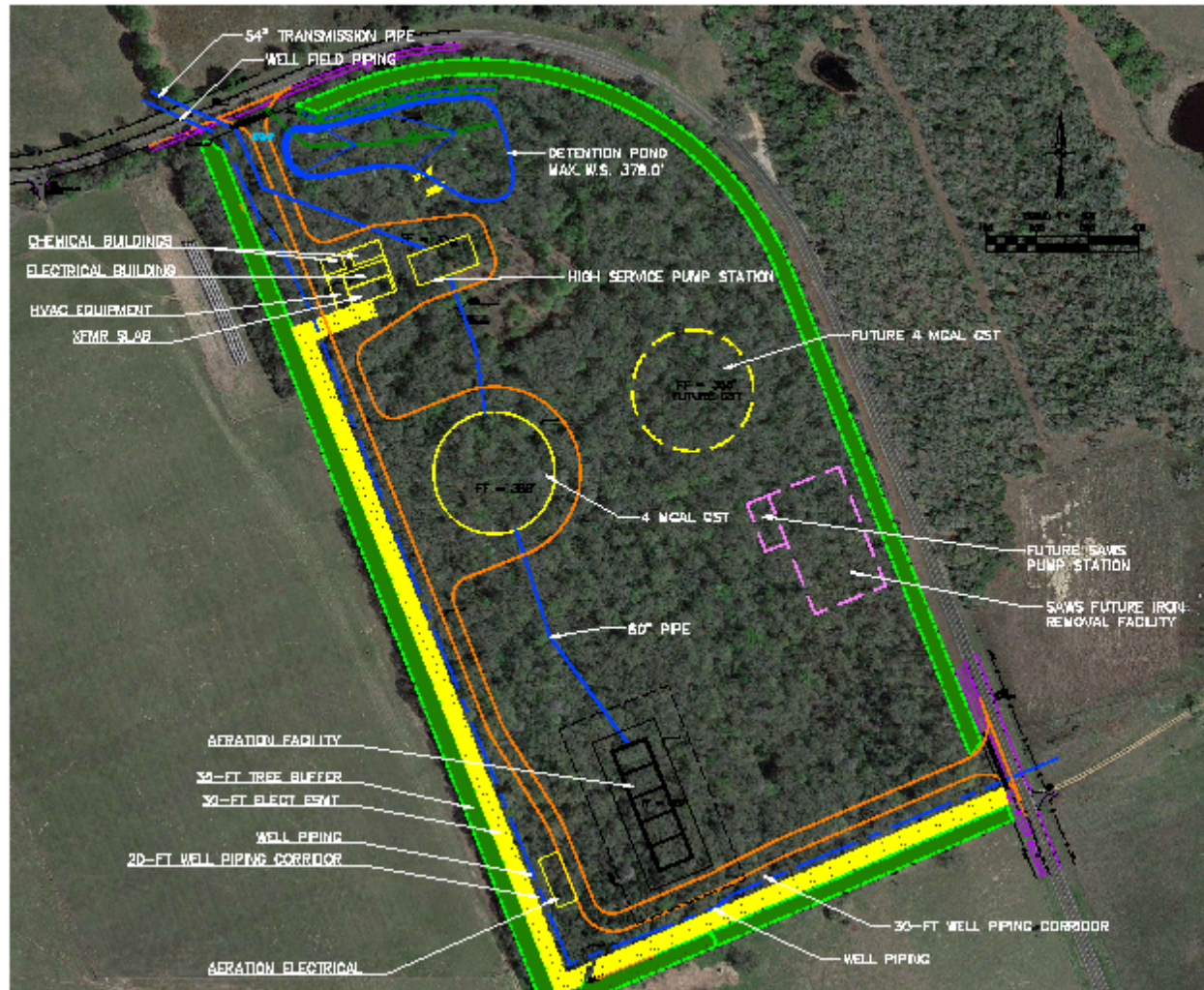
Horizontal split case or vertical turbine pumps will be fed from the ground storage tank and will deliver the water into the Transmission Pipeline where it will receive further chemical treatment for Langelier saturation index (**LSI**) adjustment before leaving the HSPS to go to the IPS #1.

As is shown on the site layout in Figure 2-6, the HSPS will initially consist of:

**Table 2-2 HSPS Scope**

Cooling System	Five (5) VFD-operated 10,500 gpm cooling towers
Storage	One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank
Treatment	One (1) Dosing system: Sodium Hypochlorite One (1) Dosing system: Caustic Soda One (1) Chemical Storage facility
Electrical Services	One (1) Electrical connection facility
Pump Pad	Four (4) 11,300 gpm @ 495' TH high service pumps
Other	Access road and the necessary security items at the site

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**Figure 2-6 High Service Pump Station Site Layout**

**Pipe Section 1: HSPS to IPS #1**

The Transmission Pipeline from the HSPS to the Intermediate Pump Station (**IPS**) #1 is approximately 39 miles long and extends across rural properties. The pipe size for this portion of the alignment is planned to be 54-inch diameter pipe capable of delivering the necessary flow rate to IPS #1. The Transmission Pipeline extends from the HSPS, in a northerly direction and subsequently parallels the existing Cross County Water Supply Corporation Project 130 (**CCWSC 130**) pipeline which was completed in 2011. The Transmission Pipeline is planned to parallel the Project 130 pipeline in a westerly direction toward the IPS #1, for a distance of approximately 27 miles.

**IPS #1**

Based on the current design, IPS #1 will be located in Bastrop County, TX on an approximately 8-acre site.

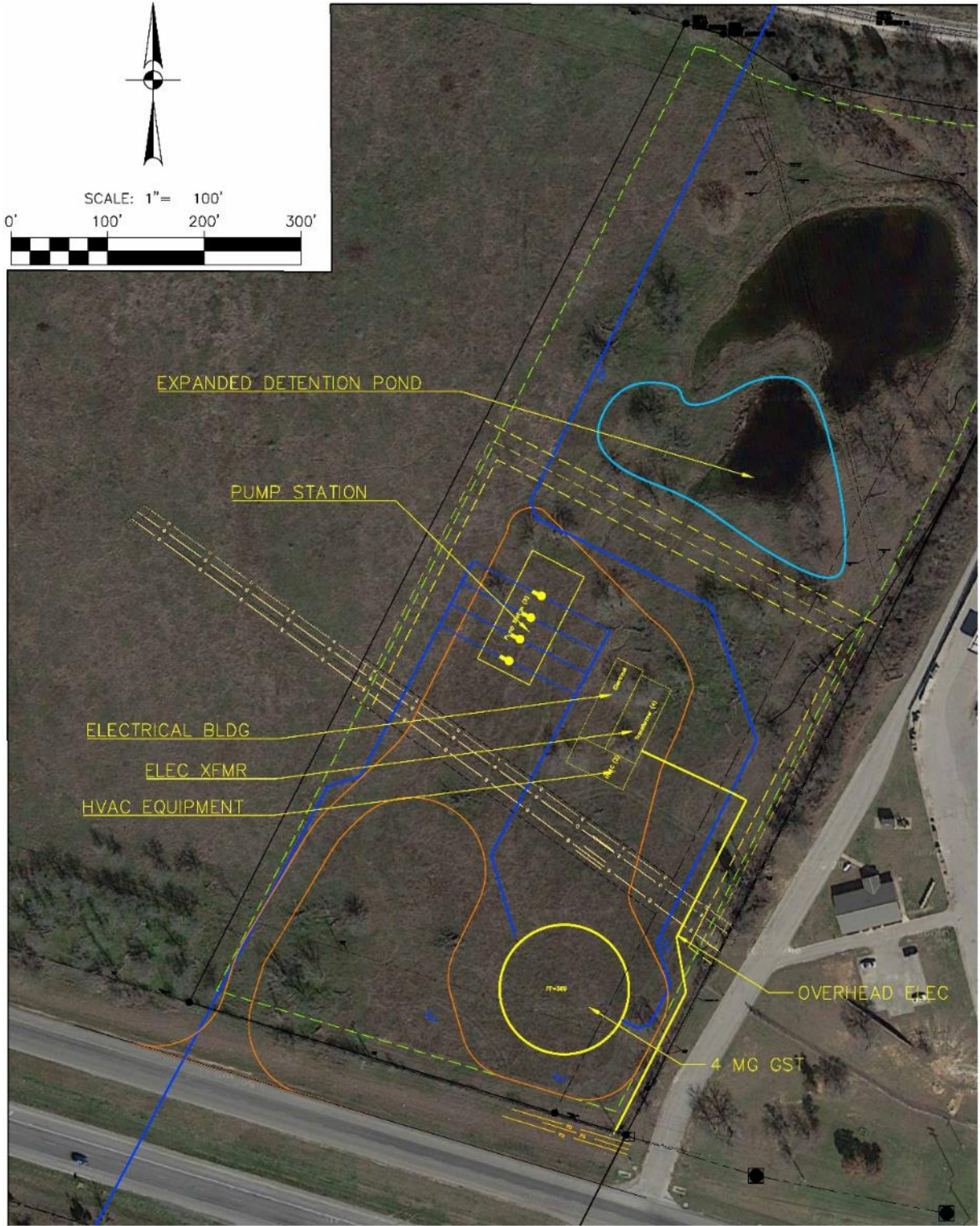
The IPS #1 will receive water from the HSPS and pump it to the IPS #2.

The conceptual site layout is presented in Figure 2-7

The IPS #1 will ultimately consist of:

**Table 2-3. IPS #1 Scope**

Storage	One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank
Treatment	One (1) Dosing system: Sodium Hypochlorite One (1) Chemical Storage facility
Electrical Services	One (1) Electrical connection facility
Pump Pad	Four (4) 11,300 gpm @ 445' TH pumps
Other	Access road and the necessary security items at the site



**Figure 2-7 Intermediate Pump Station #1 Site Layout**

**Pipe section 2: IPS #1 to IPS #2**

The Transmission Pipeline from the IPS #1 to the IPS #2 is planned to be approximately 72 miles long and extends through predominately rural properties. A 60-inch diameter pipeline capable of delivering the necessary flow to the IPS #2 is planned for this segment.

The Transmission Pipeline extends from the IPS #1 in a southwesterly direction toward the IPS #2. The Transmission Pipeline is planned to be constructed within a 85-foot wide permanent easement that parallels an existing Lower Colorado River Authority (LCRA) electrical transmission easement. In several instances, the Transmission Pipeline Alignment shifts away from the LCRA easement in order to avoid residential neighborhoods, stock ponds, trees, and existing infrastructure.

**IPS #2**

Based in the current design, IPS #2 will be located in Guadalupe County, TX on an approximately 8-acre site.

IPS #2 will receive water from IPS #1 and pump the water to the Transmission Pipeline Terminus Site.

The conceptual site layout is presented in Figure 2-8

The IPS #2 will ultimately consist of:

**Table 2-4 IPS #2 Scope**

Storage	One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank
Treatment	One (1) Dosing system: Sodium Hypochlorite One (1) Chemical Storage facility
Electrical Services	One (1) Electrical connection facility
Pump Pad	Four (4) 11,300 gpm @ 562' TH pumps
Other	Access road and the necessary security items at the site



**Figure 2-8 Intermediate Pump Station #2 Site Layout**

**Pipe Section 3: IPS #2 to Transmission Pipeline Terminus Site**

The Transmission Pipeline from the IPS #2 to the Transmission Pipeline Terminus Site is approximately 29 miles long and extends through mostly semi-rural properties. The pipe size for this portion of the Transmission Pipeline System is planned to be a 60-inch diameter pipe. The Transmission Pipeline extends from the IPS #2 in a southwesterly direction toward the Transmission Pipeline Terminus Site. The Transmission Pipeline is planned to be constructed within a 85-foot wide permanent easement that parallels the existing LCRA easement until the Transmission Pipeline Alignment reaches Green Valley Road in Guadalupe County. The Transmission Pipeline Alignment from that point shifts away from the LCRA easement and extends towards the Transmission Pipeline Terminus Site. Multiple roadways under county and State jurisdiction will also be crossed perpendicularly as typically required by local and State regulations.

**Transmission Pipeline Terminus Site**

The Transmission Pipeline Terminus Site is located in north Bexar County.

The Project Company Storage Tank will receive Product Water from the Transmission Pipeline. The Project Company will design, construct and test the 10 MG Project Company Storage Tank and dedicate the tank to SAWS on the Notice of Acceptance Date. The Transmission Pipeline Terminus Site is located within 12,000 feet of the intersection of Blanco Road and Texas State Highway Loop 1604 (the 1604) in Northern Bexar County, in San Antonio. The conceptual site layout for this facility is presented in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

The Transmission Pipeline Terminus Site will have the following major facilities:

**Table 2-5 Transmission Pipeline Terminus Site Scope**

Storage	One (1) Pre-stressed concrete ground storage tank. Capacity 10 MG
Electrical Services	One (1) Electrical connection facility
Other	Access road and the necessary security items at the site

The Transmission Pipeline Terminus Site will be sited large enough to accommodate the SAWS Interconnection Improvements, including a SAWS 10-million-gallon tank, pump station and additional treatment facilities.

The Product Water Delivery Point and Project Flow Meter are included in the scope for the Transmission Pipeline Terminus Site. The Product Water Delivery Point is expected to be downstream of the Project Flow Meter. Water is expected to be

delivered at the pressure granted by the height of the water surface inside the Project Company Storage Tank.

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**[REFER TO ATTACHMENT 13E OF APPENDIX 13 FOR SITE LAYOUT]**

**Figure 2-9 Transmission Pipeline Terminus Site Layout**

### 3. Design Intent and Project Requirements

#### 3.1. Transmission Pipeline System

##### *Transmission Pipeline Hydraulics*

Planning stage hydraulic calculations have been performed for the sizing of the pipelines and selecting pumps for the Transmission Pipeline Alignment. The calculations in Table 3-1 are based on the final delivery flow of 50,000 ac-ft/yr. Water losses in the Transmission Pipeline are assumed to be 4%. Friction losses in the Transmission Pipeline are based on a Hazen Williams’ Coefficient (C) equal to 120 for the aged pipe. Based on the above assumptions, the total head at each pump station is calculated. Table 3-1 shows pipeline size, pipeline length, static head, friction losses and total head.

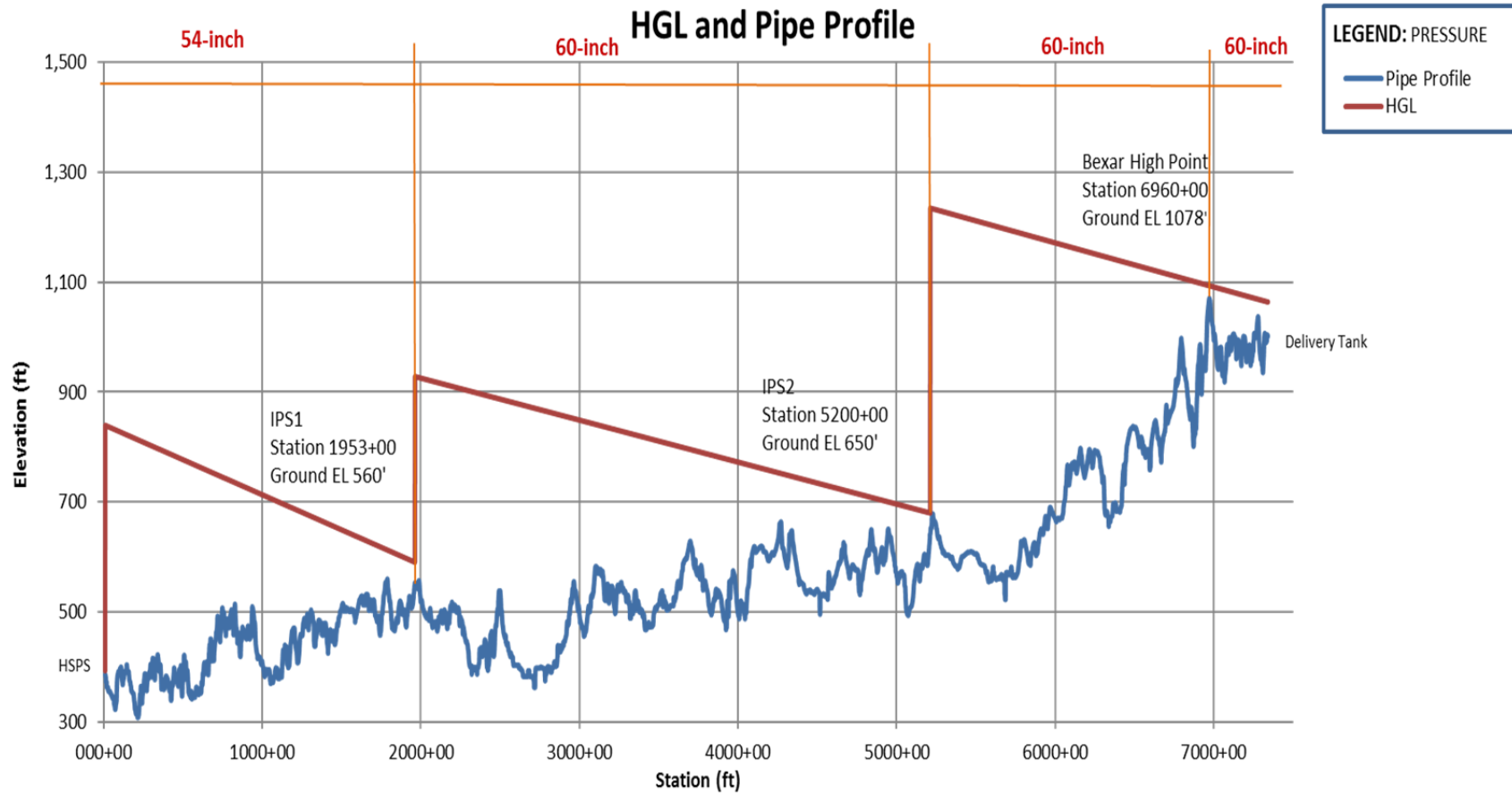
**Table 3-1 Hydraulic Calculations**

	<b>High Service Pump Station</b>	<b>Intermediate Pump Station #1</b>	<b>Intermediate Pump Station #2</b>
Pipe Diameter (in)	54	60	60
Static Lift (ft)	209	131	424
C Factor	135	135	135
Head Loss (ft/1,000')	1.32	0.79	0.79
Segment Length (ft)	205,131	378,141	155,331
Friction Losses (ft) <sup>1</sup>	286	314	138
Total Head (ft)	495	445	562

<sup>1</sup> Friction losses include frictional losses from the pipe as well as 15’ losses from elbows and valves.

Note that frictional losses are expected to increase throughout the life of the pipelines. Since this Project will be in operation for at least 30 years, the Transmission Pipeline efficiency and capacity are expected to decrease from year to year despite regular maintenance, which will maintain frictional losses within acceptable levels. The maximum theoretical peak flow rate for the Transmission Pipeline System is estimated to be between 34,880 gpm (new pipe) and 32,548 gpm (30-year pipe).

In order to provide a conservative estimate for the pressure class for each section of the Transmission Pipeline, all pressure losses from valves and elbows are accounted for along each section of pipeline. Figure 3-1 shows the hydraulic profile of the Transmission Pipeline System.



**Figure 3-1 Hydraulic Grade Line**

**Delivery Variability**

The Project is designed to provide some variations in the delivery of 50,000 ac-ft/year to SAWS. The Project includes allowances for losses due to evaporation (cooling towers) and unavoidable or non-economically repairable leakage on pipes. Table 3-2 provides the design capacities of the major components (and potential losses).

**Table 3-2 Design Capacity of Components**

	Wellfield		Evaporation (2%)		HSPS		Pipe		Losses (4%)		Delivery	
	Acft /yr	gpm	Acft /yr	gpm	Acft /yr	gpm	Acft /yr	gpm	Acft /yr	gpm	Acft /yr	gpm
<b><i>New Pipe with Losses (C=140)</i></b>												
Peak	59800	37075	1196	742	58606	36334	58606	36334	2344	1453	56262	34880
Operation	53028	32875	1061	658	52261	32400	52261	32400	2090	1296	50171	31104
Margin	6775	4200			6345	3934	6345	3934			6091	3776
Margin %	13%	13%			12%	12%	12%	12%			12%	12%
<b><i>Old Pipe with Losses (C=120)</i></b>												
Peak	59800	37075	1196	742	58606	36334	54687	33904	2187	1356	52500	32548
Operation	53028	32875	1061	658	52261	32400	52261	32400	2090	1296	50171	31104
Margin	6775	4200			6345	3934	2426	1504			2329	1444
Margin %	13%	13%			12%	12%	5%	5%			5%	5%

Based on the difference between peak and normal operation, Table 3-3 and Table 3-4 illustrate the anticipated recovery time following a down time within the Project for the initial installation and the 30-year old pipe scenario.

**Table 3-3 Project Recovery (Initial Installation; C factor = 140)**

<b>Stop Time (minutes)</b>	<b>Base Load (gpm)</b>	<b>Unsold Volume (kgallons)</b>	<b>Excess Capacity (gpm)</b>	<b>Recovery Time (minutes)</b>	<b>Recovery Time (hours)</b>	<b>Recovery Time (days)</b>
15	31,104	467	3,776	124	2	-
30	31,104	933	3,776	247	4	-
60	31,104	1,866	3,776	494	8	-
<b>Stop Time (hours)</b>	<b>Base Load (gpm)</b>	<b>Unsold Volume (kgallons)</b>	<b>Excess Capacity (gpm)</b>	<b>Recovery Time (minutes)</b>	<b>Recovery Time (hours)</b>	<b>Recovery Time (days)</b>
2	31,104	3,733	3,776	988	17	0.7
4	31,104	7,465	3,776	1,977	33	1.4
8	31,104	14,930	3,776	3,954	66	2.7
24	31,104	44,790	3,776	11,861	198	8.2

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**Table 3-4 Project Recovery (30-Year Old Pipe; C factor = 120)**

<b>Stop Time (minutes)</b>	<b>Base Load (gpm)</b>	<b>Unsold Volume (kgallons)</b>	<b>Excess Capacity (gpm)</b>	<b>Recovery Time (minutes)</b>	<b>Recovery Time (hours)</b>	<b>Recovery Time (days)</b>
15	31,104	467	1,444	323	5	-
30	31,104	933	1,444	646	11	-
60	31,104	1,866	1,444	1,293	22	1
<b>Stop Time (hours)</b>	<b>Base Load (gpm)</b>	<b>Unsold Volume (kgallons)</b>	<b>Excess Capacity (gpm)</b>	<b>Recovery Time (minutes)</b>	<b>Recovery Time (hours)</b>	<b>Recovery Time (days)</b>
2	31,104	3,733	1,444	2,585	43	2
4	31,104	7,465	1,444	5,170	86	4
8	31,104	14,930	1,444	10,340	172	7
24	31,104	44,790	1,444	31,021	517	22

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### ***Surge Control***

During the detailed design phase of the Project, two potential surge events will be evaluated:

- 1) A pump shutdown due to power failure at the Project and
- 2) A sudden valve closing at the Project.

Various surge scenarios will be used to evaluate the impacts of either surge event in the Transmission Pipeline System. The simulation results will be used to evaluate and recommend surge protection devices to provide sufficient surge protection for the Transmission Pipeline System.

The effectiveness of installing air/vacuum valves along the Transmission Pipeline in addition to those at high points and/or installing surge tanks will be studied to control surge pressures. Combination air valves will be installed on each of the pump discharges as well as the common header at each pump station. These extra surge protection devices will be adequately sized during final design.

Also, at each pump station, a surge anticipator/relief line with surge anticipator valve will be installed off of the discharge header and tied into the suction header to relieve surge waves. The surge anticipating valve will activate on the low pressure wave and remain in the open position to dissipate the anticipated return high pressure wave in order to protect the Transmission Pipeline and the equipment at the pump station from any damage caused by unexpected surge pressures. It will also function as a pressure relief valve, and will open when the pressure in the pipe exceeds a preset high pressure limit to protect the equipment from damage caused by unexpected high non-surge pressures.

Final design of surge control equipment will be performed after a thorough transient analysis is completed and will include detailed modeling of all aspects of the Transmission Pipeline under multiple operating scenarios. The Project analysis includes costing for industry standard surge mitigation devices.

### ***Transmission Pipeline Easements***

The Transmission Pipeline traverses numerous parcels that generally consist of farmland, with lesser lengths located in residential sites and mixed-use developments.

The Project Company shall acquire access (which are broadly described in this section as “easements”) to approximately 450 land parcels for the construction, operation and maintenance of the Transmission Pipeline. This will be accomplished by means of easements, rights-of-way, or fee interests, which will be acquired by negotiation with the relevant landowners or, if necessary, by means of eminent domain proceedings.

Typically, permanent easements are of sufficient width to allow installation of the pipeline, access for construction equipment, stockpiles of excavated material and staging areas for pipe and bedding material. In evaluating the recommended easement width, it was determined that if the easement is wide enough to construct the Project pipeline, it will be wide enough to provide for operations and maintenance.

With respect to the Well Field Facilities Site and HSPS in Burleson County to the Burleson/Lee County line, Groundwater Leases are in place on the traversed parcels which allow for the construction of the Well pump station, the HSPS and Transmission Pipeline within those properties. Notwithstanding the foregoing, fee simple sites shall be obtained for the Well Sites and the High Service Pump Station Site, and permanent easements shall be acquired for the Transmission Pipeline and gathering lines within those properties.

Additional easements will be required at several locations from the Burleson/Lee County line to IPS #1 in Lee County, where the existing easement width is not adequate to install the pipeline. Temporary construction easement may also be obtained to construct this segment of the pipeline.

Between IPS #1, IPS #2 and the Transmission Pipeline Terminus Site, the planned 85-foot easement will mainly parallel an existing LCRA electrical transmission line easement.

The following is a summary of the course of action to acquire easements for the Project once the route of the Transmission Pipeline has been decided:

- a. Identify property owners
- b. Develop Right of Entry and Easement forms
- c. Obtain Rights of Entry
- d. Determine the approximate value of land within the pipeline route
- e. Develop a schedule easement acquisition
- f. Process title commitments or title runs to reveal the current land owner and any encumbrances
- g. Contract with property appraisers to determine the value of the easement
- h. Complete surveys and appraisals of the properties
- i. Acquire the easement. Task includes negotiating with the landowners
- j. Pay easement and recording fees to finalize transactions



An experienced local appraiser was consulted in developing a preliminary estimate of easement acquisition costs for property values on a per acre basis by county.

### ***Soil Corrosion Control and Cathodic Protection***

The Transmission Pipeline extends west and southwest across a series of Eocene sedimentary deposits to a location near the Bastrop - Caldwell County Line. At that point, and continuing to its terminus at the Transmission Pipeline Terminus Site, bedrock consists of Cretaceous-age marl and shale sedimentary deposits. Formations that will be crossed along the northeastern half of the pipeline include the Sparta Sand, Weches Formation, Queen City Sand, Wellborn Formation, and the Wilcox and Midway Groups. These formations are predominantly comprised of fine- to medium-grained sands, clayey sands and clay. Interbeds of clay, mudstone and sandstone are fairly common.

The southwestern half of the Transmission Pipeline will traverse Cretaceous-age formations identified as the Austin Chalk, Navarro Group and Marlbrook Marl and Pecan Gap Chalk ("upper Taylor Marl"). The Austin Chalk is comprised primarily of chalk and marl and locally may contain bentonitic seams. The Navarro Group and Marlbrook Marl is a mixture of marl, clay, sandstone and siltstone. The Pecan Gap Formation consists of chalk and chalky marl. Stream and river valleys will feature alluvial deposits of sand, clay and gravel to varying depths and horizontal extent.

It is anticipated that the Austin Chalk is likely to contain some beds of relatively hard limestone, requiring special methods of trenching.

The corrosive nature of the soil surrounding pipelines is based on characteristics including electric resistivity, pH, chloride content, sulfate/sulfide content, redox potential and moisture condition.

The soil for the Project will be studied by taking soil bores along the Transmission Pipeline Alignment and testing it for resistivity and pH. The wet chemistry of the soil will also be studied to determine the chloride content, the sulfate concentration and to verify the pH.

If corrosion protection is warranted, there are common installation methods for each pipe material to combat the corrosive soils. Bar wrapped cylinder concrete pipe can be installed in polyethylene encasement, but more typical is a mortar coating that acts as a barrier between the corrosive soils and the pipe. Steel pipe also commonly uses a urethane or mortar coating as corrosion protection. Fiberglass pipe will not be used or considered as a suitable material for the pipeline.

Cathodic corrosion protection offers an optimum of safety and efficiency. Corrosion evaluation and mitigation measures will be considered during design and development

of the Transmission Pipeline System and dependent on the results of the onsite specific corrosion evaluation.

For preliminary study purposes, soil surveys conducted by National Resources Conservation Service indicate that soil is mild to moderately corrosive for concrete and high or moderately high corrosive for uncoated steel. Cathodic protection has been included because it would be beneficial and economical for the life of the pipeline.

Installation of galvanic anode system is one of the options planned for the Project for corrosion protection of the pipeline; active cathodic protection will be studied too.

Suitable measures as per applicable standards will be taken to mitigate any interference current and cross currents from any source. Special protection will be provided at cased-crossing (road crossing/rail crossing etc.). Additional permanent sacrificial anodes for casings/ carrier pipes within casings will be provided if needed. The final cathodic protection system will be decided after the field studies and detailed design is performed.

### **3.2. Instrumentation and Controls**

The Project will utilize a supervisory control and data acquisition (**SCADA**) system to monitor and control the facilities along the Transmission Pipeline. In general, there are three major components for the SCADA system; the human machine interface (**HMI**), the programmable logic controller (**PLC**), and the communication system.

The top-end HMI consists of operators' workstations, a communication server and a historical server. This will be located at the main control center. The HMI provides the operator with an operator's interface, alarms, and trending functionality.

PLCs are installed with major equipment or at locations along the Transmission Pipeline where it has direct control of the equipment. The user-defined function block provided by the PLC, together with the classes and objects provided by the HMI, promote consistency throughout the SCADA system.

Fiber optics will be used for the communication between the Well Field Facilities Site and the HSPS, whereas reliable wireless communication system may be used for the communication between the Transmission Pipeline Pumping Stations. The primary/main control center will be located either at the HSPS or at the Transmission Pipeline Terminus Site.

### **3.3. Fire Protection**

The fire protection system includes all material, design, fabrication, installation and testing per National Fire Protection Association (NFPA) and local code requirements. The fire protection system includes open head deluge sprinklers with dry pilot

activation in the chemical buildings for HSPS and Intermediate Pump Stations. The open head deluge sprinklers will be designed to meet extra hazard per NFPA with a density of 0.30 over the entire area of protection. The ground storage tanks will be protected with two levels of protection and will be designed to meet a density of 0.30 over the surface area of the tank. The valves will be located within a conditioned area of each building. The cooling towers' fire protection system includes open head deluge sprinklers with dry pilot activation. The cooling towers' fire protection system will be designed to meet a density of 0.50 over the entire area. Each electrical room will contain dry closed head system or a double interlock pre-action tied to the smoke detection system. Each electrical room's fire protection packages also include fire alarms, monitoring systems, smoke detection, heat detection, and two 20 pound (lb.) CO<sub>2</sub> and six 20 lb. ABC fire extinguishers.

### **3.4. Water Treatment**

General water quality data was reviewed and evaluated for Edwards, Carrizo, and Simsboro water. The evaluation results indicate that no water quality parameters exceeded the current PMCLs and SMCLs in any one of these three sources. In addition, the Project water sources are of high quality and have a total dissolved solids content similar to the SAWS' Edwards supply.

#### ***Stability***

Generally speaking, the water is typically considered in a stable state when a LSI is greater than -0.4 and lower than 0.4. The evaluation results indicate the Carrizo water is under stable conditions with a LSI of 0.15 while the water from Wells in the Simsboro Aquifer has a slight corrosive tendency based on the calculated LSIs. The Additional Product Water Quality Standards require Product Water with a LSI greater than 0.1. The stability was then evaluated for the water mixture blended from these two sources. Under the current plan, a blending ratio between 20-40% of Carrizo water is considered with a design ratio of 30%. The resulting LSI from this mixed Carrizo-Simsboro blending ratio range is between -0.66 and -0.75 at a temperature of 77°F. The Project Company will treat the Raw Groundwater so that the delivered Product Water falls within the LSI range preferred by SAWS. Treatment to bring the delivered Product Water to within SAWS-preferred LSI range was evaluated. The planned treatment is the addition of caustic (NaOH) solution for adjustment of the pH of the delivered Product Water. The results of the treatment evaluations are summarized in Table 3-5 for a Carrizo/Simsboro blend of 20 percent and 40 percent.

**Table 3-5 Water Stability for Blended Source Water after pH Adjustment**

Parameter	Unit	Value
		20%–40% Carrizo Water
<b>Caustic Data</b>		
Dosage	mg/L as NaOH	11.0–13.9
	mg/L as solution at 50%	22.0–27.8
<b>Water Quality</b>		
Temperature <sup>1</sup>	°F	77
Total Alkalinity	mg/L as CaCO <sub>3</sub>	174–190
TDS	mg/L	263–269
Calcium	mg/L as Ca	9.71–10.2
pH	standard unit	8.57–8.59
<b>Water Stability</b>		
pH at CaCO <sub>3</sub> Saturation (pHs)	standard unit	8.27–8.28
Langelier Saturation Index (LSI)		0.30

<sup>1</sup> It is assumed a temperature of 77°F is reached in the distribution system after cooling and treatment on the well site.

The evaluation results indicate a resulting LSI after treatment of 0.3 can be reached in the blended source water at a caustic dosages range from 11.0 to 13.9 mg/L as NaOH. The water mixture is under safe and stable conditions after pH adjustment and within the range preferred by SAWS. No stability concern is associated with integration of the Product Water into the SAWS Distribution System.

**Disinfection**

Free chlorine residual is planned for primary disinfection of the source water at the Project treatment facility. It is also used as secondary disinfectant in the Transmission Pipeline System. Since free chlorine is used by SAWS in the SAWS Distribution System, waters from both water supplies are compatible in terms of disinfection mechanism and are not anticipated to create and concerns from blending.

A minimum free chlorine residual of 0.5 mg/L is recommended for design to provide the secondary disinfection as well as prevent bacteria regrowth in the Transmission Pipeline System. It is anticipated that the free chlorine residual should also meet the minimum residual disinfectant concentration of 0.2 mg/L by the TCEQ for free chlorine in any blending scenarios.

### ***Cooling***

Based on SAWS requirements the delivered Product Water must not exceed 83° F. The Simsboro water will enter the Well pump at 101° F and the Carrizo water enters at 81° F. These waters will mix in the Well header lines, and will have an estimated temperature of 95.3° after blending. However, this is higher than the 83° SAWS stipulated water temperature. To meet the SAWS temperature requirement, the water will be fed through cooling towers, at the HSPS, before entering the Transmission Pipeline.

Water losses due to evaporation are considered to be 2% of the incoming volume.

The cooling towers are designed to accept incoming water and cool it down to 84° F, using the wet bulb temperature of 78°. This is 1° higher than the SAWS requirement but additional cooling will take place as the Product Water travels approximately 140 miles through the Transmission Pipeline before being delivered to the SAWS Distribution System. The transient time spent in cooler subsurface conditions will provide additional aid in the cooling of the Product Water to the SAWS stipulated 83°.

### ***Additional Treatment***

Additional Product Water Quality Standards are set forth in Appendix 8 (Performance Guarantees). This includes modifications to the calcium and iron levels. The HSPS site has adequate acreage to accommodate these types of advanced treatment processes, if required by the Project.

A treatment concept for reducing the iron content from the 0.3 mg/L secondary standard in the Product Water delivered to SAWS to an iron concentration of 0.2 mg/L has been evaluated. The HSPS site is currently sized to accommodate the iron removal process if required by SAWS.

In the evaluated process, the existing cooling and chlorination systems may be used for oxidation of iron. Partial flow may be diverted to a filtration system where iron precipitates to be removed. The filtered effluent would be lifted by pumps and blended with unfiltered flow in an in-line mixer prior to the ground storage tanks. The filters may need to be washed periodically and the backwash wastes be sent to a pond. A pilot study is recommended once iron concentrations are actually known to verify the treatment processes and validate the design parameters.

#### **4. Environmental Considerations**

This section will identify potential Federal and State requirements that may impact planning, design, construction and operational requirements for the Project.

##### ***Jurisdictional Waters of the US***

According to the National Hydrography Dataset, the Project would potentially cross numerous streams, tributaries and ponds. The Project will require a jurisdictional waters determination and delineation investigation along the Transmission Pipeline Alignment to identify potential waters of the United States, including wetlands. The Project would likely be permitted under Nationwide Permit (NWP) 12 for Utility Line Activities pursuant to Section 404 of the Clean Water Act (CWA).

If there are impacts to wetlands or if impacts to waters of the U.S. exceed 0.10 acres, the U.S. Army Corps of Engineers (USACE) must be notified prior to initiating any activity and a Pre-Construction Notification (PCN) must be prepared and submitted to the USACE-Fort Worth District for approval. Other conditions that could require preparation of a PCN include the presence of federally-listed threatened or endangered species habitat in the vicinity of the Project. If impacts to jurisdictional wetlands and/or waters of the U.S. exceed a half acre or the proposed activity does not meet the general conditions of the NWP 12, an Individual Permit (IP) may be required, which usually requires public notice. Generally, the typical agency review and approval period is 45 to 60 days for NWPs and 270 days for IPs.

##### ***Threatened and Endangered Species***

Prior to final design, a review of technical databases, technical literature, governmental publications, databases, and field surveys will be performed to identify federally threatened, endangered, and candidate plant and animal species in the vicinity of the Project Sites. The habitat assessment will determine whether suitable habitat exists within and adjacent to the Project Sites, taking representative photographs of the Project Sites, and reporting all findings. Protocols for determining required habitat will be performed for the federally threatened, endangered, and candidate species listed in Table 4-1, which lists federally-designated threatened, endangered, and candidate species within the counties where the Project is located. However, according to the Natural Diversity Database, only two federally-listed species occur within five miles of the Transmission Pipeline Alignment. The Houston Toad (*Anaxyrus houstonensis*) is a federally-designated endangered species and occurs within five miles of the Transmission Pipeline Alignment in Lee County. The Houston toad and bald eagle (*Haliaeetus leucocephalus*), the latter of which is a federally delisted species (currently in recovery), has been observed within five miles of the Transmission Pipeline Alignment in Bastrop County.

**Table 4-1 Federally-Listed Threatened/Endangered Species Potentially Present**

Species/Sub-Species		Scientific Name	Species Group	Federal Status <sup>1</sup>
Common Name				
Bexar County				
[unnamed] ground beetle		Rhadine exilis	Insects	E
[unnamed] ground beetle		Rhadine infernalis	Insects	E
Black-Capped Vireo		Vireo atricapilla	Birds	E
Braken Bat Cave Meshweaver		Cicurina venii	Arachnids	E
Cokendolpher Cave Harvestman		Texella cokendolpheri	Arachnids	E
Comal Springs Dryopid Beetle		Stygoparnus comalensis	Insects	E
Comal Springs Riffle Beetle		Heterelmis comalensis	Insects	E
Fountain Darter		Etheostoma fonticola	Fishes	E
Golden-Cheeked Warbler		Dendroica chrysoparia	Birds	E
Government Canyon Bat Cave Meshweaver		Cicurina vespera	Arachnids	E
Government Canyon Bat Cave Spider		Neoleptoneta microps	Arachnids	E
Helotes Mold Beetle		Batrisodes venyivi	Insects	E
Madla's Cave Meshweaver		Cicurina madla	Arachnids	E
Peck's Cave Amphipod		Stygobromus pecki	Crustaceans	E
Robber Baron Cave Meshweaver		Cicurina baronia	Arachnids	E
San Marcos Gambusia		Gambusia georgei	Fishes	E
San Marcos Salamander		Eurycea nana	Amphibians	T
Texas Blind Salamander		Typhlomolge rathbuni	Amphibians	E
Texas Wild-Rice		Zizania texana	Flowering Plants	E
Whooping Crane		Grus Americana	Birds	E
Guadalupe County				
Bald Eagle		Haliaeetus leucocephalus	Birds	DM
Whooping Crane		Grus Americana	Birds	E
Caldwell County				
Bald Eagle		Haliaeetus leucocephalus	Birds	DM

<b>Species/Sub-Species</b>		<b>Species Group</b>	<b>Federal Status<sup>1</sup></b>
<b>Common Name</b>	<b>Scientific Name</b>		
Whooping Crane	Grus Americana	Birds	E
Bastrop County			
Bald Eagle	Haliaeetus leucocephalus	Birds	DM
Houston Toad	Bufo houstonensis	Amphibians	E
Navasota Ladies'-Tresses	Spiranthes parksii	Flowering Plants	E
Whooping Crane	Grus Americana	Birds	E
Lee County			
Bald Eagle	Haliaeetus leucocephalus	Birds	DM
Houston Toad	Bufo houstonensis	Amphibians	E
Whooping Crane	Grus Americana	Birds	E
Burleson County			
Bald Eagle	Haliaeetus leucocephalus	Birds	DM
Houston Toad	Bufo houstonensis	Amphibians	E
Navasota Ladies'-Tresses	Spiranthes parksii	Flowering Plants	E
Sharpnose Shiner	Notropis oxyrhynchus	Fishes	C
Smalleye Shiner	Notropis buccula	Fishes	C
Whooping Crane	Grus Americana	Birds	E
Navasota Ladies'-Tresses	Spiranthes parksii	Flowering Plants	E
Sharpnose Shiner	Notropis oxyrhynchus	Fishes	C
Smalleye Shiner	Notropis buccula	Fishes	C
Whooping Crane	Grus Americana	Birds	E

Sources: U.S. Fish and Wildlife Service, 2011

Notes: <sup>1</sup> C = candidate species, DM = delisted species (in recovery), E = endangered, T = threatened

Both the Houston toad and the bald eagle were identified during the CCWSC 130 Project and both were addressed successfully from a regulatory standpoint without significant loss of time or additional expenditures. Accordingly, currently neither of these issues is believed to constitute a potential concern or unknown with regard to the feasibility of the Project or potential significant delay in the delivery of water. As a part of this Project, a Habitat Assessment Report is expected to be prepared for review and approval.

If habitat for federally listed species is identified, coordination with the U.S. Fish and Wildlife Service would be conducted under a supplemental agreement.



### ***Archeological***

A Texas Antiquities permit is anticipated to be required to cover any archeological field reconnaissance and survey investigations per the requirements of the Antiquities Code of Texas. An Antiquities permit also allows monitoring of construction and recovery/recording of resources during construction.

A cursory review of the planned Transmission Pipeline Alignment was performed utilizing the Texas Historical Commission Site Atlas (Atlas). This Atlas illustrates previously recorded cultural resources and conducted surveys across the State. Generally, archeological surveys were conducted for the CCWSC 130 Project which shares part of the Transmission Pipeline Alignment with the Project. The historical data indicates that of the remaining Transmission Pipeline Alignment the majority of the Transmission Pipeline properties have never been formally surveyed for archaeological resources. A records research of the properties that have not been surveyed needs to be conducted to determine potential areas along the Transmission Pipeline Alignment that may contain significant archaeological sites. A survey plan would then be developed and the properties would be field assessed to confirm the location of any potential archaeological sites. Below is a list from the Atlas by county of the potential archaeological sites as well as high probability areas (mainly large waterways) traversed by the Transmission Pipeline Alignment which may contain significant archaeological sites:

1. **Burleson County** –None
2. **Lee County** – None anticipated but further study will be done on the short portion of the Transmission Pipeline Alignment that deviates from the CCWSC 130 Project.
3. **Bastrop County** – Colorado River crossing - several previously recorded sites including 41BP75 and 41BP306 near the Transmission Pipeline Alignment are considered significant and the Project Company will have to evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to the previously recorded sites.
4. **Caldwell County** – San Marcos River crossing near Martindale, high probability of containing significant archaeological sites near the Transmission Pipeline Alignment. The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.
5. **Guadalupe County** – Guadalupe River crossing contains numerous significant, previously recorded significant sites near the Transmission Pipeline Alignment.

The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.

6. **Bexar County** – Cibolo Creek crossing contains numerous previously recorded significant sites near the Transmission Pipeline Alignment. The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.

Note that a majority of the Transmission Pipeline Alignment south and west of the IPS #1 parallels an existing LCRA power line. Therefore, significant issues with archeological sites are currently considered to be unlikely.

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**APPENDIX 2**  
**GOVERNMENTAL APPROVALS**

## APPENDIX 2

### GOVERNMENTAL APPROVALS

#### 2.1. PURPOSE

The purpose of this Appendix is to provide an outline of the Governmental Approvals that are expected to be required for the construction and operation of the Project. As required by this Water Transmission and Purchase Agreement, the Project Company shall obtain and maintain all required Governmental Approvals necessary to construct and operate the Project, irrespective of whether such Governmental Approval is identified in this Appendix.

#### 2.2. GOVERNMENTAL APPROVALS

The following tables set forth the Governmental Approvals that are expected to be required for the construction and operation of the Project. The Project Company will be responsible for complying with the terms and conditions contained in the applicable Construction Governmental Approvals and Operating Governmental Approvals, in accordance with this Appendix and Section 5.5 (Construction Governmental Approvals) and Section 9.8 (Operating Governmental Approvals) of this Water Transmission and Purchase Agreement.

<b>Permit Type</b>	<b>Permitting Agency</b>	<b>Description</b>
Federal Endangered or Threatened Species (Section 7 or 10 Review)	U.S. Fish and Wildlife Service (USFWS)	Section 7- provides interagency cooperation to ensure a federal action does not jeopardize the existence of any listed species. Section 10- obtained when non-federal activities cause harm to animals designated as endangered or threatened by the USFWS.
Section 404 Permit	United States Army Corps of Engineers	Regulates the discharge of dredged or fill material into waters of the United States, including wetlands
Section 10 Permit	United States Army Corps of Engineers	Regulates the placement of any structure below, within, or over navigable waters of the United States, or would involve excavation/ dredging or deposition of material or any obstruction or alteration in navigable waters of the United States
Creek Crossing Permits/River Crossing Permit	Lower Colorado River Authority	Regulates design and construction of pipeline infrastructure projects with minimal disruption to the bed and banks of the stream, the public and the environment during construction as well as the long term operation

<b>Permit Type</b>	<b>Permitting Agency</b>	<b>Description</b>
Creek Crossing Permits/River Crossing Permit	Guadalupe Blanco River Authority	Regulates design and construction of pipeline infrastructure projects with minimal disruption to the bed and banks of the stream, the public and the environment during construction as well as the long term operation
Drilling and Operating Permit/Transportation Permit	Post Oak Savannah Groundwater Conservation District	Regulates the rights to produce and transport permit groundwater out of the boundaries of the District
Utility Crossing Approval	Bluebonnet Electrical Cooperative	Provides for notification of the crossing and/or encroachment onto the electric easement and requirements for safe construction and maintenance
Utility Crossing Approval	CPS Energy	Provides for notification of the crossing and/or encroachment onto the electric easement and requirements for safe construction and maintenance
Utility Crossing Approval	Lower Colorado River Authority	Provides for notification of the crossing and/or encroachment onto the electric easement and requirements for safe construction and maintenance
Public Water System Plans Review	TCEQ	Provides for the determination that the proposed public water system is financially stable and technically sound and can supply adequate quantities of safe drinking water
Texas Pollutant Discharge Elimination Permit Storm Water Permits	TCEQ	Regulates discharge of pollutants to surface water of the State of Texas
Texas Antiquities Permit	Texas Historical Commission	Must be obtained by a registered archeologist for studies at archeological sites and historic buildings on public land
Right of Way and Utility Permits	Texas Department of Transportation	Provides for the placement of utilities within the right-of-way of State roads and provides for the longer term use
Development Application Permit	Bastrop County	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain
Road Crossing - County Approval	Bastrop County	Provides for the monitoring and approval of utilization of County right-of-way
Floodplain Development Permit	Bexar County	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain

<b>Permit Type</b>	<b>Permitting Agency</b>	<b>Description</b>
Stormwater Quality Site Development Permit	Bexar County	Regulates discharges of storm water associated with construction activities over 1 acre
Utilities Permit	Bexar County	Regulates all construction activities in County-maintained rights of way, including driveways that access County roads
Roadway Permit	Bexar County - Public Works	Controls all construction activities in County maintained rights-of-way; including driveways to access County roads
Floodplain Development Permit	Burleson County	Verifies that development does not have a negative impact on the 100 - Year Flood Plain
Commissioners Court Approval	Burleson County	Regulates proposed development, inclusive of areas located on a site within the regulatory 100 year FEMA Flood Plain
Road Crossing - County Approval	Burleson County	Provides for the monitoring and approval of utilization of County right-of-way
Work in the Public Right-of-Way Permit	Caldwell County-Unit Road Administrator	Regulates all construction or activity of any kind within the County's right-of-way, including installation of overhead or underground utilities
Floodplain Permit Application	Comal County	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain
Private improvements in the Public Right of Way permit	Comal County Engineer's Office	Regulates all construction or activity of any kind within the County's right-of-way, including installation of overhead or underground utilities
Floodplain Development Permit	Guadalupe County Environmental Health	Regulates for all development in the 100-year floodplain, as part of the National Flood Insurance Program
Culvert/Access Permit	Guadalupe County Road and Bridge Department	Regulates construction or activity within the County's right-of-way, including installation of overhead or underground utilities at culverts and provides for access requirements
Roadway/Excavation Permit	Guadalupe County Road and Bridge Department	Regulates construction or activity within the County's right-of-way, including installation of overhead or underground utilities
Road Crossing - County	Lee County	Provides for the monitoring and approval of utilization of County right-of-way
Development Application	Lee County	Administers all the business of the County, including the building and maintenance of county roads and bridges and floodplains

<b>Permit Type</b>	<b>Permitting Agency</b>	<b>Description</b>
Floodplain Permit	Lee County	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain
Tree Permit(s)	City of San Antonio	Maintain, to the greatest extent possible, existing trees within the city and the extraterritorial jurisdiction (ETJ), and to add to the tree population within the city and the ETJ to promote a high tree canopy goal
Building Permit	City of San Antonio	Ensures that all construction activities associated with potentially occupied structures are well coordinated and protect the health, safety, and quality of life of the citizens of San Antonio
Site Plan Permit	City of San Antonio	Ensures understanding and compliance with the City's development codes associated with commercial site work, utility work, drainage structures, sidewalks, driveways and grading
Stormwater Permit	City of San Antonio	Ensures future construction projects do not adversely impact current drainage system
Floodplain Development Permit	City of San Antonio	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain
Roadway Permit	City of San Antonio Public Works Right-of-Way Management	Ensures that all construction activities are well coordinated and impacts are mitigated to reduce public inconvenience, guarantee proper street repair and ensure all regulations are enforced appropriately
Roadway Crossing-Public Works Permit	City of Schertz	Regulates construction of improvements within City street rights-of-way
Floodplain Permit	City of Schertz	Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain
Tree Preservation/Removal Permit	City of Schertz	Maintain, to the greatest extent possible, existing trees within the city and the extraterritorial jurisdiction (ETJ)
Permit for New Pipeline Crossings	Union Pacific	Regulates the crossing of Union Pacific railway lines with utility pipelines

**APPENDIX 3**  
**TECHNICAL SPECIFICATIONS**



## **APPENDIX 3**

### **TECHNICAL SPECIFICATIONS**

#### 3.1. PURPOSE

The purpose of this Appendix is to specify certain Design Requirements and minimum procedures and requirements to be followed by the Project Company in performing the Construction Work, which together with Appendix 1 (Description of the Project), shall collectively constitute the “Technical Specifications” hereunder. The Technical Specifications are intended to result in a Project that achieves the following objectives:

- Efficient and cost-effective design, construction and operation;
- Limiting noise, dust, odors, traffic and lighting impacts to adjacent properties;
- A high degree of coordination between the design, construction and operation elements;
- Design of structures, piping, equipment, and other elements such that they can be maintained while continuing to meet the Performance Guarantees;
- Selection of equipment such that the Project Company’s implementation of the Maintenance, Repair and Replacement Plan, including the Maintenance, Repair and Replacement Schedule, will result in equipment that, at a minimum, meets the End of Term Performance Evaluation Requirements;
- Selection of materials that assure a low incidence of failure, high probability of continued manufacturer support and service, and compatibility with the SAWS Distribution System;
- Construction of an aesthetically-pleasing Project;
- A safe construction and operating environment;
- Mitigation of environmental impacts;
- A safe, adequate and uninterrupted water supply;
- Completion of a Project that produces the Baseline Daily Volume and Baseline Annual Volume of Product Water by the Commercial Operation Longstop Date;
- Include the necessary unit processes, process control, monitoring and control, systems and system redundancy to achieve Acceptance, to continuously meet the Performance Guarantees and to pass the Exit Performance Test;
- A high degree of security for the Project and the Project Sites; and
- Efficient and effective management of Project By-Products

The Project shall be designed and constructed to meet the Performance Guarantees. Nothing in these Technical Specifications shall relieve the Project Company of its obligation to meet the Performance Guarantees.

#### 3.2. APPLICABLE CODES, POLICIES AND INDUSTRY STANDARDS

The Project shall be designed in accordance with the current applicable codes, policies, and industry standards as referenced in this Appendix and the other Appendices of this Water Transmission and Purchase Agreement. Reference Standards applicable to the Project include, but are not limited to, the following:

<b>International/National Codes and Regulations</b>	
<b>Organization</b>	
International Building Code (IBC)	
International Fire Prevention Code (IFC)	
International Energy Conservation Code	
National Electrical Code (NEC)	
International Mechanical Code (IMC)	
International Plumbing Code (IPC)	
American National Standards Institute (ANSI)	
Occupational Safety and Health Administration (OSHA)	
American Association of State Highway and Transportation Officials (AASHTO)	
American Gear Manufacturers Association (AGMA)	
American Institute of Steel Construction (AISC)	
American Iron and Steel Institute (AISI)	
American Petroleum Institute (API)	
American Society of Civil Engineers (ASCE)	
American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)	
American Society of Mechanical Engineers (ASME)	
American Welding Society (AWS)	
Americans with Disabilities Act (ADA)	
Concrete Reinforcing Steel Institute (CRSI) .	
Factory Mutual (FM).	
Institute of Electrical and Electronics Engineers (IEEE).	
National Electric Code (NEC).	
National Electrical Manufacturer's Association (NEMA).	
National Fire Protection Association (NFPA).	
Precast/Prestressed Concrete Institute (PCI).	
Underwriters' Laboratories, Inc. (UL)	
NSF International (f/k/a National Sanitation Foundation) (NSF)	
American Concrete Institute (ACI)	
American Society for Testing and Materials (ASTM)	
American Water Works Association (AWWA)	

<b>State (Texas) and Regional Authority Codes and Regulations</b>	
<b>Organization</b>	
Architectural Barriers Act with Texas Accessibility Standards	
Texas Department of Transportation (TxDOT)	
Texas Department of Transportation Crossing and Driveway Standards	
Lower Colorado River Authority Creek Crossing/River Crossing Standards	
San Antonio River Authority Creek Crossing Standards	
Guadalupe- Blanco Authority Creek Crossing/River Crossing Standards	
Texas Commission on Environmental Quality- Chapter 290	

<b>County Codes and Regulations</b>	
<b>Organization</b>	
Bexar County Infrastructure Services- Floodplain Development standards	
Bexar County Public Works Roadway Crossing Standards	
Bastrop County Roadway Crossing Standards	
Burleson County Roadway Crossing Standards	

Lee County Utility Installation standards
Lee County Roadway Crossing Standards
Caldwell County (Unit Road Administrator) Work in the Public Way Standards
Guadalupe County Environmental Health Floodplain Development standards
Guadalupe County Road and Bridge Department Roadway/Excavation standards

<b>City Codes and Regulations</b>
<b>Organization</b>
City of San Antonio Unified Development Code
City of San Antonio Tree Mitigation standards
City of San Antonio Floodplain Development Standards
City of San Antonio Public Works Right-of-Way Management Roadway Crossing Standards
City of Schertz Tree Removal standards
City of Schertz Roadway Crossing Standards

3.3. TECHNICAL SPECIFICATIONS – PRODUCTION WELL INSTALLATION

The Production Wells for the Project shall be designed in accordance with the AWWA guidelines and the TCEQ regulations pertaining to public supply wells. The Technical Specifications presented below provide an outline of the specifications required to meet these guidelines and regulations.

(A) Technical Specifications: Test Drilling

- (1) General
- (2) Depth and Diameter
- (3) Driller's Log
- (4) Surface Conductor Casing
- (5) Drill Cutting Sample Flow Line
- (6) Drill Cutting Samples
- (7) Sieve Analyses of Drill Cuttings
- (8) Geophysical Logging
- (9) Unattended Holes
- (10) Interval Plugs
- (11) Plugging of Hole
- (12) Lost Materials or Abandonment of Hole

(B) Technical Specifications: Temporary Well

- (1) General
- (2) Backfilling and Reaming
- (3) Base Material Amounts
- (4) Schedule
- (5) Construction
- (6) Centralizers
- (7) Development
- (8) Pumping Equipment
- (9) Measurement Assembly
- (10) Testing Procedure
- (11) Water Samples and Chemical Analyses
- (12) Lost Materials or Abandonment of Hole
- (13) Plugging

- 
- (C) Technical Specifications: Production Well
- (1) General
  - (2) Surface Conductor Casing
  - (3) Welding
  - (4) Pilot Hole
    - (i) Depth and Diameter
    - (ii) Pilot Hole Alignment
    - (iii) Driller's Log
    - (iv) Drill Cuttings Sample Flow Line
    - (v) Drill Cutting Samples
    - (vi) Sieve Analyses of Drill Cuttings
    - (vii) Geophysical Logging
    - (viii) Lost Materials or Abandonment of Hole
  - (5) Production Casing
    - (i) Reaming
    - (ii) Alignment Survey
    - (iii) Schedule
    - (iv) Description
    - (v) Depths
    - (vi) Centralizers
    - (vii) Cementing
    - (viii) Samples
  - (6) Aquifer Production Zone (Screened Interval)
    - (i) Method of Reaming and Diameter
    - (ii) Depths
    - (iii) Caliper Log
  - (7) Bottom of Well
    - (i) Reaming
    - (ii) Plugging
  - (8) Blank Liner Above Screen
    - (i) Description
    - (ii) Depths
    - (iii) Centralizers
  - (9) Screen
    - (i) Description
    - (ii) Depths
    - (iii) Centralizers
  - (10) Blank Liner Below Screen
  - (11) Gravel Pack
    - (i) Description
    - (ii) Graveling Operation
    - (iii) Depths
    - (iv) Sterilizing Gravel
  - (12) Well Development
    - (i) Overview of Process
    - (ii) Sterilization
    - (iii) Development Tests
    - (iv) Cleaning Bottom of Well
  - (13) Pumping Tests
    - (i) Testing Rates and Pumping Levels
    - (ii) Discharge and Flow Measurement Assembly
    - (iii) Pumping Test Schedule
    - (iv) Testing Procedure
-

- (14) Water Samples and Chemical Analyses
  - (15) Microbiological Testing
  - (16) Guarantees
    - (i) Well Efficiency Guarantee
    - (ii) Settleable Solids Guarantee
    - (iii) Materials and Workmanship Guarantee
  - (17) Lost Materials or Abandonment of Hole
  - (18) Production Well Completion
    - (i) Capping
    - (ii) Completed Well
    - (iii) Completion Report
- (D) Technical Specifications: Pump Foundation
- (1) General
  - (2) Concrete
  - (3) Proportions
  - (4) Compressive Strength
  - (5) Mixing and Placing
  - (6) Forms
  - (7) Curing
  - (8) Finishing
  - (9) Rubbing
  - (10) Concrete Foundations
  - (11) Concrete Reinforcement
  - (12) Placing of Reinforcement
  - (13) Electrical Conduit
  - (14) Casing Vent
- (E) Technical Specifications: Pumping Equipment
- (1) General
  - (2) Base Bid
  - (3) Motor
  - (4) Electrical Components
    - (i) Subsurface Electrical Components
    - (ii) Electrical Controls and Panel
  - (5) Pump
  - (6) Subsurface Pumping Equipment
  - (7) Discharge Head Completion
  - (8) Pre-Testing of Equipment
  - (9) Pump Column Pipe
  - (10) Airline
  - (11) Measuring Pipe
  - (12) Disinfection
  - (13) Acceptance Testing
  - (14) Microbiological Testing
  - (15) Materials and Workmanship Guarantee
  - (16) Discharge Elbow Flange Plate
  - (17) Painting

(F) Figures

3.4. TECHNICAL SPECIFICATIONS – WELL FIELD PIPING AND HIGH SERVICE PUMP STATION

The following Technical Specifications have been developed using the Construction Specifications Institute (CSI) format (2003) Master Format. The CSI format provides the standardization of construction language specifications. The general requirements in the current applicable codes, policies, and industry standards provided previously in this Appendix and the specific requirements presented below must be read together for a comprehensive set of the construction requirements of the Project.

DIVISION 1 - GENERAL PROVISIONS

- 01010 - Summary of Work
- 01045 - Demolition, Cutting and Patching
- 01051 - Grades, Lines and Levels
- 01070 - Reference Standards
- 01300 - Submittals
- 01305 - Spare Parts
- 01310 - Construction Schedules
- 01350 - Operation and Maintenance Data
- 01360 - Quality Control
- 01400 - International Building Code Special Inspections
- 01410 - Testing Laboratory Services
- 01500 - Temporary Facilities and Controls
- 01520 - Security
- 01600 - Material and Equipment
- 01640 - Manufacturers' Services
- 01710 - Cleaning and Adjusting
- 01750 - Extended Warranties (greater than 23 months) and Bonds

DIVISION 2 - SITE WORK

- 02010 - Subsurface Investigation
- 02200 - Earthwork
- 02223 - Trench and Excavation Safety Systems
- 02225 - Trenching, Backfilling, Embedment and Encasement
- 02227 - Waste Material Disposal
- 02290 - Erosion Control During Construction
- 02373 - Drilled Piers
- 02510 - Buried Steel Pipe and Fittings Mortar Lined and Polyurethane Coated
- 02515 - PVC Pressure Pipe-Gasketed Joints
- 02530 - Dewatering and Drainage
- 02630 - Concrete Manholes
- 02640 - Ductile Iron Pipe
- 02675 - Disinfection of Potable Water Facilities
- 02751 - Concrete Pavement and Sidewalks
- 02831 - Chain Link Fences and Gates
- 02910 - Surface Restoration

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DIVISION 3	-	CONCRETE
03100	-	Concrete Formwork
03200	-	Concrete Reinforcement
03250	-	Concrete Joints and Embedded Items
03300	-	Cast-in-Place Concrete
03400	-	Flowable Fill
03600	-	Grout
DIVISION 4	-	MASONRY
04200	-	Building Masonry
DIVISION 5	-	METALS
05120	-	Structural Steel
05500	-	Miscellaneous Metal Fabrications
05501	-	Anchor Bolts, Expansion Anchors and Concrete Inserts
05520	-	Handrails and Railing
05530	-	Metal Gratings and Cover Plates
DIVISION 6	-	WOOD AND PLASTICS (NOT USED)
DIVISION 7	-	THERMAL AND MOISTURE PROTECTION
07200	-	Building Insulation
07222	-	Polyisocyanurate Roof Insulation
07920	-	Joint Sealants
DIVISION 8	-	DOORS AND WINDOWS
08110	-	Steel Doors and Frames
08711	-	Door Hardware
08800	-	Glass and Glazing
DIVISION 9	-	FINISHES
09820	-	Prestressed Concrete Tank Coating
09900	-	Painting
09940	-	Protective Coatings
DIVISION 10	-	SPECIALTIES
10431	-	Signs
10520	-	Fire-Protection Specialties
DIVISION 11	-	EQUIPMENT
11000	-	Equipment General Provisions
11030	-	Noise Requirements and Control
11100	-	Pumps, General
11100	-	Horizontal Split Case Pumps
11149	-	Submersible Sump Pumps
11215	-	Vertical Turbine Pumps

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11218	-	Metering Pumps
11219	-	Chemical Transfer Pumps
11300	-	Control Valves
11313	-	Pumping Unit Testing
11400	-	Flow Meters
DIVISION 12	-	FURNISHINGS (NOT USED)
DIVISION 13	-	SPECIAL CONSTRUCTION
13000	-	Wire or Strand Wound, Prestressed Concrete Tank
13110	-	Cathodic Protection – Galvanic Anode
13120	-	Pre-Cast Concrete Building Prefabricated
13122	-	Chemical Tank Cover Structure
13675	-	Polyethylene Tanks
DIVISION 14	-	CONVEYING SYSTEMS (NOT USED)
DIVISION 15	-	MECHANICAL
15000	-	Special Conditions for Mechanical Work
15001	-	Plant Piping - General
15002	-	Field Testing of Piping Systems
15043	-	Leakage Test of Hydraulic Structures
15047	-	Identification
15061	-	PVC Pressure Pipe- Solvent Weld
15063	-	Copper Piping
15064	-	Steel Pipe and Fittings
15065	-	CPVC Pressure Pipe
15072	-	Ductile Iron Pipe and Fittings
15073	-	Concrete Bar-Wrapped Cylinder Pipe (AWWA C303-Type Pipe)
15100	-	Miscellaneous Valves
15101	-	Valve Appurtenances
15102	-	Butterfly Valves
15103	-	Check Valves
15104	-	Gate Valves
15107	-	Pressure Relief Valve
15108	-	Pump Control Valves
15120	-	Piping Specialties
15139	-	Electric Motor Operator
15140	-	Supports and Hangers
15256	-	Insulation and Heat Tracing
15500	-	HVAC - General (Small Project Specs)
15625	-	Cooling Tower
DIVISION 16	-	ELECTRICAL
16010	-	Electrical General Provisions
16012	-	Identification
16020	-	Utilities
16040	-	Electrical Motors (150 HP and LESS)
16044	-	Large Electric Motors
16055	-	Power System Studies
16060	-	Acceptance Testing and Calibration

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- 16073 - Hangers and Supports for Electrical Systems
- 16110 - Raceways
- 16120 - Conductors
- 16121 - Medium Voltage Cables
- 16130 - Boxes
- 16140 - Wiring Devices
- 16191 - Miscellaneous Equipment
- 16231 - Packaged Engine Generator Systems
- 16289 - Surge Protective Devices
- 16345 - Medium Voltage Metal-Enclosed Vacuum Switchgear
- 16360 - Underground Duct Banks
- 16362 - Electrical Manholes
- 16370 - Variable Frequency Drive
- 16373 - Stand Alone Low Voltage Solid State Starters
- 16438 - Dry - Type Transformers
- 16441 - Switchboard
- 16442 - Mini-Power Centers
- 16445 - Panelboards - Distribution and Branch Circuits
- 16450 - Grounding
- 16600 - Lighting
- 16610 - Lightning Protection
- 16700 - Common Control Panel Requirements for Equipment

DIVISION 17 - INSTRUMENTATION

- 17000 - Instrumentation General Provisions
- 17100 - Human Machine Interface (HMI) Requirements
- 17200 - Top End Equipment Requirements
- 17300 - Programmable Logic Controllers (PLC) Requirements
- 17315 - PLC Network Requirements
- 17325 - Uninterruptible Power Supply
- 17400 - Instrument Panels
- 17520 - Instruments
- 17530 - Instrumentation Accessories
- 17540 - Instrument Commissioning
- 17600 - System Configuration
- 17910 - Input/Output List
- 17920 - Control Narrative

3.5. TECHNICAL SPECIFICATIONS – INTERMEDIATE PUMP STATIONS AND PRODUCT WATER DELIVERY POINT

The following Technical Specifications have been developed using the Construction Specifications Institute (CSI) format (2003) Master Format. The CSI format provides the standardization of construction language specifications. The general requirements in the current applicable codes, policies, and industry standards provided previously in this Appendix and the specific requirements presented below must be read together for a comprehensive set of the construction requirements of the Project.

DIVISION 1 - GENERAL PROVISIONS

- 01010 - Summary of Work
- 01045 - Demolition, Cutting and Patching
- 01051 - Grades, Lines and Levels

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01070	-	Reference Standards
01300	-	Submittals
01305	-	Spare Parts
01310	-	Construction Schedules
01350	-	Operation and Maintenance Data
01360	-	Quality Control
01400	-	International Building Code Special Inspections
01410	-	Testing Laboratory Services
01500	-	Temporary Facilities and Controls
01520	-	Security
01600	-	Material and Equipment
01640	-	Manufacturers' Services
01710	-	Cleaning and Adjusting
01750	-	Extended Warranties (greater than 12 months) and Bonds
DIVISION 2	-	SITE WORK
02010	-	Subsurface Investigation
02200	-	Earthwork
02220	-	Structural Excavation, Fill, and Backfill
02223	-	Trench and Excavation Safety Systems
02225	-	Trenching, Backfilling, Embedment and Encasement
02227	-	Waste Material Disposal
02290	-	Erosion Control During Construction
02373	-	Drilled Piers
02510	-	Buried Steel Pipe and Fittings Mortar Lined and Polyurethane Coated
02515	-	PVC Pressure Pipe-Gasketed Joints
02530	-	Dewatering and Drainage
02630	-	Concrete Manholes
02675	-	Disinfection of Potable Water Facilities
02751	-	Concrete Pavement and Sidewalks
02831	-	Chain Link Fences and Gates
DIVISION 3	-	CONCRETE
03100	-	Concrete Formwork
03200	-	Concrete Reinforcement
03250	-	Concrete Joints and Embedded Items
03300	-	Cast-in-Place Concrete
03400	-	Flowable Fill
03600	-	Grout
DIVISION 4	-	MASONRY
04200	-	Building Masonry
DIVISION 5	-	METALS
05120	-	Structural Steel
05500	-	Miscellaneous Metal Fabrications
05501	-	Anchor Bolts, Expansion Anchors and Concrete Inserts
05520	-	Handrails and Railing
05530	-	Metal Gratings and Cover Plates

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DIVISION 6	-	WOOD AND PLASTICS (NOT USED)
DIVISION 7	-	THERMAL AND MOISTURE PROTECTION
07200	-	Building Insulation
07222	-	Polyisocyanurate Roof Insulation
07920	-	Joint Sealants
DIVISION 8	-	DOORS AND WINDOWS
08110	-	Steel Doors and Frames
08711	-	Door Hardware
08800	-	Glass and Glazing
DIVISION 9	-	FINISHES
09820	-	Prestressed Concrete Tank Coating
09900	-	Painting
09940	-	Protective Coatings
DIVISION 10	-	SPECIALTIES
10431	-	Signs
10520	-	Fire-Protection Specialties
DIVISION 11	-	EQUIPMENT
11000	-	Equipment General Provisions
11030	-	Noise Requirements and Control
11100	-	Pumps, General
11100	-	Horizontal Split Case Pumps
11149	-	Submersible Sump Pumps
11215	-	Vertical Turbine Pumps
11218	-	Metering Pumps
11219	-	Chemical Transfer Pumps
11300	-	Control Valves
11313	-	Pumping Unit Testing
11400	-	Flow Meters
DIVISION 12	-	FURNISHINGS (NOT USED)
DIVISION 13	-	SPECIAL CONSTRUCTION
13000	-	Wire or Strand Wound, Prestressed Concrete Tank
13110	-	Cathodic Protection – Galvanic Anode
13120	-	Pre-Cast Concrete Building Prefabricated
13122	-	Chemical Tank Cover Structure
13675	-	Polyethylene Tanks
DIVISION 14	-	CONVEYING SYSTEMS (NOT USED)
DIVISION 15	-	MECHANICAL
15000	-	Special Conditions for Mechanical Work

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15001	-	Plant Piping - General
15002	-	Field Testing of Piping Systems
15043	-	Leakage Test of Hydraulic Structures
15047	-	Identification
15061	-	PVC Pressure Pipe- Solvent weld
15063	-	Copper Piping
15064	-	Steel Pipe and Fittings
15065	-	CPVC Pressure Pipe
15072	-	Ductile Iron Pipe and Fittings
15073	-	Concrete Bar-Wrapped Cylinder Pipe (AWWA C303-Type Pipe)
15100	-	Miscellaneous Valves
15101	-	Valve Appurtenances
15102	-	Butterfly Valves
15103	-	Check Valves
15104	-	Gate Valves
15107	-	Pressure Relief Valve
15108	-	Pump Control Valves
15120	-	Piping Specialties
15139	-	Electric Motor Operator
15140	-	Supports and Hangers
15256	-	Insulation and Heat Tracing
15500	-	HVAC - General (Small Project Specs)
DIVISION 16	-	ELECTRICAL
16010	-	Electrical General Provisions
16012	-	Identification
16020	-	Utilities
16040	-	Electrical Motor
16044	-	Large Electric Motors
16055	-	Power System Studies
16060	-	Acceptance Testing and Calibration
16073	-	Hangers and Supports for Electrical Systems
16110	-	Raceways
16120	-	Conductors
16121	-	Medium Voltage Cables
16130	-	Boxes
16140	-	Wiring Devices
16191	-	Miscellaneous Equipment
16231	-	Packaged Engine Generator Systems
16289	-	Surge Protective Devices
16345	-	Medium Voltage Metal-Enclosed Vacuum Switchgear
16360	-	Underground Duct Banks
16362	-	Electrical Manholes
16370	-	Variable Frequency Drive
16373	-	Stand Alone Low Voltage Solid State Starters
16438	-	Dry - Type Transformers
16441	-	Switchboard
16442	-	Mini-Power Centers
16445	-	Panelboards - Distribution and Branch Circuits
16450	-	Grounding
16600	-	Lighting
16610	-	Lightning Protection
16700	-	Common Control Panel Requirements for Equipment

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DIVISION 17 - INSTRUMENTATION

- 17000 - Instrumentation General Provisions
- 17100 - Human Machine Interface (HMI) Requirements
- 17200 - Top End Equipment Requirements
- 17300 - Programmable Logic Controllers (PLC) Requirements
- 17315 - PLC Network Requirements
- 17325 - Uninterruptible Power Supply
- 17400 - Instrument Panels
- 17520 - Instruments
- 17530 - Instrumentation Accessories
- 17540 - Instrument Commissioning
- 17600 - System Configuration
- 17910 - Input/Output List
- 17920 - Control Narrative

3.6. TECHNICAL SPECIFICATIONS – TRANSMISSION PIPELINES

The following Technical Specifications have been developed using the Construction Specifications Institute (CSI) format (2003) Master Format. The CSI format provides the standardization of construction language specifications. The general requirements in the current applicable codes, policies, and industry standards provided previously in this Appendix and the specific requirements presented below must be read together for a comprehensive set of the construction requirements of the Project.

DIVISION 1 - GENERAL PROVISIONS

- 01010 - Summary of Work
- 01045 - Demolition, Cutting and Patching
- 01051 - Grades, Lines and Levels
- 01070 - Reference Standards
- 01300 - Submittals
- 01310 - Construction Schedules
- 01350 - Operation and Maintenance Data
- 01360 - Quality Control
- 01410 - Testing Laboratory Services
- 01500 - Temporary Facilities and Controls
- 01600 - Material and Equipment
- 01710 - Cleaning and Adjusting
- 01750 - Extended Warranties (greater than 12 months) and Bonds

DIVISION 2 - SITE WORK

- 02010 - Subsurface Investigation
- 02100 - Site Preparation
- 02223 - Trench and Excavation Safety Systems
- 02225 - Trenching, Backfilling, Embedment and Encasement
- 02227 - Waste Material Disposal
- 02235 - Riprap
- 02290 - Erosion Control During Construction
- 02314 - Jacking, Boring or Tunneling Pipe
- 02510 - Buried Steel Pipe and Fittings Mortar Lined and Polyurethane Coated
- 02515 - PVC Pressure Pipe-Gasketed Joints

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02530	-	Dewatering and Drainage
02630	-	Concrete Manholes
02675	-	Disinfection of Potable Water Facilities
02710	-	Roadways and Paving
02720	-	Flexible Base
02730	-	Prime Coat
02740	-	Hot Mix Asphaltic Concrete Pavement
02755	-	Asphalt Treated Base
02900	-	Fencing
02910	-	Surface Restoration
02950	-	Wire Fence and Gates
DIVISION 3	-	CONCRETE
03100	-	Concrete Formwork
03200	-	Concrete Reinforcement
03250	-	Concrete Joints and Embedded Items
03300	-	Cast-in-Place Concrete
03400	-	Flowable Fill
03600	-	Grout
DIVISION 4	-	MASONRY (NOT USED)
DIVISION 5	-	METALS
05500	-	Miscellaneous Metal Fabrications
05501	-	Anchor Bolts, Expansion Anchors and Concrete Inserts
05530	-	Metal Gratings and Cover Plates
DIVISION 6	-	WOOD AND PLASTICS (NOT USED)
DIVISION 7	-	THERMAL AND MOISTURE PROTECTION (NOT USED)
DIVISION 8	-	DOORS AND WINDOWS (NOT USED)
DIVISION 9	-	FINISHES (NOT USED)
09900	-	Painting
DIVISION 10	-	SPECIALTIES (NOT USED)
DIVISION 11	-	EQUIPMENT (NOT USED)
DIVISION 12	-	FURNISHINGS (NOT USED)
DIVISION 13	-	SPECIAL CONSTRUCTION
13110	-	Cathodic Protection – Galvanic Anode
DIVISION 14	-	CONVEYING SYSTEMS (NOT USED)
DIVISION 15	-	MECHANICAL
15002	-	Field Testing of Piping Systems

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- 15064 - Steel Pipe and Fittings
  - 15072 - Ductile Iron Pipe
  - 15073 - Bar-Wrapped Concrete Cylinder Pipe
  - 15100 - Miscellaneous Valves
  - 15101 - Valve Appurtenances
  - 15102 - Butterfly Valves
  - 15104 - Gate Valves
  - 15670 - Water Pipeline Testing
  - 15680 - Disinfection of Water Systems
- DIVISION 16 - ELECTRICAL (NOT USED)
- DIVISION 17 - INSTRUMENTATION (NOT USED)

### 3.7. TECHNICAL MEMORANDUM ON STANDARDS OF CONSTRUCTION

Notwithstanding anything in Appendix 1 (Description of the Project) or this Appendix 3 to the contrary, the Project Company agrees to construct the Project Improvements in accordance with the supplemental standards identified in the Technical Memorandum attached as Attachment 3A to this Appendix. To the extent any provision of this Appendix is addressed differently or more specifically by the Technical Memorandum, the higher standard will govern.

**ATTACHMENT 3A**

**TECHNICAL MEMORANDUM**

**MEMORANDUM**

TO: San Antonio Water System DATE: October 26, 2016  
FROM: Kim S. Keefer, PE  
COPY: Scott Parrish, Gene Dawson, Pete Patel, Marisa Vergara  
Subject: Vista Ridge Regional Supply Project – Project Company’s  
Memorandum of Intent

The Water Transmission and Purchase Agreement (WTPA) by and between the City of San Antonio (acting by and through the San Antonio Water Systems (SAWS) Board of Trustees) and Vista Ridge LLC (formerly Abengoa Vista Ridge, LLC) (the “Project Company”), dated November 4, 2014 and amended June 10, 2015, includes an Appendix 3- Technical Specifications. Section 3.1 of the Appendix states:

The purpose of this Appendix is to specify certain Design Requirements and minimum procedures and requirements to be followed by the Project Company in performing the Construction Work, which together with Appendix 1 (Description of the Project), shall collectively constitute the “Technical Specifications” hereunder.

As part of the due diligence process, several minimum design and construction procedures and requirements have been discussed and agreed to by the Project Company and members of SAWS’ staff. These minimum design and construction requirements are enumerated and memorialized below:

**Piping**

- The piping system will be designed and installed in compliance with AWWA standards.
- C303 concrete pressure pipe, bar-wrapped, steel-cylinder mortar-lined mortar-coated pipe will be used on all well collection and transmission piping 30-inches and greater in diameter having a pressure class of less than 225 PSI.
- The restraint system for the C303 pipe installation will be designed in accordance with AWWA Section M9 and accomplished by employing full-fillet internal welds (weld after backfill) at the joints within the limits of the restrained sections (no skip-welding will be utilized).
- C200 mortar-lined polyurethane coated steel pipe will be used having a maximum D/t of 240 with full-fillet internal welds (weld after backfill) at the joints for all piping 60-inches and greater in diameter having a pressure class of 225 PSI and higher. No skip welding will be utilized.
- The well collection piping with a diameter less than 30-inches will be C900 PVC for pipe size 12-inch and smaller and C905 for pipe sizes greater than 12-inch in diameter.
- The Project Company will warrant and pay for all repair costs on any leaks at O-ring joints caused by installation issues for a period of 5-years.



**Concrete Piping Encasements:**

- Concrete piping encasements will be reinforced with fiber mesh if required, no reinforcing steel will be used.

**Embedment and Backfill:**

- Imported bedding material will begin 6" below the pipe invert and extend up-to the pipe spring line.
- Bedding material will be locally available imported material which provides adequate pipe support as determined by the design engineers.
- The Project Company will warrant and pay for the repair costs on any leaks caused by pipe deflection for a period of 5 years.
- Initial backfill material will be select, job excavated material that generally complies with a 2" minus gradation.
- Initial backfill will be mechanically compacted to 90% in non-pavement areas and 95% in roadways.

**Quality Control during Pipeline Installation:**

- Extensive density testing will be performed during the startup of each segment to establish means and methods achieving project required results. Once established, additional testing will be performed daily for quality assurance.

**Air Valves:**

- The Project Company will not be required to use Vent-o-mat brand air and vacuum valves.

**Butterfly Valves:**

- The butterfly valves will be AWWA direct bury service valves and may be used for testing purposes where the test pressure of the piping system will be less than the pressure rating of the valve. Test plugs and/or differential pressure will be used where the test pressure exceeds the pressure rating of the valve.

**Cathodic Protection:**

- Provide impressed current system for cathodic protection for 100% of all metal pipelines. Solar-powered systems may be considered subject to verification and agreement on reliability by SAWS.

**Tunnel and Bore:**

- Liner plate and casing are both acceptable and the usage of material types will be determined by the Tunneling subcontractor and permitting requirements.
- Casing spacers will be in accordance with AWWA standards as designated in WTPA Appendix 3.
- Painted steel casing pipe spacers will be used in tunnels with steel carrier pipe.

- Tunnels with C303 carrier pipe will utilize mortar bands.
- Cellular Grout will be installed in the annular space of tunnels containing steel carrier pipe.
- Tunnels containing C303 carrier pipe will not receive annular space grout if acceptable to permitting agency.
- Cellular grout will have a compressive strength between 200 and 300 psi.

**Ground Storage Tanks:**

- AWWA D110, Type III precast, prestressed, concrete circular tanks with steel diaphragm will be provided for ground storage.
- Appurtenances to be industry standard.

**Groundwater Wells:**

- Groundwater wells will be similar to the test well specifications provided in the Central Texas Regional Water Supply Corporation Project Manual and Specifications for Well Construction for the Simsboro Pilot Production Well prepared by RW Harden & Associates Inc. and the Project Company dated May 18, 2015, and the Central Texas Regional Water Supply Corporation Project Manual and Specifications for Well Construction for the Carrizo Pilot Production Well prepared by RW Harden & Associates Inc. and the Project Company dated May 6, 2015.
- Well open hole diameter will exceed casing diameter by 6 inches, and annulus to be cemented via interior tremie method.
- Casing will be minimum 0.5-inch thick carbon steel.
- Screen will be pipe-based construction. Screen, underbar, and wire wrap material will be 304 stainless steel.
- All wells will be geophysically logged and CCTV inspected.
- Select wells spatially distributed throughout the well field will be logged with a sonic tool.

**Pump Stations:**

- Pump Station to consist of an open layout with horizontal split case or vertical turbines with a can configuration.
- The pumps will be placed on a slab on grade for support of the pumps and discharge valves/piping.
- Electrical gear for pump station to be housed in a separate enclosed building to protect against environment.
- Chemical feed facilities to be located nearby the electrical enclosure for access to injection points and chemical truck deliveries.
- Cooling towers will be located on the high service pump station site and utilize existing topography to gravity feed storage tank.

- Underground piping will be cement mortar lined fabricated steel pipe with an option for ductile iron piping for smaller lines.
- Above ground piping to be epoxy coated and lined fabricated steel pipe.

**APPENDIX 4**

**DESIGN AND CONSTRUCTION REVIEW PROCEDURES,  
COMMISSIONING AND SUBSTANTIAL COMPLETION**

## APPENDIX 4

### DESIGN AND CONSTRUCTION REVIEW PROCEDURES, COMMISSIONING AND SUBSTANTIAL COMPLETION

#### PART A: DESIGN AND CONSTRUCTION REVIEW PROCEDURES

#### 4.1. OVERVIEW

4.1.1 Purpose. The purpose of this Appendix is to set forth the procedures for SAWS' review of the Construction Work to verify that the Project has been designed and constructed in accordance with the Contract Standards, and to provide a process to review Design Requirements Changes.

4.1.2 SAWS Review and Comment on Design Documents. The Project Company shall have the obligation to make available to SAWS Design Documents in accordance with this Appendix. SAWS will have the right to provide comments on Design Documents which identify any issues: (a) of material non-compliance with the Design Requirements; (b) that may reasonably and adversely affect the ability of the Project Company to achieve Acceptance or meet the Performance Guarantees; or (c) which may have a material impact on the SAWS Distribution System ("Material Issue Comments"). The Project Company shall provide written responses to any Material Issue Comments delivered by SAWS indicating if proposed measures will be taken to correct any such material issues. Neither compliance by the Project Company with the Design Requirements, nor review and comment by SAWS of the Design Documents, nor any failure or delay by SAWS in commenting on any design submittals shall in any way relieve the Project Company of full responsibility for the design, construction, performance, operation, maintenance and management of the Project in accordance with the Contract Standards. During the review process set forth in Section 4.4 (SAWS Design Review) of this Appendix, the Project Company may proceed with the Construction Work based on a particular design package, provided that all Material Issue Comments related to that design package are responded to within 30 days of receipt.

#### 4.1.3 Document Ownership

All design and construction information shall remain property of the Project Company until the ownership of such information is transferred to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement. Any information provided or made available to SAWS with regards to this Section may be defined as confidential by the Project Company and SAWS agrees not to disclose such information as and to the extent provided under Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement.

4.1.4 Document Review Protocol. No later than 30 days following the Financial Closing Date, the Project Company shall submit to SAWS a document review protocol (the "Document Review Protocol") which shall identify the key document review packages to be prepared by the Project Company, the expected information availability dates to SAWS and the expected dates for SAWS comments, which shall be reasonable and be based on and consistent with the Project Schedule. The Document Review Protocol shall stipulate that SAWS shall have at least 10 Business Days for review of each document package and provide related Material Issue Comments. The Document Review Protocol shall also require the Project Company to submit to SAWS for review and comment (but not approval) five hardcopies and one electronic copy of the final versions of the record drawings and specifications set forth in: (i) Section 4.6.2(a) (Record Drawings and Specifications) of this Appendix; and (ii) and the maintenance manuals and other information set forth in Section 4.6.2(b) (Maintenance Manuals) of this

Appendix. All other project records required pursuant to Section 4.6.2 (Project Records) of this Appendix, and all other reports, plans, drawings, submittals, and draft and final versions of documentation required to be provided or made available to SAWS may be submitted for review and comment (but not approval) electronically in an agreed upon format and in accordance with Section 1.2(X) (Delivery of Documents in Digital Format) of this Water Transmission and Purchase Agreement. The Document Review Protocol shall also require the Project Company to distribute the document submittals in the manner directed by SAWS.

#### 4.2. PROJECT SCHEDULE

4.2.1 Initial Project Schedule. Attachment 4A (Preliminary Project Schedule) to this Appendix is the initial project schedule (the “Project Schedule”), which the parties have relied upon when entering into this Water Transmission and Purchase Agreement.

4.2.2 Baseline CPM Schedule. Within 45 days following the Financial Closing Date, the Project Company shall prepare a critical path method (“CPM”) Project Schedule that is an accurate representation of the proposed means and methods for accomplishing the Construction Work and reflects the entire scope of the Construction Work as included in this Water Transmission and Purchase Agreement. This updated Project Schedule shall show the breakdown of Construction Work into activities and relationships to the extent required to effectively plan the Project, report work progress and analyze time impacts.

4.2.3 Project Schedule Updates. The Project Company shall, as required from time to time until the Commercial Operation Date, but no less than once per calendar month, update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of the Project Company's plans for the completion of the Construction Work in accordance with the requirements of this Water Transmission and Purchase Agreement. The updates shall include:

- (a) Adjustments resulting from Design Requirements Changes;
- (b) Property acquisition timeline;
- (c) As the design progresses, best estimates of:
  - (i) The start and completion dates for the major design phases; and
  - (ii) The commencement of construction of each heading;
- (d) The planned start and completion dates of the major activities of construction;
- (e) The planned start and completion dates for fabrication, testing and delivery of the Project and major equipment items; and
- (f) The estimated date on which Project construction completion is expected to occur.

The Project Company shall deliver to SAWS for review and comment (but not approval) an updated Project Schedule on a monthly basis to SAWS. Upon delivery, the updated Project Schedule shall replace the previously issued Project Schedule as the “Project Schedule” under this Water Transmission and Purchase Agreement.

#### 4.3. PROJECT COMPANY DESIGN PROCESS

4.3.1 Phases Generally. The Project Company shall cause the Design Build Contractor to undertake the design in progressive phases, with each phase capturing the information and detail provided in a previous phase.

4.3.2 Construction Drawings Phase. The construction drawings phase shall include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of elements of the Project delivered to SAWS when the design of the Project is:

- (a) Approximately 50% complete or better (“Ready for Construction”); and
- (b) Final Documents (as defined below).

These construction documents shall be delivered to SAWS for review and comment (but not approval) in a timely way in advance of construction with sufficient detail as to permit SAWS to monitor compliance and to assess the design of that portion of the Project. At such time as all or a portion of the construction documents are finally complete (the “Final Documents”), the Project Company shall deliver the Final Documents to SAWS and the SAWS Engineer. SAWS and the SAWS Engineer shall review and comment on (but not approve) the Final Documents in accordance with the Document Review Protocol and this Appendix.

4.3.3 Documentation Generally. In each phase, the Project Company shall provide to SAWS the level of detail and documentation as required by Good Design and Construction Practice.

4.3.4 Conditions to Issuance of Construction Drawings. The Project Company shall only issue drawings and specifications for construction purposes which have been submitted to SAWS in accordance with the Document Review Protocol. Should SAWS provide comments at a time later than that set forth in the Document Review Protocol, the Project Company’s obligation to respond to such SAWS comments shall be deemed to have been waived.

4.3.5 Document Control and Coordination. The Project Company shall ensure that all documentation made available to SAWS as part of the design process:

- (a) indicates the design phase to which it relates, and if it is a document from the construction drawings phase pursuant to Section 4.3.2 (Construction Drawings Phase) of this Appendix, whether such document is part of the Ready for Construction documents or the Final Documents; and
- (b) is provided in accordance with the Document Review Protocol.

#### 4.4. SAWS DESIGN REVIEW

4.4.1 Identification of Design Requirements Changes. Any Design Requirements Change shall be submitted in accordance with Sections 5.7 (Project Company-Requested Design Requirements Changes) and 5.8 (SAWS-Requested Design Requirements Changes) of this Water Transmission and Purchase Agreement.

4.4.2 Time for Project Company Response. When necessary, SAWS may provide written Material Issue Comments in accordance with Section 4.1.2 (SAWS Review and Comment on Design Documents) of this Appendix. The Project Company shall provide a

written response to such Material Issue Comments within the time periods set forth in the Document Review Protocol.

4.4.3 Design Submittals During Construction. It is anticipated that there could be some redesign or design clarifications needed during construction and after the Final Documents are completed. This continuing design effort shall be subject to SAWS' review for compliance and consistency with the applicable Design Requirements in the same manner as set forth in this Appendix with respect to the Design Documents. Material design changes to a particular Final Document performed following the issuance of the Design Document for construction shall be issued under a Design Change Notice ("DCN") process that accurately tracks and documents changes to the design. Copies of all DCNs will be submitted to SAWS in a timely manner to allow review by SAWS and the ability to make Material Issue Comments in the same manner as set forth with respect to the Design Documents. If a DCN requires a material change from what was reflected in the applications for Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

4.4.4 Role of SAWS Engineer. The Project Company shall fully cooperate with the SAWS Engineer in connection with the administration of the construction of the Project. The Project Company agrees that SAWS Engineer may: review and monitor construction progress and procedures; determine the completion of specified portions of the Project; review proposed changes to the Design Requirements; review plans, drawings and specifications of the Project for compliance with the Design Requirements; monitor the Performance Test undertaken by the Project Company and review the Project Company's certified test reports to determine whether the Acceptance Conditions have been satisfied; and perform in-plant observation of fabrication for all pipeline, valves, equipment, and appurtenances.

#### 4.5. SAWS REVIEW DURING CONSTRUCTION

4.5.1 Construction Review Intent. In accordance with the terms and conditions of this Water Transmission and Purchase Agreement, SAWS will review construction activities and participate in construction progress meetings to verify compliance with this Water Transmission and Purchase Agreement, including the construction-related requirements specified in Appendix 3 (Technical Specifications). SAWS' review and involvement in construction activities is not intended to be a part of the Project Company's independent quality assurance process and shall not be viewed as an additional layer or integral part of the Construction Quality Management Plan.

#### 4.6. CONSTRUCTION MEETINGS AND REPORTS

4.6.1 Construction Progress Meetings. From the time mobilization for construction commences through the Commercial Operation Date, for the purpose of facilitating the construction process, the Project Company shall schedule, hold, and facilitate construction progress meetings. SAWS shall have the right, but not the obligation, to attend such meetings.

4.6.2 Project Records. Notwithstanding any other provision of this Water Transmission and Purchase Agreement, the Project Company shall meet the following obligations:

- (a) Record Drawings and Specifications. The Project Company shall:
  - (i) throughout the Construction Period, update the Design Documents (with respect to the drawings, such update shall be in electronic format), including approved shop drawings that are available from the Design



- Build Contractor and Subcontractors, so as to produce accurate and complete record documents for the Project;
- (ii) as requested from time to time during the Construction Period, make available such record drawings and specifications to SAWS or the SAWS Engineer for review to permit SAWS to monitor the Project Company's compliance with the requirements of this Water Transmission and Purchase Agreement;
  - (iii) provide an electronic copy of the conformed, approved shop drawings; and
  - (iv) provide an electronic version and one hard copy of the completed, as-built record drawings and specifications to SAWS as a condition to Final Completion in accordance with Attachment 4B (SAWS Drawing Requirements) of this Appendix. All as-built information shall remain property of the Project Company until the ownership of such information is transferred to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement. Any as-built information provided or made available to SAWS may be defined as confidential by the Project Company and SAWS agrees not to disclose such information as and to the extent provided under Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement.
- (b) Maintenance Manuals. The Project Company shall make available all maintenance manuals, specifications, warranties and related information, in both written and electronic form, for all the equipment and systems that have been included in the Construction Work for review by SAWS.
  - (c) Design Records. The Project Company shall retain electronic records of the design development consistent with the record retention requirements of this Water Transmission and Purchase Agreement.
  - (d) Minutes of Meetings. The Project Company shall promulgate minutes of meetings between SAWS and the Project Company relating to the Construction Work, and shall make available such minutes to SAWS Representative for review and comment.
  - (e) Inspection Reports and Tests Results. The Project Company shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the construction.
  - (f) Utility Plans. The Project Company shall retain utility plans for the Project.
  - (g) Copies of all Governmental Approvals. The Project Company shall retain copies of all Governmental Approvals for the construction and occupation of the Project.
  - (h) Signed Construction Quality Management Plan. The Project Company shall retain a signed copy of the Construction Quality Management Plan (as defined in Section 4.7 of this Appendix) for the construction and all records of the quality assurance program implemented as required by this Water Transmission and Purchase Agreement.

#### 4.7. QUALITY MANAGEMENT

4.7.1 Quality of the Construction Work. The Project Company is solely responsible for the quality of the Construction Work and acknowledges that a comprehensive quality management system is critical for the proper and timely completion of the Construction Work. At all times during the Construction Period, the Project Company shall comply with the requirements set forth in the Construction Quality Management Plan and this Water Transmission and Purchase Agreement.

4.7.2 Construction Quality Management Plan. The development and implementation of the Construction Quality Management Plan shall be the responsibility of the Project Company. Within 45 days following the Financial Closing Date, the Project Company shall submit for SAWS review and comment (but not approval) its Construction Quality Management Plan that describes how QA/QC will be provided and managed for all design, permitting and construction activities and which shall include, but not be limited to, the following:

- (a) Design integration;
- (b) Interdisciplinary coordination;
- (c) Constructability reviews;
- (d) Cost impact analyses;
- (e) On-site equipment/materials protection; and
- (f) Quality assurance procedures, inspections and testing.

Revisions and updates to the Project Company's Construction Quality Management Plan may be proposed by the Project Company as the Construction Work progresses. Any such changes shall be provided to SAWS for review and comment (but not approval) prior to the start of the element of the Construction Work to which the revision applies.

4.7.3 Construction Quality Management Plan Objectives. The Construction Quality Management Plan, including QA and QC, shall be consistent with and support the following overall quality objectives:

- (a) Ensure that the permitting, design, and construction of the Project are consistent with this Water Transmission and Purchase Agreement and the Contract Standards.
- (b) Provide for high-quality workmanship.
- (c) Integrate and coordinate permit specialists, environmental scientists, designers, engineers, construction contractors, and operators into all review phases of the Construction Work.
- (d) Develop systems to ensure that problems are discovered early, resolved in a timely manner, and do not recur.
- (e) Provide independent (non-production) oversight equipped with adequate resources to ensure that quality is not compromised by production goals. During the permitting and design phase, independent oversight is defined as having QA/QC personnel separate from and independent of the design

production team on whose work QA/QC functions are being performed. During the construction phase, the lead engineering personnel involved in making design decisions shall remain involved (including receiving periodic updates on the progress of the construction and making site visits during key points in the construction related to their respective design expertise) to ensure quality assurance.

- (f) Ensure implementation of the QA/QC functions by the use of specified procedures and audit functions.

4.7.4 Quality Review by SAWS. SAWS may, at its discretion, perform its own audits of the Construction Quality Management Plan and for that purpose the Project Company shall make available for review by SAWS, upon request from SAWS, all material records relating to the Construction Quality Management Plan.

#### 4.8. ENVIRONMENTAL REVIEW AND PROTECTION

4.8.1 Compliance With Governmental Approvals. The Project Company shall be solely responsible for developing and complying with all applicable environmental mitigation and management measures required by the Governmental Approvals during the performance of the Construction Work.

4.8.2 Hazardous Substances Management Program. The Project Company shall develop and maintain a written Hazardous Substances management program that includes as a minimum, but is not limited to, the requirements specified in this Section 4.8 (Environmental Review and Protection) (the "Hazardous Substance Management Program"). A copy of the Hazardous Substance Management Program shall be submitted to SAWS. Accidental spills, site contamination, and injury of personnel shall be avoided. SAWS shall notify the Project Company of suspected violations. Any fines that may be levied against SAWS for violations relating to Hazardous Substances connected to the Project shall be reimbursed immediately by the Project Company. All documents required by the Hazardous Substances Management Program shall be made available to SAWS immediately upon request.

4.8.3 Project Company Hazardous Substances. Any Hazardous Substances related to the Project shall be the responsibility of the Project Company. To the extent required by Applicable Law, the Project Company shall ensure that an EPA identification number is obtained for all Project Company Hazardous Substances, listing the Project Company's name and Project construction office address as the generator of the Project Company Hazardous Substance. To the extent required by Applicable Law, the Project Company shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of such Hazardous Substances.

4.8.4 Emergency/Spill Response Plan. The Project Company shall develop an Emergency/Spill Response Plan ("Response Plan"), for each Hazardous Substance or class/group of Hazardous Substances either known to be on the Project Sites or intended to be brought to the Project Sites by the Project Company. As a minimum, the Response Plan must address the following:

- (a) Provide a description of on-site equipment used to segregate and contain Hazardous Substances and available to respond to an emergency/spill of the Hazardous Substance;
- (b) Notification procedures, including notification to potentially impacted residents and businesses adjacent to the Project;

- (c) Response coordination procedures between the Project Company and SAWS;
- (d) Provide a Project Sites plan identifying the location of stored Hazardous Substances and location spill containment/response equipment;
- (e) Provide a description of the Hazardous Substances handling and spill response training provided to employees of the Project Company, the Design Build Contractor and Subcontractors; and
- (f) Provide a description of arrangements with Hazardous Substance and spill response contractors and their response times.

**PART B: COMMISSIONING**

4.9. PROJECT COMMISSIONING

4.9.1 General Commissioning Plan Requirements. The Project Company shall prepare a commissioning plan which shall provide a protocol for the conduct of all Project start-up and commissioning activities consistent with this Section (the “Commissioning Plan”). As set forth in Section 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement, the Project Company shall prepare and submit to SAWS for its approval the Commissioning Plan no later than 60 days prior to the anticipated commencement of commissioning of the Project for review and comment by SAWS. Within 30 days after SAWS’ receipt of the Commissioning Plan, SAWS shall provide written notice to the Project Company either acknowledging that the Commissioning Plan is acceptable to SAWS or specifying the deficiencies therein. The content of the Commissioning Plan shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All commissioning activities shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

4.9.2 Commissioning Plan Content. The Commissioning Plan shall be a comprehensive plan organized into separate sections addressing overall Project start-up and commissioning procedures and practices, all equipment and each unit operation, all auxiliary Project equipment and systems, and the Project Company’s management, documentation, and oversight of the start-up and commissioning process. At a minimum, the Project Company’s Commissioning Plan shall include the following:

- (a) A start-up and commissioning overview with a complete description of start-up and commissioning activities.
- (b) The list of prerequisites required for commencing commissioning.
- (c) A critical path method (“CPM”) commissioning schedule that sequences all commissioning activities required to achieve Substantial Completion. The commissioning schedule shall incorporate logic to properly sequence activities with precedents and constraints including, but not limited to, Governmental Approvals such that the schedule addresses dry and wet testing, verification of equipment readiness for service, instrumentation and controls calibration, local control and SCADA functionality, and all other steps consistent with Good Design and Construction Practice, Good Management Practice, and all equipment manufacturers’ guidelines and equipment warranty provisions. The commissioning schedule shall also indicate any activities on the critical path that require SAWS actions.

- (d) A description of the Project Company's process for assuring orderly transitions between its construction, start-up, commissioning activities and the Performance Test, and the Operating Period.
- (e) An organizational chart for the Project Company's start-up and commissioning team and a description stating the responsibilities and the level of authority of each Project Company representative in the organizational chart.
- (f) The QA/QC procedures for oversight by the Design Build Contractor's QA/QC staff to assure adherence to the requirements of the Commissioning Plan and the procedures for deficiency correction and tracking/documentation of such corrections.
- (g) A description of the procedures the Project Company proposes for inspecting equipment prior to and during functional testing and for developing the Punch List.
- (h) The procedures and staffing planned that Project Company intends to use for disinfecting the Project and obtaining all regulatory clearances necessary for starting-up the Project and producing Product Water;
- (i) A description of the systems or components of the Project that will be started up as unit processes or sub-process and the sequence in which they will be started up.
- (j) A description of the sequence of start-up and commissioning activities the Project Company intends to conduct including the functional testing of individual control loops and unit processes, equipment, generator systems, SCADA demonstrations, and CMMS demonstrations.
- (k) A description of the dry testing of the Project, which shall include ensuring proper electrical installation, mechanical installation, valve operation, pump operational readiness, instrumentation calibration and performance, complete and calibrated electronic signals, and control hardware installation. Initial performance during dry testing shall be logged on data sheets maintained by the Project Company and available for review by SAWS.
- (l) A description of the wet testing of the Project, which shall include ensuring proper air venting, flushing of all lines and pressure vessels, chlorinating lines and tanks (as appropriate), running water through all systems, control loop check, adjustment and tuning, ensuring proper communications between systems and SCADA, ensuring SCADA system coordinates all systems according to Operating and Maintenance Standards, testing SCADA alarms, starting and testing chemical feed systems, loading cartridge filters.
- (m) A schedule and description of the approach for coordination with SAWS to facilitate necessary testing, adjustment and calibration of the Project Company Storage Tank and SAWS' chemical feed, SCADA, Stone Oak pumping station and flow control systems at Terminus Site Lot 2 and Terminus Site Lot 3.
- (n) A list of all Governmental Approvals required for functional testing and for Performance Testing and the tracking mechanism the Project Company proposes to use to confirm that the Project Company has obtained all such Governmental

Approvals prior to commencing the functional testing and Performance Testing activities for which such Governmental Approvals are required.

- (o) A description of the approach for management of Project generated wastewaters confirming that all wastewater created during start-up and commissioning activities can be disposed of in a manner consistent with the provisions of all Governmental Approvals.
- (p) A list of all controls system set points and alarms required for operating the Project and for equipment protection. The Project Company shall maintain the list as a controlled document throughout the Construction Period.
- (q) A description of the procedure the company will follow for making corrections to its Electronic Operation and Maintenance Manual.
- (r) A Flushing Plan, as further described in Section 4.9.3 (Flushing Plan) of this Appendix.

4.9.3 Flushing Plan. The Project Company shall prepare a flushing plan which shall provide a protocol for the conduct of all Project flushing, including flushing points, volumes to be flushed, drainage ways, identification of potentially affected parties and mitigation plans and procedures (the “Flushing Plan”). The Project Company shall prepare and submit to SAWS for its approval the Flushing Plan as part of the Commissioning Plan. The content of the Flushing Plan shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All flushing activities shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

4.9.4 Start-up Prerequisites. The Project Company shall complete the following prerequisites prior to commencing start-up:

- (a) Commissioning Plan. The Project Company has prepared and forwarded a copy of the Commissioning Plan to SAWS and received SAWS’ approval for the plan in accordance with Section 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement.
- (b) Flushing Plan. The Project Company has prepared and forwarded a copy of the Flushing Plan to SAWS and received SAWS’ approval for the plan in accordance with subsection 4.9.3 (Flushing Plan) of this Appendix.
- (c) Instrument Calibration. The Project Company has completed instrument calibration activities required to assure Project instrumentation provides readings accurate within manufacturer’s tolerances only as applicable to the systems and subsystems commissioned. Upon request by SAWS, the Project Company shall produce documentation verifying the completion of such activities.
- (d) SCADA. The Project Company has completed SCADA programming and testing necessary for operating the Project in both automatic mode and manual mode and a fully functional fiber optic link to SAWS’ SCADA system has been established. Upon request, the Project Company shall deliver to SAWS verification that SCADA testing has been completed.

- (e) Operation and Maintenance Staff Training. The Project Company completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers or suppliers sufficient to start-up the Project in accordance with Good Industry Practices and provided documentation to SAWS, if requested, certifying all such training has been completed.
- (f) Electronic Operation and Maintenance Manual. The Project Company completed the draft Electronic Operation and Maintenance Manual and obtained SAWS' comments in accordance with Section 9.5 (Electronic Operation and Maintenance Manual) of this Water Transmission and Purchase Agreement.
- (g) Operating Protocol. The Project Company and SAWS have jointly developed the Operating Protocol in accordance with this Water Transmission and Purchase Agreement.
- (h) Governmental Approvals. The Project Company obtained all Governmental Approvals required for commencing Performance Testing.

4.9.5 Coordination Meetings. The Project Company shall meet with SAWS and the SAWS Engineer on a regularly scheduled basis to review status of its commissioning activities; to coordinate with SAWS for activities related to system walk-downs with the Design Build Contractor and the development of a Punch List; witnessing equipment functional and operability demonstrations; and to address any other relevant issues. The Commissioning Plan shall define the frequency of all commissioning activity coordination meetings.

4.9.6 Documentation. All documentation verifying start-up and commissioning activities shall incorporate checklists which are signed and dated by an authorized representative of the Design Build Contractor's staff confirming the accuracy of the information on each checklist. An authorized representative of the Design Build Contractor's staff shall also review and sign and date all such documentation prior to its review by SAWS, or if required, prior to transmittal to SAWS, thus indicating that the information in the checklist has been incorporated into the commissioning records. The Project Company shall submit an electronic copy of such documentation to SAWS. The electronic copies shall be searchable documents supplied in Adobe Acrobat electronic format or other format acceptable to SAWS.

4.9.7 Commissioning Manager. The Project Company shall designate a manager who shall be responsible for directing all Substantial Completion Procedures and who shall attend all Project meetings related to construction completion or Substantial Completion Procedures (the "Commissioning Manager"). The direction of all start-up, Substantial Completion Procedures, and Performance Tests shall be the Commissioning Manager's primary duty. The Project Company shall assure that the Commissioning Manager has sufficient authority to direct start-up and the Substantial Completion Procedures. The Commissioning Manager shall be a Key Individual and the Project Company's sole representative responsible to schedule Substantial Completion Procedures with SAWS.

4.9.8 Project Company Responsibilities. The Project Company shall be responsible for all items that pertain to start-up, commissioning and testing. Overall, the start-up, commissioning and testing decision-making shall be based on the following key objectives:

- (a) Protection of the health and welfare of the public;
- (b) Protection of the health and safety of the Operating Service Provider staff;

- (c) Preservation of the long-term reliability of the Project for supplying potable water;
- (d) Protection and preservation of all Project facilities;
- (e) Protection of the environment;
- (f) Compliance with Applicable Law;
- (g) Maximizing the efficiency of commissioning activities of the Project Company and SAWS staff and representatives;
- (h) Achieving Acceptance by the Commercial Operation Date; and
- (i) Assure that the staff of the Operating Service Provider is competent to perform the operation and maintenance requirements for the Project before Performance Testing commences.

### **PART C: SUBSTANTIAL COMPLETION**

#### 4.10. SUBSTANTIAL COMPLETION PROCEDURES

4.10.1 Substantial Completion Procedures Generally. The intent of the Substantial Completion Procedures (as defined below) are to demonstrate that the installed facilities, systems, subsystems, related equipment, and the Project as a whole are ready to perform in accordance with the requirements of this Water Transmission and Purchase Agreement and Design Requirements. The procedures described in this Appendix for determining when the Project Company has achieved Substantial Completion (the “Substantial Completion Procedures”) include pre-commissioning, verification of start-up readiness, Governmental Approval compliance, functionality of individual Project subsystems, testing the back-up power capabilities of the Project and Project commissioning. During the implementation of the Substantial Completion Procedures, the Project Company shall carry out various inspections and pre-performance test activities, the scope and extent of which tests are outlined in this Appendix. Each system, subsystem or facility identified in this Section shall be successfully demonstrated to have the capability to operate both individually, and as a part of the integrated Project.

4.10.2 Performance Testing. The purpose of Performance Testing is to demonstrate that the Project meets all performance requirements set forth in this Water Transmission and Purchase Agreement. This Appendix and Appendix 5 (Performance Test Procedures and Standards) set forth the requirements for the Performance Test of the Project required pursuant to Section 8.3 (Performance Testing) of this Water Transmission and Purchase Agreement.

4.10.3 Construction Testing. To confirm compliance with the Technical Specifications, the Project Company shall submit certified reports. The certified reports shall be from the appropriate certifying entity demonstrating that construction meets the Technical Specifications and has satisfactorily passed relevant testing. For general construction, the reports will be submitted by a professional engineer. For valves and pumps and similar equipment, the certifications shall be factory certifications. Specifically the tests listed in Sections 4.10.4, 4.10.5 and 4.10.6 of this Appendix, and others as required by selection of material, will be conducted and certified reports submitted by the Project Company to SAWS.

#### 4.10.4 Water Main Testing and Documentation Requirements.



- (a) PIPE LEAK TEST RECORD, i.e. Hydrostatic Test (FN027-4) (Form 10).
- (b) PIPE COATING TESTS for Steel Pipes – Provide reports from testing agency that demonstrate no holidays and repair of holidays.
- (c) CATHODIC PROTECTION TESTS – Provide reports signed by Cathodic Protection Engineer.
- (d) WELD TESTS – Provide reports signed by Certified Welder for full penetration exterior welds.
- (e) DENSITY TESTS – Sand Cone Tests for Gravel & Density test on secondary backfill confirming 95% compaction level. Provide geotechnical lab test reports.
- (f) DEFLECTION TESTS – Provide test reports signed by the construction observer/inspector and contractor or televising reports and approval and signed by an engineer if used in lieu of deflection tests.
- (g) VERIFY JOINT RESTRAINT SYSTEM – Follow manufacturer’s recommendation – consider valves to be closed.
- (h) VERIFY ALL VALVES OPERATE PROPERLY – either through operation and visual operation after installation or factory certification.
- (i) RIVER CROSSING – Provide scour analysis report and certification that the pipe was installed at the appropriate depth.

4.10.5 Production Well Testing and Documentation Requirements. Where appropriate, certification can be made by a professional geologist for well testing.

- (a) General Information:
  - Copy of Sanitary Control Easements filed w/County Courthouse
  - Construction Data –
    - Well location information per TCEQ requirements
    - casing information (diameter, thickness, length, material type)
    - casing alignment information & surveys
    - screen type, length, slot size, and location of screened intervals
    - cementing information & class of cement
    - gravel pack size, length of gravel pack & location, under ream information
    - geophysical logs (hardcopies & electronic format)
    - color video of final completed well (from surface to total depth)
    - copy of drillers log
  - Copy of State of Texas Water Well Report
- (b) Hydrologic Testing:
  - 36 Hour Pump Test - TCEQ 290.41 (c)(3)(A) & (G) (Aquifer parameters)
  - Storativity
  - Drawdown
  - Specific Capacity of each well

4.10.6 Facilities Testing and Documentation Requirements.

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(a) GENERAL:

- Site Environmental and Archaeological/Historical Assessments
- Reports of Explorations & Tests of Subsurface Conditions at the Project Sites
- Manifests for the Removal of Hazardous Materials (where applicable)
- Signed and sealed Vendors Certificates, Test Reports & Shop Drawings
- Backflow Prevention Reports (where applicable)

(b) DIVISION 1 – GENERAL PROVISIONS:

**Section 01400 International Building Code Special Inspections:**

- Certificate of Structural Statement of Special Inspections for buildings signed by Structural Engineer of Record and/or Design Professional in Responsible Charge
- Steel Construction Special Inspection Reports for miscellaneous structural steel, steel joist and metal deck
- Concrete Construction Special Inspection Report for cast-in-place concrete
- Masonry Construction Special Inspection Report for load bearing and reinforced concrete masonry construction
- Soils Special Inspection Report for structural and compacted fill for shallow footings and slabs-on-grade

**Section 01640 Manufacturer Field Services:**

- Manufacturer's Certificate of Proper Installation Form signed by an authorized representative
- Certificate of Successful Equipment Testing signed by an authorized Manufacturer's representative and Contractor's representative witnessing the test
- System Start Up Testing Form

(c) DIVISION 2 – SITE WORK:

**Section 02200 Excavation, Backfill and Compaction:**

- Subgrade soil compaction test
- Compaction tests under proposed structures

**Section 02220 Structural Excavation Fill and Backfill:**

- Test results of materials reused onsite
- Test results for "select materials" brought onsite

**Section 02510 Buried Steel Pipe and Fittings epoxy lined and polyurethane coated:**

- Welder's certificates
- Field Weld Test results
- Coatings system test results
- Lining system factory test results

**Section 02675 Disinfection of Potable Water Facilities:**

- Test results for bacteriological samples
- Test results for disinfection

(d) DIVISION 3 – CONCRETE:

**Section 03200 - Concrete Reinforcement:**

- Rebar Mill Test certificates

**Section 03300 - Cast-in-Place Concrete:**

- Slump tests
- Air content tests
- Temperature tests
- Strength test results

**Section 03400 Flowable Fill:**

- Permeability test
- Subsidence test
- Strength test
- Fluidity test

**Section 03600 – Grout:**

- Strength test results
- Field Control Test Results (when required)

(e) DIVISION 4 – MASONRY:

**Section 04200 Building Masonry:**

- Mortar Test Results
- Grout Strength Tests
- Field Control Test Results (when required)

(f) DIVISION 5 – METALS:

**Section 05120 - Structural Steel**

- Nondestructive test results

**Section 05500 – Structural and Misc. Metals:**

- Bolts & Washers Test Ratings
- Stainless Steel 24 hour Water Test Results

**Section 05501 - Anchor Bolts, Expansion Anchors and Concrete Inserts:**

- Certificates.

(g) DIVISION 7 - THERMAL AND MOISTURE PROTECTION (not used)

(h) DIVISION 9 – FINISHES:

**Section 9820 Pre-stressed Concrete Tanking Coating:**

- Coating Samples

**Section 09900 – Painting:**

- Coating Test Results

**Section 09940 – Protective Coatings:**

- Coating Test Results

(i) DIVISION 10 – SPECIALTIES:

**Section 10520 - Fire-Protection Specialties**

- Performance Test Results
- Witnessed Test Results
- Flow Test Results
- Test Certificates

(j) DIVISION 11 – EQUIPMENT:

**Section 11100 Horizontal Split Case Pumps:**

- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
  - Test results shall show no minus tolerance or margin with respect to capacity, total head or guaranteed efficiency at the specified conditions. Pumps shall have a continuous down slope in the head-capacity curve. Pumps shall be within the following plus tolerance:
    - 1) At rated head: +10% of rated capacity
    - 2) At rated capacity: +5% of rated head
    - 3) Provide certified copy of all test data and test curves for the pump
  - CERTIFIED TEST REPORTS – Submit the following certified test reports for the pump:
    - 1) Provide CTR for pump factory performance tests
    - 2) Provide CTR for metallurgical analysis of castings
    - 3) Provide CTR for stress relieving of components
    - 4) Provide CTR for pump casing hydrostatic tests
    - 5) Provide CTR (with EIR) for pump field tests
- Field test results.
  1. Mounting and Alignment. The pump and motor shall be aligned using laser alignment
  2. Vibration Test
  3. Noise Test
- Testing Log
- Functional test results
- Performance test results
- Operational test results
- O&M Manuals

**Section 11200 Vertical Sump Pumps:**

- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
- Field test results
- Testing Log
- Functional test results
- Performance test results
- Operational test results
- O&M Manuals

**Section 11220 Vertical Turbine Pumps:**

- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
- Field test results
- Testing Log
- Functional test results
- Performance test results
- Operational test results
- O&M Manuals

**Section 11300 Control Valves:**

- Manufacturer's Certificate of Proper Installation
- Certificate of Successful Equipment Testing
- Start Up Testing Form

**Section 11400 Flow Meters:**

- Manufacturer's Certificate of Proper Installation
- Certificate of Successful Equipment Testing
- Start Up Testing Form

(k) DIVISION 13 – SPECIAL CONSTRUCTION:

**Section 13122 Chemical Tank Cover Structures:**

- Manufacturer test results
- Certifications
- Test of Wind-Uplift Resistance of Roof Assembly Results
- Canopy Leak - Field Test Results

**Section 13000 Wrapped Pre-stressed Concrete Tank:**

- Leak Test Results
- Disinfection Test Results

**Section 13110 – Cathodic Protection System:**

- System testing results

(l) DIVISION 14 – CONVEYING SYSTEMS (not used)

(m) DIVISION 15 – MECHANICAL:

**Section 15002 - Field Testing of Piping Systems:**

- Hydrostatic Test Results for pressure line
- Leak test results

**Section 15064 - Steel Pipe and Fittings:**

- Hydrostatic Test Results
- Factory Test Results for steel
- Weld Test Results demonstrating full penetration weld
- Welder's Certifications

**Section 15102, 15103, 15104, 15107, 15108 – Valves:**

- Factory Test Results
- Leak Test Results

**Section 15500 - HVAC – General Provisions:**

- Shop Test Results for AC Units, Heating Equipment, Refrigeration Systems, DX Air Handling Units, Fans, Ductwork and Accessories, and Controls
- Field Test Results for AC Units, Heating Equipment, Refrigeration Systems, DX Air Handling Units, Fans, Ductwork and Accessories, and Controls
- Indoor / Outdoor Coil Pressure Test Results
- HVAC Balancing Report

(n) DIVISION 16 – ELECTRICAL:

**Section 16060 – Electrical Testing:**

- Independent Third Party Testing Reports
- In accordance with National Electrical Testing Association – Standard for Acceptance Testing Specifications (NETA-ATS) *for Electrical Power Equipment and Systems*, ANSI/NFPA 70, NFPA70E, ANSI C2, IEEE 1584 and Manufacturer’s recommendations
- Power System Study Report

(o) DIVISION 17 – INSTRUMENTATION:

**Section 17000 - Instrumentation – General Provisions:**

- System Test Results for Field Instruments, Panel Mounted Equipment, Control Loops, Input/Outputs, Programmable Logic Controllers, Communications Interface Equipment, etc.
- Unwitnessed Factory Test (UFT) Results
- System Integration Test (SIT) Results
- Factory Acceptance Test (FAT) Results
- Operational Readiness Test (ORT) Results
- Functional Demonstration Test (FDT) Results
- 30-Day Site Acceptance Test (SAT) Results
- Radio Path Study Results for Communications

4.10.7 Observation of Substantial Completion Procedures. SAWS reserves the right to observe and inspect the Substantial Completion Procedures. The Project Company shall provide at least five days’ notice to SAWS prior to commencement of any Substantial Completion Procedure. The Project Company shall also ensure that each equipment manufacturer representative that is required to witness such Substantial Completion Procedures is present.

4.10.8 Subcontractors Required During Substantial Completion Procedures. Prior to the commencement of any Substantial Completion Procedure, the Project Company will identify all subcontractors needed during such Substantial Completion Procedure, and define their roles.

4.10.9 Substantial Completion Protocol. As part of the Commissioning Plan required to be prepared and submitted by the Project Company pursuant to subsection 4.9.1 (General Commissioning Plan Requirements) of this Appendix and subsection 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement, the Project Company shall also prepare and submit a protocol for the conduct of the Substantial Completion Procedures pursuant to this Appendix (the “Substantial Completion Protocol”). The Substantial Completion Protocol shall identify the key Substantial Completion Procedures to be performed and the expected date of such performance as well as expected submittal dates to SAWS related to the Substantial Completion Procedures and the expected dates for SAWS responses,

which shall be reasonable and be based on and consistent with the Project Schedule. The content of the Substantial Completion Protocol shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All Substantial Completion Procedures shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

#### 4.11. SUBSTANTIAL COMPLETION PROCEDURE REQUIREMENTS AND COMPONENTS

4.11.1 General Information. To meet the requirements of Substantial Completion, the Project Company is required to demonstrate that all key Project equipment, processes, systems, subsystems and the Project as a whole function in accordance with the Contract Standards, equipment warranty provisions, all Applicable Laws and Governmental Approvals.

4.11.2 Process and Equipment Performance Requirements. During the Substantial Completion Procedures, the following, at a minimum, shall be demonstrated with respect to all of the tested Project systems and subsystems:

- (a) All pumps operate through their specified design range, and are verified for proper rotation, speed, flow rate, pressure and design point;
- (b) Project systems and subsystems meet the requirements of the Contract Standards and are installed as designed;
- (c) All required automatic, manual control and remote control features are provided and operable;
- (d) All required valves, water quality sensors and analyzers, pressure and flow sensors, liquid level sensors, indicators, alarms, signals, leak detectors, monitors, controls, field devices and panel devices, are provided, correctly installed, calibrated and operable over their full range;
- (e) All required inlet, outlet, sensor taps, and drain connections are included and operable;
- (f) All required liquid dosing metering pumps, accessories, appurtenances, and injection systems, are provided, installed and operable over the full turn down range, for each chemical;
- (g) The Project functions as designed upon loss of power, loss of control system, manual start-up and shutdown, and automatic shutdown;
- (h) Software and hardware operational interlocks and startup, shutdown, control loop functions, and proper sequencing within all programmable logic controllers, HMIs, SCADA and other control locations are fully functional; and
- (i) All equipment manufacturer's equipment warranty, start-up and operating instructions draft standard operating procedures for system or subsystem start-up, operation and shut down are available on-site.

In addition, the Project Company shall demonstrate a complete Project start-up and shutdown cycle.

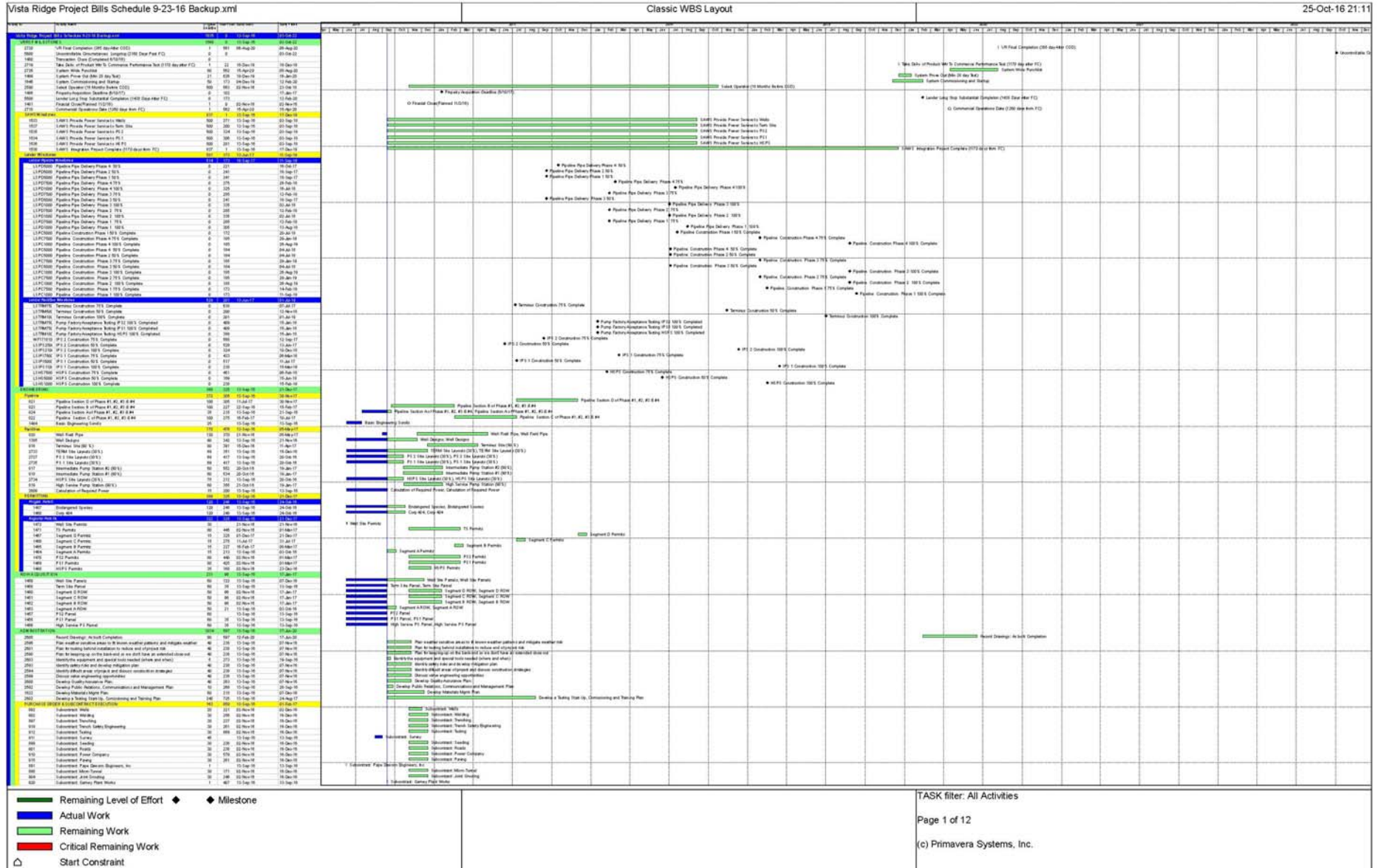
#### 4.12. SUBSTANTIAL COMPLETION PROCEDURES REPORT

4.12.1 Substantial Completion Procedures Report Requirements. Upon completion of operational preparedness, and as a condition of Substantial Completion, the Project Company will prepare and submit five copies of the Substantial Completion Procedures report which shall comply with the requirements set forth in this Section and Section 8.1(C) (Substantial Completion Procedures Report) of this Water Transmission and Purchase Agreement (the “Substantial Completion Procedures Report”).

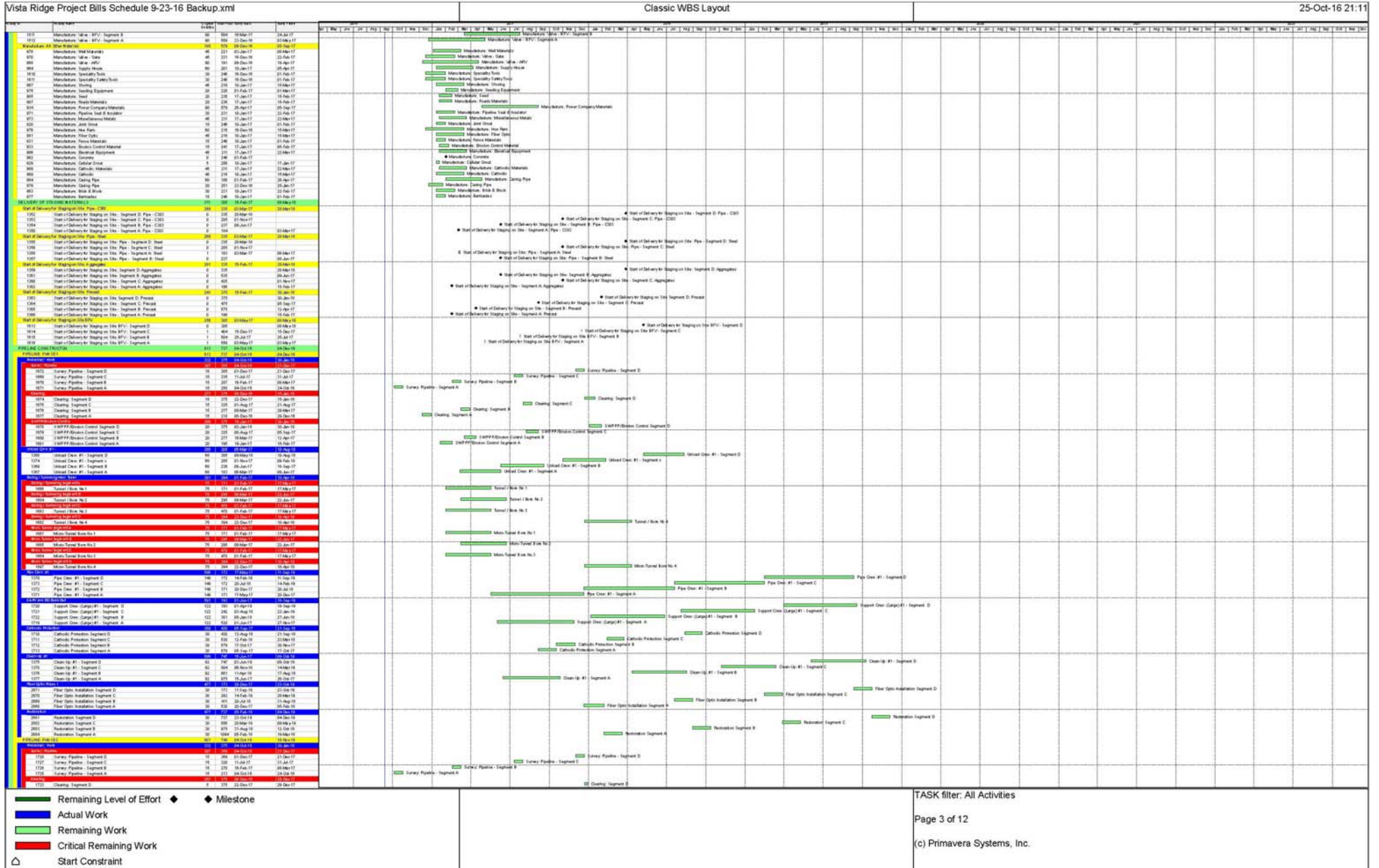
4.12.2 Substantial Completion Procedures Report Contents. The Substantial Completion Procedures Report will include a signed and sealed certification by a State registered professional engineer with thorough and appropriate knowledge of the Project Company’s start-up and commissioning activities and signed by a duly authorized officer of the Design Build Contractor attesting to the facts that the Project has achieved Substantial Completion including that: (i) all equipment has been properly installed correctly and the applicable equipment manufacturers’ post-installation inspection certifications for major equipment are available; (ii) all dry, wet, and functional testing has been satisfactorily completed; (iii) all pre-operational checks are complete, including, but not limited to, flushing and pressure testing piping, tanks, and other such components; (iv) checking automated valve operations, rotating equipment has been properly balanced and vibrations are within manufacturer’s Good Design and Construction Practice; (v) motor rotational direction has been confirmed; (vi) electrical insulation integrity has been confirmed; (vii) all electric over/under voltage or amperage protective equipment is appropriately programmed, calibrated or set; (viii) all instrumentation, valves, metering pumps, and chemical dosing systems have been calibrated (as applicable); (ix) local and remote instrumentation and SCADA readings are consistent; (x) appropriate instrumentation and control set points have been established and hard-wired; (xi) SCADA equipment protective devices function properly; (xii) local and manual equipment controls are fully functional; (xiii) SCADA control system logic functions have been tested, and are fail safe, and function as intended; (xiv) an alarm and set point register has been established documenting all alarm and controls set points; (xv) all equipment is ready for service in accordance with Good Design and Construction Practice, Good Management Practice, and all equipment manufacturer’s guidelines and no equipment warranty provisions have been voided; (xvi) all wet testing of the Project has been completed successfully; (xvii) the Operating Service Provider staff have available to them, on-site, all required equipment manufacturers’ documentation, including but not limited to operation and maintenance manuals, equipment manufacturers’ equipment manuals and copies of applicable equipment warranties; (xviii) all orientation, classroom and field training necessary to be provided to the Operating Service Provider has been conducted and such staff is competent to operate the Project; and (xix) all Governmental Approvals necessary for subsequent commissioning activities have been received prior to conducting such commissioning steps.

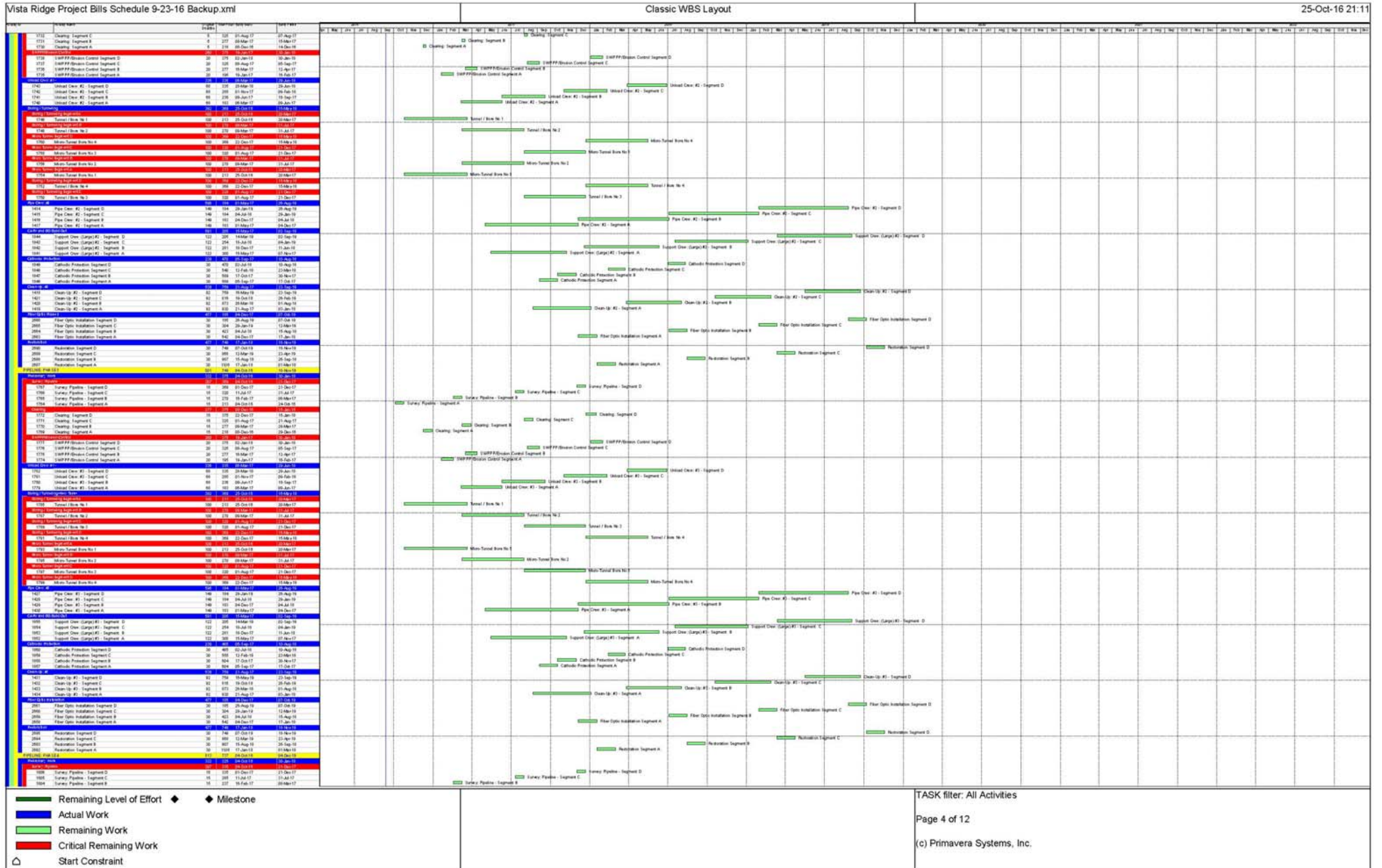


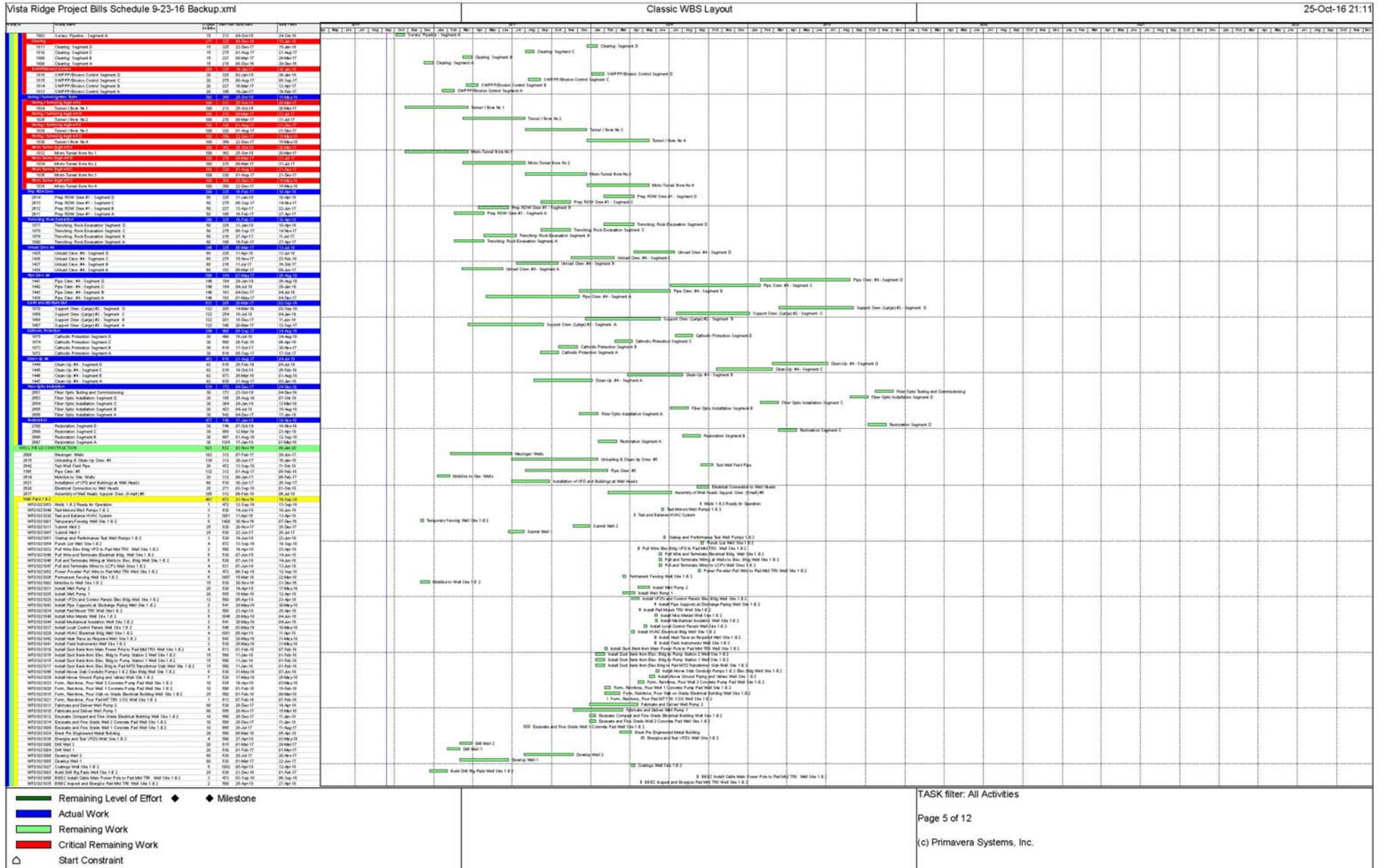
**ATTACHMENT 4A**  
**PRELIMINARY PROJECT SCHEDULE**





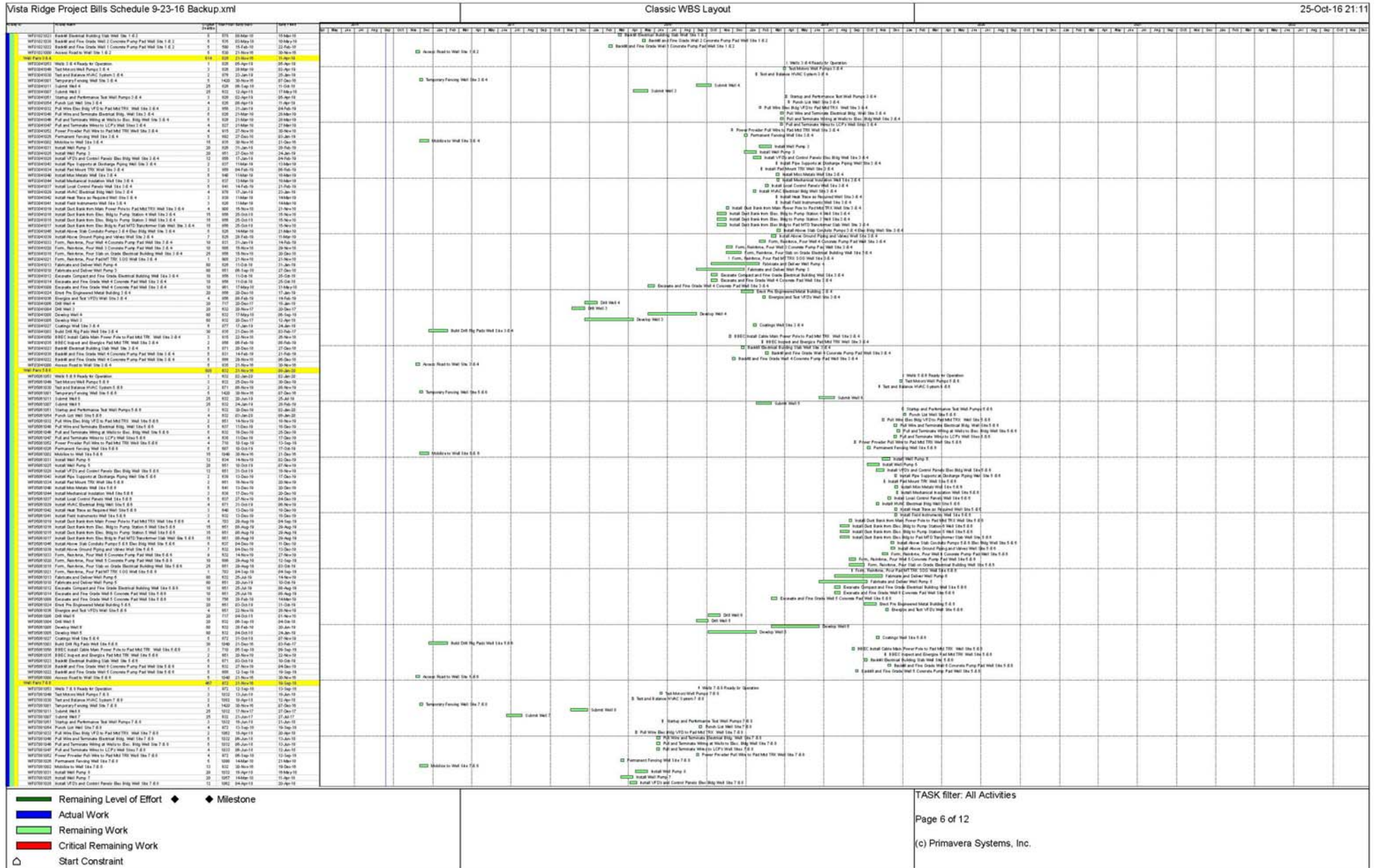






Vista Ridge Regional Supply Project  
Water Transmission and Purchase Agreement

Appendix 4  
Design and Construction Review Procedures,  
Commissioning and Substantial Completion



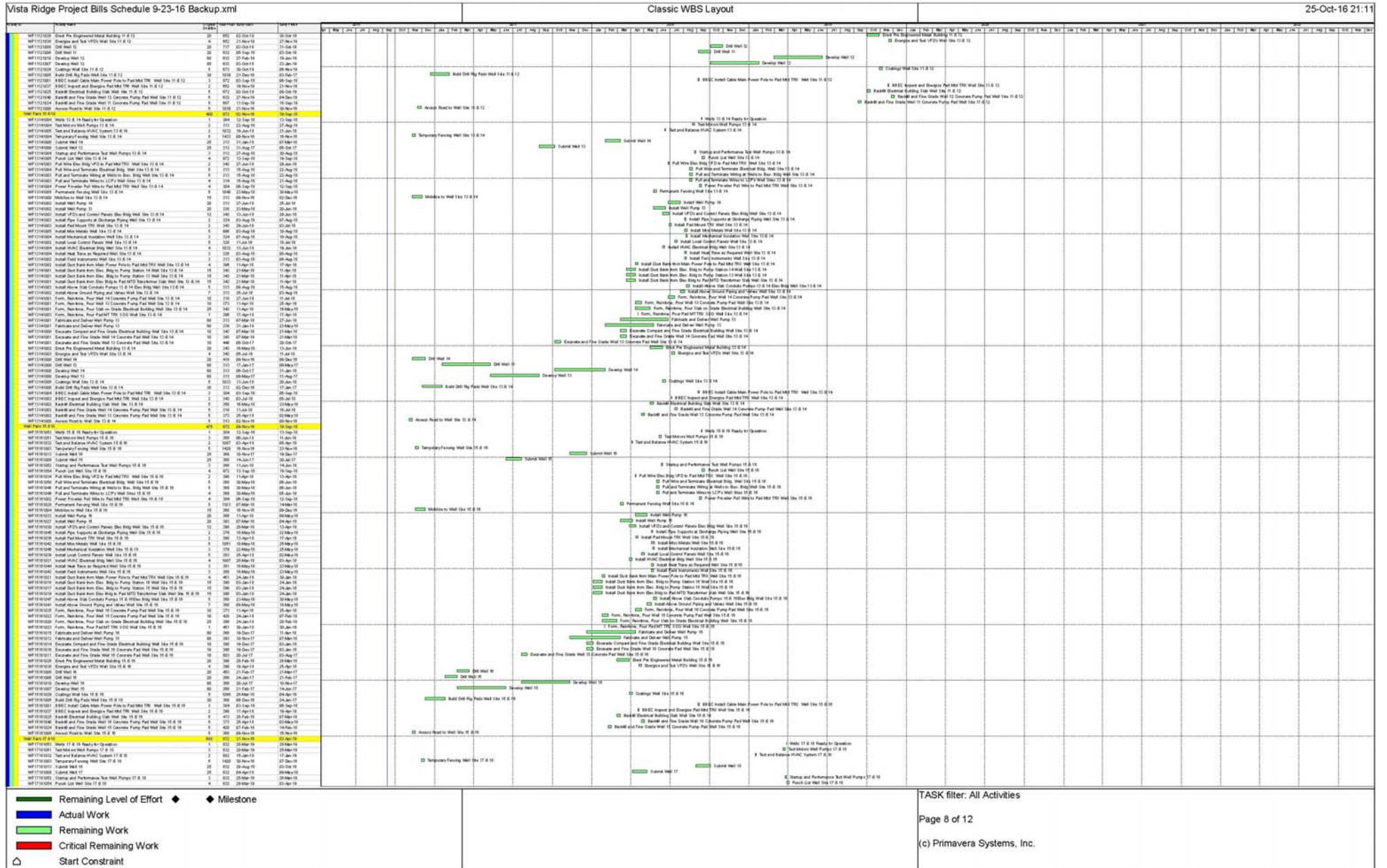
Third Amendment, April 5, 2017

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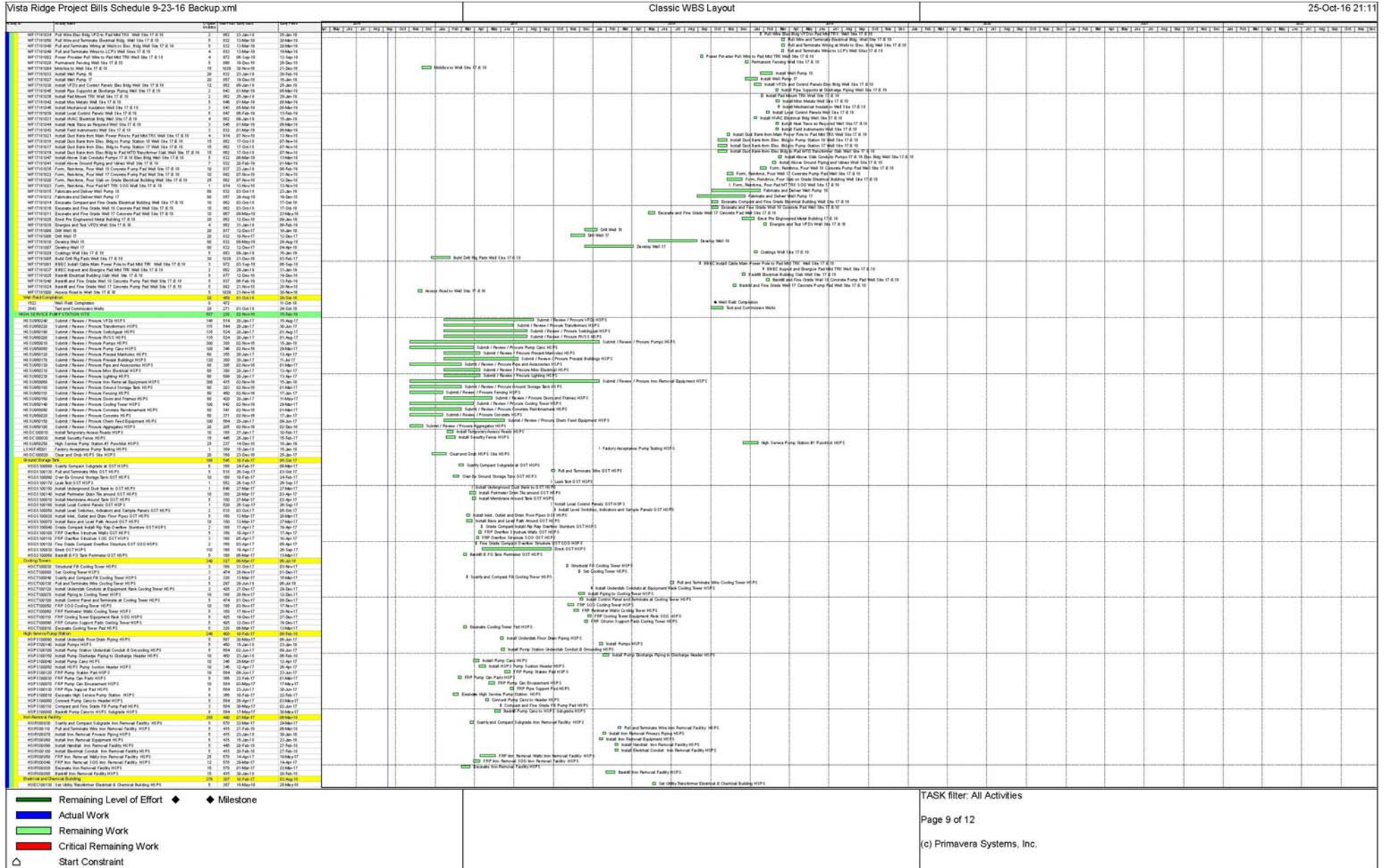






Vista Ridge Regional Supply Project  
Water Transmission and Purchase Agreement

Appendix 4  
Design and Construction Review Procedures,  
Commissioning and Substantial Completion



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Third Amendment, April 5, 2017

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Vista Ridge Project Bills Schedule 9-23-16 Backup.xml		Classic WBS Layout																																										25-Oct-16 21:11																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
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1075	FFP Payroll T&E 7500	10/1/16	10/31/16		
1076	FFP Payroll T&E 7600	10/1/16	10/31/16		
1077	FFP Payroll T&E 7700	10/1/16	10/31/16		
1078	FFP Payroll T&E 7800	10/1/16	10/31/16		
1079	FFP Payroll T&E 7900	10/1/16	10/31/16		
1080	FFP Payroll T&E 8000	10/1/16	10/31/16		
1081	FFP Payroll T&E 8100	10/1/16	10/31/16		
1082	FFP Payroll T&E 8200	10/1/16	10/31/16		
1083	FFP Payroll T&E 8300	10/1/16	10/31/16		
1084	FFP Payroll T&E 8400	10/1/16	10/31/16		
1085	FFP Payroll T&E 8500	10/1/16	10/31/16		
1086	FFP Payroll T&E 8600	10/1/16	10/31/16		
1087	FFP Payroll T&E 8700	10/1/16	10/31/16		
1088	FFP Payroll T&E 8800	10/1/16	10/31/16		
1089	FFP Payroll T&E 8900	10/1/16	10/31/16		
1090	FFP Payroll T&E 9000	10/1/16	10/31/16		
1091	FFP Payroll T&E 9100	10/1/16	10/31/16		
1092	FFP Payroll T&E 9200	10/1/16	10/31/16		
1093	FFP Payroll T&E 9300	10/1/16	10/31/16		
1094	FFP Payroll T&E 9400	10/1/16	10/31/16		
1095	FFP Payroll T&E 9500	10/1/16	10/31/16		
1096	FFP Payroll T&E 9600	10/1/16	10/31/16		
1097	FFP Payroll T&E 9700	10/1/16	10/31/16		
1098	FFP Payroll T&E 9800	10/1/16	10/31/16		
1099	FFP Payroll T&E 9900	10/1/16	10/31/16		
1100	FFP Payroll T&E 10000	10/1/16	10/31/16		

<ul style="list-style-type: none"> <li><span style="color: green;">■</span> Remaining Level of Effort</li> <li><span style="color: blue;">■</span> Actual Work</li> <li><span style="color: red;">■</span> Remaining Work</li> <li><span style="color: orange;">■</span> Critical Remaining Work</li> <li><span style="color: grey;">■</span> Start Constraint</li> </ul>	<ul style="list-style-type: none"> <li>◆ Milestone</li> </ul>	<p>TASK filter: All Activities</p> <p>Page 12 of 12</p> <p>(c) Primavera Systems, Inc.</p>
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## **ATTACHMENT 4B SAWS DRAWING REQUIREMENTS**

This Attachment sets forth the requirements with which the as-built construction record drawings delivered by the Project Company shall comply as noted in Section 4.6.2(a)(iv) of this Appendix.

### 4B.1 RECORD DRAWINGS PREPARATION

4B.1.3 Discussion. Record drawings are a complete set of drawings for a facility reflecting the best understanding of what was constructed or modified. During construction or modification of a facility, a record of the construction of the facility is marked in red on a set of the construction drawing blueprints (that is, a master set of contract redline drawings). Following construction, the master set of contract redline drawings is incorporated into the construction drawings and finalized as record drawings. The record drawings will then be forwarded to SAWS and, to the extent permitted under Applicable Law based on the ownership of such record drawings by the Project Company prior to transfer of their ownership to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement, SAWS will incorporate such record drawings into SAWS' archive construction drawing inventory. Any record drawings provided or made available to SAWS may be defined as confidential by the Project Company and SAWS agrees not to disclose such information as and to the extent provided under Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement.

4B.1.4 Procedure. Procedures for preparation and future updates of record drawings are as follows:

- (a) *Record Drawing Preparation*. The record drawings shall be prepared as follows:
  - (i) Original AutoCAD addendum/conformed CAD drawing files shall be updated to prepare record drawings.
  - (ii) Before preparation of the record drawings, the master set of contract redline drawings shall be reviewed by the Project Company to ensure the master set of contract redline drawings represent accurately what was constructed.
  - (iii) Line work for profiles, plans, details, and other elements that require modifications shall be erased on the original CAD drawing files and drafted according to the master redline drawings developed during construction. All lettering, line patterns, and weights required to revise the original CAD drawings shall match those shown on the existing original CAD drawings. Revisions to the drawings shall be bubble outlined to highlight the revised areas on each drawing. The bubbled outline shall also contain a small triangle with a corresponding revision number as shown in the revision block.
  - (iv) Notes shall be added on the plan and profile sheets identifying the stations and the type of materials (for example, sand, concrete, or gravel) used for backfill in the pipe zone. Additional information to be noted on the record drawings includes, but is not limited to:

- (a) locations of over excavation; give approximate dimensions and materials;
  - (b) dewatering well heads/casing left in place;
  - (c) zones where groundwater was encountered; estimate seepage rate and elevation;
  - (d) trench conditions that deviate from the originally assumed conditions; give trench width, failures, approximate dimensions of backfill, and type of material;
  - (e) soil description of trench sidewalls;
  - (f) soil stabilization treatments left in place, such as piles and bracing;
  - (g) location of any shoring left in place, such as soldier beams and tunnel supports; and
  - (h) utility relocations.
- (v) The information in item (iv) and any other unusual conditions are to be recorded in the construction daily reports and transferred to the drawings during the preparation of the record drawings.
  - (vi) The Project Company is responsible for ensuring all revised CAD drawing files have the appropriate signatures and registered professional engineer's seal as provided on the original CAD drawings to the extent required pursuant to Applicable Law.
  - (vii) SAWS has the right to review and approve the record drawings for consistency with the Contract Standards.
  - (viii) If construction management services are not performed by the Project Company's Design Engineer, then the Construction Manager's registered professional engineer's stamp is required on the record drawings for construction revisions/record drawing purposes only.
  - (ix) The Project Company shall include GPS coordinates for all installed improvements in the Record Drawings. GPS coordinates must be listed using the NAD 83 Texas South Central FIPS Zone: 4204 Feet coordinate system.
- (b) *Annual Update of Record Drawings.* In accordance with subsection 9.10(D) (Annual Update of Record Drawings and Documents) of this Water Transmission and Purchase Agreement, the Project Company shall deliver to SAWS an annual update of record drawing in accordance with the Contract Standards. SAWS shall review and approve all updates for consistency with the Contract Standards. Revisions to the drawing shall be bubble outlined to highlight the revised areas on each drawing. The bubbled outline shall also contain a small triangle with the next succeeding revision number as shown on the revision block. Each revised drawing shall have a description of the change filled in the



revision block adjacent to the corresponding revision number with the date drawn, checked, and approved boxed filled in.

**APPENDIX 5**  
**PERFORMANCE TEST PROCEDURES AND STANDARDS**

## APPENDIX 5

### PERFORMANCE TEST PROCEDURES AND STANDARDS

#### 5.1. PURPOSE

The purpose of the Performance Test is to demonstrate that the Project has achieved the Minimum Performance Criteria (as defined in Section 5.4 of this Appendix) and has met applicable Contract Standards, including compliance with all Applicable Laws (the “**Performance Test**”). The Performance Test is intended to verify the performance of the Project, including in terms of operability, Product Water quality, Product Water quantity, total power consumption and total chemical consumption.

#### 5.2. PERFORMANCE TESTING PREREQUISITES

The Project Company shall not commence the Performance Test until the events in Section 8.3(D) (Conditions to Commencement of the Performance Test) of this Water Transmission and Purchase Agreement have occurred.

The Project Company shall submit a detailed Performance Test Protocol to SAWS for its approval no later than 145 days prior to the date upon which the Project Company plans to commence the Performance Test. SAWS will have the right to observe the testing as it occurs. The Project Company shall provide SAWS with at least three Business Days written notice prior to any Performance Test and the reasonable opportunity to observe the test. SAWS cannot request a retest to observe performance if SAWS failed to attend the original test as scheduled.

Prior to the Performance Test, the Project Company shall provide evidence of (i) pressure testing of all pipelines, including the Well Field Facilities and the Transmission Pipeline and their appurtenances, and (ii) testing each of the Project Equipment at the Asset Registry level as identified in Appendix 6 (Operating and Maintenance Standards), including testing of the Transmission Pipeline cathodic protection system, pumps, motors, fiber optic cable communication system, electrical system components, instrumentation system components, and SCADA control system components following the completion of the PLC programming in accordance with the Design Requirements. SAWS shall make available its SCADA system integrator to verify proper integration of the Project components into SAWS' SCADA system as required, no later than 30 days prior to the performance of the Performance Test. Testing procedures for each of these tests will be described in the Performance Test Protocol, and test reports will be delivered promptly upon completion throughout the Performance Test period. The Commercial Operation Date and Acceptance shall not be deemed to have occurred until all Performance Test-related reports have been properly prepared and delivered to SAWS in accordance with this Appendix and Section 8.3(F) (Test Report) of this Water Transmission and Purchase Agreement.

Prior to commencement of the Performance Test, the Project Company shall have received written notice from SAWS that the SAWS Interconnection Improvements have been completed and SAWS is ready to receive Product Water. The Scheduled SAWS Interconnection Improvements Completion Date and any completion delays are described in Sections 6.2(B), (C), and (D) of this Water Transmission and Purchase Agreement.

#### 5.3. PERFORMANCE TESTING REQUIREMENTS

The Performance Test shall be conducted in compliance with the Contract Standards, including all Applicable Laws and Governmental Approvals.

To meet the requirements of the Performance Test, the Project Company must demonstrate that the Project meets the following criteria at all times during the Performance Test:

1. The Project performs in a manner that is consistent with Appendix 3 (Technical Specifications), Sections 4.10 (Substantial Completion Procedures) and 4.11 (Substantial Completion Procedure Requirements and Components) of Appendix 4 (Design and Construction Review Procedures), Appendix 13 (SAWS Interconnection Improvements), Governmental Approvals, Applicable Law, and all other Contract Standards;
2. The Project has been operated and maintained pursuant to the requirements of the draft preliminary Electronic Operation and Maintenance Manual for the entire duration of the Performance Test;
3. All Project Equipment functions properly as per the manufacturers specifications and recommendations for such operations and there is no need for any material temporary repairs or material overrides of any equipment protective devices to keep the Project Equipment functioning properly during the Performance Test;
4. The Project operates properly with automated and computerized systems in full operation (allowing for periodic manual operation consistent with Good Management Practice) and with only the normal complement of employees included in the Project Company's staffing plan for the Project (or SAWS's staffing plan for the Project Company Storage Tank, as applicable), with the exception of additional Project Company staffing related to collection and analysis of samples and other test data;
5. The Residuals handling system operates as intended and all solids are removed from the Project Sites in accordance with the draft preliminary Electronic Operation and Maintenance Manual and Applicable Law;
6. Any Off-Specification Product Water and Unacceptable Product Water produced by the Project shall constitute a failure of the Performance Test, and the Performance Test shall immediately terminate;
7. The Project has been operated and maintained in a manner consistent with all Applicable Law and Governmental Approvals;
8. Procedures are in place to prevent Unacceptable Water and Off-Specification Product Water not accepted by SAWS from being introduced into the SAWS Distribution System, and for the disposal of such water; and
9. The Project has achieved the performance specified in Section 5.4 (Minimum Performance Criteria) of this Appendix.
10. The Project operates properly during unexpected loss of power.

If any of the foregoing criteria are not met during a Test Event (as defined in Section 5.5 of this Appendix), that Test Event will be considered to have failed.

#### 5.4. MINIMUM PERFORMANCE CRITERIA

The minimum performance criteria which must be met in order for the Project Company to achieve Acceptance are the flow ranges identified in Section 5.5 of this Appendix and Product Water Quality Guarantee requirements provided in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Appendix 8 (Performance Guarantee Requirements) (the “**Minimum Performance Criteria**”). The Minimum Performance Criteria will be measured at the Product Water Delivery Point (for flow ranges) and Product Water Quality Sampling Locations (for Product Water Quality Guarantee). Failure to comply with any of the Minimum Performance Criteria shall result in the Project Company failing the Performance Test.

#### 5.5. PERFORMANCE TEST SEQUENCE OF EVENTS

The Performance Test will be divided into two independent events (“Event 1” and “Event 2”), the successful completion of which results in the Project as a whole being rated for a capacity and in SAWS taking delivery of Product Water in the amount of the accepted capacity.

Upon agreement of both parties, the Performance Test may be restructured into three or more events. The parties will coordinate in advance to determine the best course of action overall.

Event 1, Event 2, or any additional event shall be a “Test Event.”

Event 1 and Event 2 are described below.

##### 5.5.1 Event 1 - Whole Project Partial Flow Performance Test (Midrange Partial Flow)

Event 1 will be preceded by the testing described in Section 5.2 (Performance Testing Prerequisites) of this Appendix. The purpose of the Performance Test tied to Event 1 is to obtain Acceptance in accordance with Article 8 (Completion and Acceptance of the Project) of this Water Transmission and Purchase Agreement for operation of the Project as a whole to deliver a fraction of 50,000 Acre Feet per Contract Year (the “**Midrange Partial Flow**”) of Product Water to the Product Water Delivery Point with the water quality described in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Section 8.2.1 (Product Water Quality Guarantee) of Appendix 8 (Performance Guarantee Requirements). The Midrange Partial Flow will be specifically defined in the Performance Test Protocol as sustainable flow that the project is capable of delivering and falling within the range of 22,400 to 33,600 Acre Feet per Contract Year (20-30 mgd).

It should be noted that only a portion of the Wells and their associated mechanical equipment will need to be released for successful completion of Event 1. That is, as long as sufficient Wells are available to provide a firm capacity equal to the Midrange Partial Flow (delivered) within the water quality parameters that SAWS has set forth in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Section 8.2.1 (Product Water Quality Guarantee) of Appendix 8 (Performance Guarantee Requirements), then the Project as a whole will be released for production and delivery of the Midrange Partial Flow expressed in units of Acre Feet per Contract Year. Likewise, only a portion of the pumps at the pump stations will need to be released for successful completion of Event 1. Any component that cannot demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix may be substituted for another identical and available Project component. Each piece of equipment at the Asset Registry level that cannot successfully demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix will need to be successfully demonstrated before final acceptance of Event 2 described in Section 5.5.2 of this Appendix.

### 5.5.2 Event 2 - Whole Project Performance (50,000 Acre Feet per Contract Year)

Event 2 will be preceded by Event 1, as well as any additional testing needed, including mechanical testing of additional Wells and pumps, to complete Event 2. The purpose of the Performance Test tied to Event 2 is to obtain Acceptance in accordance with Article 8 (Completion and Acceptance of the Project) of this Water Transmission and Purchase Agreement for operation of the Project as a whole to deliver 50,000 Acre Feet per Contract Year of Product Water to the Product Water Delivery Point with the water quality described in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Appendix 8 (Performance Guarantee Requirements).

Event 2 will include simulation of loss of power while pumping the full 50,000 Acre Foot per year flow by de-energizing Intermediate Pump Station #2 at the main disconnect switch for a 24-hour period then re-energizing and resuming the Test Event to demonstrate proper response and recovery of normal operation of the whole Project. The timing of the simulated power loss during Event 2 will be agreed upon by both parties. Event 2 will also include ramping up delivery of Product Water to the maximum sustainable design flow or 149.2 Acre Feet per day for a period of 6 hours. The timing of the delivery of the maximum sustainable design flow will be determined by SAWS and will occur within the duration of Event 2 as defined in Section 5.6 of this Appendix.

It should be noted that in addition to the Wells and pumps released during Event 1, additional Wells and pumps will need to be released for successful completion of Event 2. Once the Performance Test for all Asset Registry level components is successfully demonstrated, then the Project as a whole will be released for production and delivery of 50,000 Acre Feet per Contract Year. To successfully pass Event 2, all Project components at the Asset Registry level will need to successfully demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix.

A failure of test Event 2 will not require a repeat of test Event 1.

### 5.6. DURATION OF PERFORMANCE TESTING

The duration of Event 1 will be a minimum of 7 days followed by a minimum 3-day period of no delivery. The duration of Event 2 will be for a minimum of 18 days inclusive of the 6-hour delivery of the maximum sustainable design flow and the 24-hour simulation of loss of power. The combined duration of Event 1 and Event 2 exclusive of the intervening 3-day shutdown will be 25 days using the two-step performance testing described.

Should a failure occur during Event 1, repairs or replacements will be made and the entire Test Event will be repeated until performance is successfully demonstrated. Should an unplanned failure occur after the fifth day of Event 2 test of the whole Project for the full 50,000 Acre Foot delivery, then any retest to demonstrate performance will be reduced to 10 days. If additional failures occur during the 10-day retest, then the 10-day demonstration will repeat until the Project as a whole passes the Performance Test.

Any failures, stoppages or interruption of the Project that occurs during a Performance Test shall not excuse the Project Company from complying with the Performance Test requirements set forth in this Appendix, except for an hour-for-hour extension of the duration of the Performance Test for the duration of an Uncontrollable Circumstance for which performance or schedule relief is provided in accordance with this Water Transmission and Purchase Agreement.

#### 5.7. PUMPING RAMP-UP LIMITS AND EXTENDED SHUTDOWN

When initiating delivery of Product Water for Performance Testing, the Project Company shall limit pumping ramp-up to allow SAWS sufficient time to manage reversal of flow within the SAWS Distribution System, except for initiation of pumping up to the Midrange Partial Flow (i.e. within the range of 20 to 30 mgd) during which the ramp-up may occur as quickly as the Project Company may choose. Increasing delivery of Product Water above the Midrange Partial Flow during Event 2 may only occur after the Project Company first notifies SAWS that the Midrange Partial Flow has been reached, and a minimum of 6 hours of subsequent operation at the Midrange Partial Flow has been sustained.

During either of the Test Events, any unplanned Project shutdown exceeding 120 minutes will constitute an extended shutdown and automatically trigger a minimum 3-day suspension of Performance Testing,

#### 5.8. VERIFICATION OF PERFORMANCE

The quality of water delivered during the Performance Test will be certified by an independent laboratory certified in accordance with Section 5.6(B) (Sampling, Testing and Laboratory Work) Water quality testing will be performed in accordance with this Section and Section 5.6(B) (Sampling, Testing and Laboratory Work) and Section 10.10(A) (Testing) of this Water Transmission and Purchase Agreement. All water quality analytical methods used to demonstrate compliance with the Product Water Quality Guarantee shall be performed according to methods approved by TCEQ or EPA, or otherwise approved in advance by SAWS. For routine process control analysis or routine Product Water analysis, the Project Company may use the SAWS Analytical Laboratory to perform the water quality testing. An independent third-party laboratory should be used if the Project Company reasonably believes that water quality may become noncompliant with any Product Water Quality Guarantee or for any reanalysis of Product Water.

**APPENDIX 6**  
**OPERATING AND MAINTENANCE STANDARDS**



## APPENDIX 6

### OPERATING AND MAINTENANCE STANDARDS

#### 6.1. OPERATING AND MAINTENANCE STANDARDS

6.1.1 Purpose. The purpose of this Appendix is to supplement the requirements for the Operating Work set forth in Articles 9 (Operation and Management of the Project), 10 (Performance) and 11 (Maintenance, Repair and Replacement) of this Water Transmission and Purchase Agreement.

#### 6.2. OPERATIONS REQUIREMENTS

6.2.1 Objectives. The Project Company shall operate and maintain the Project in accordance with this Water Transmission and Purchase Agreement and the Contract Standards. Operational decision-making shall always be based on the following operating objectives:

- (a) Protection of the health, safety, and welfare of the public and operating staff;
- (b) Compliance with the Performance Guarantees;
- (c) Protection of the environment;
- (d) Protection and preservation of the Project;
- (e) Protection of the SAWS Distribution System; and
- (f) Producing a reliable supply of Product Water consistent with this Water Transmission and Purchase Agreement.

6.2.2 Operations Generally. The Project Company shall operate the Project under all conditions in accordance with the Contract Standards and as described below in this Appendix.

6.2.3 Wastewater Facilities and Disposal. The Project Company shall operate and maintain wastewater facilities to service the sanitary wastewater produced at the Project and the Project Sites. The Project Company shall arrange for servicing of holding tanks on a regular basis. The Project Company shall manage and operate the wastewater facilities such that no leaks or overflows occur.

6.2.4 Electric Service Equipment. The Project Company shall operate and maintain all electric service equipment owned by the Project Company in accordance with the requirements of the electric service provider. The Project Company shall provide the electric service provider with access to all electric service equipment owned by the electric service provider.

6.2.5 Operations During Power Outage. Following a primary electrical power outage from any cause, the Project Company shall ~~maintain uninterrupted supply by gravity of Product Water from the Project Company Storage Tank at the Transmission Pipeline Terminus Site in compliance with the Contract Standards for a period of not less than 120 minutes. Further, the Project Company shall~~ assure that the flush pumps and

any other components required for equipment protection during such a loss of power event remain functional upon loss of power to the Project.

**6.2.6 Minimum Staffing.** The Project Company shall staff the Project consistent with the Operating Protocol and Applicable Law; provided, however, that (1) in no event shall the Project be staffed less than eight hours per day, and (2) the Project shall be monitored by an operator 24 hours per day. All individuals who are proposed to operate or supervise the operation and maintenance of the Project must possess valid operator certifications that meet the requirements of Applicable Law. The Chief Operator shall have the overall responsibility for the day-to-day, hands-on operation of the Project. During off hours (including vacation and sick leave), an operator or shift operator (with a minimum certification meeting the requirements of Applicable Law), in either case with a demonstrated familiarity with the Project, shall be accessible to the on-site staff and SAWS by phone within one hour notice.

**6.2.7 Environmental Compliance.** The Project Company shall assure compliance with Applicable Law and Governmental Approvals. The Project Company shall provide ongoing training and environmental education of staff and operators for long-term environmental sensitivity, awareness, and compliance. Annually, the Project Company shall perform an environmental review of the Project Sites that will include confirming compliance with Applicable Law and Governmental Approvals. The review shall also include all reports (e.g., quarterly and annual) and monitoring data, as necessary to demonstrate compliance therewith. Any non-compliance and reporting issues shall be reported to the Chief Operator and SAWS immediately.

**6.2.8 Regulated Substances Management.** The Project Company shall maintain and comply with a current Regulated Substances management program and emergency/spill response plan meeting the requirements of Applicable Law and this Water Transmission and Purchase Agreement. All water treatment chemicals and corrosion inhibitors used at the Project Sites shall comply with the American Water Works Association standards and shall be approved by the National Science Foundation for potable water treatment. Chemicals that could be discharged into the environment shall be stored and used in compliance with Applicable Law. Each chemical load shall be certified by the manufacturer and shall be randomly tested for product quality at least once per month in accordance with the Project Company's standard operating procedures. Records of such test results shall, at all times, be maintained and available for SAWS review.

**6.2.9 Buildings and Grounds.** The Project Company shall at a minimum perform the following activities relevant to the buildings and grounds:

- (a) Maintain the buildings, grounds, and landscaping in an aesthetically attractive and clean condition.
- (b) Repair all roof leaks promptly upon discovery.
- (c) Implement regularly scheduled pest control measures.
- (d) Apply paint as necessary to all painted surfaces, as appropriate. All painted surfaces shall be painted to maintain a clean aspect, except for such surfaces that have maintained their original condition and would be adversely affected

by frequent painting. The Transmission Pipeline is excluded from this obligation.

- (e) Repair cracks, erosions, depressions, and potholes, and slab shifts on paved areas, sidewalks, and other areas, as necessary.
- (f) Periodically resurface paved areas, if and as necessary.
- (g) Mow all Transmission Pipeline Easements at least once every three years, or more frequently if necessary, to provide for ease of inspection of the Transmission Pipeline System.

6.2.10 Pipeline Maintenance Requirements. All Project pipelines shall be maintained by the Project Company in accordance with the Contract Standards. If any such pipelines develop a leak or otherwise fail, the Project Company shall repair and restore the affected pipeline as soon as possible. Prior to placing the pipeline back into service, the Project Company shall perform proper blow-off and as pertinent, sanitation procedures shall be followed in accordance with Applicable Law. If a leak or rupture occurs, barricades shall be placed around the problem area and at all times the safety of the public shall be paramount. The Project Company shall follow all requirements of Applicable Law such as proper backfill and compaction, erosion and sediment control and traffic control. Utility locations, traffic control plans, and other information required by applicable Governmental Bodies prior to digging shall be provided before any such work begins. The Project Company shall comply with all applicable local requirements for construction at all times. After repair of any pipelines, sod or pavement shall be replaced and the area shall be restored to at least its original condition. Where metallic piping is used, the Project Company shall incorporate appropriate measures into the corrosion protection plan to protect the integrity of the pipelines and monitor the rate of corrosion. If requested by SAWS, the Project Company shall utilize a closed-circuit televising or other survey equipment approved in writing by SAWS to determine the condition of all pipelines operated by the Project Company every 10 years, or earlier if necessary, during the Term and prior to the expiration of the Term and the Project Company's turnover of the Project to SAWS pursuant to Article 23 (SAWS Project Assets Purchase Options) of this Water Transmission and Purchase Agreement.

6.2.11 Project Flow Meter and Well Field Meters.

- (a) On a monthly basis, the Project Company shall provide routine servicing and maintenance of the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments. Routine maintenance activities generally include, but are not limited to: (i) inspection and cleaning of all ports; (ii) visual inspection to detect leaks, and (iii) confirming properly functioning differential pressure transducers. Twice yearly, the Project Company shall calibrate and service, as required, the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments at the Project Sites. The Project Company shall provide SAWS with copies of its maintenance reports and also enter such reports in the CMMS.
- (b) At any time other than during the twice yearly calibration by the Project Company, SAWS can request, at its own expense, to have the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted

instruments calibrated, provided that such calibration shall be performed by the Project Company at the Project Sites within 10 business days of the Project Company's receipt of written notification of such request.

- (c) In the event any such calibration test discloses an error exceeding two percent, an adjustment shall be made in charges incurred during the known or estimated period of such error, but in no event exceeding six months prior.

6.2.12 Ordinary and Preventive Maintenance Generally. The Project Company's preventive maintenance plan within the Maintenance, Repair and Replacement Plan (as defined below) shall reflect procedures and standards consistent with Good Management Practice. The preventive maintenance plan shall reflect that in no event shall maintenance be less frequent and less comprehensive than that specified in manufacturers' warranties and manuals, unless otherwise approved in writing by SAWS. The preventive maintenance plan shall also address the inspection, leak testing, maintenance, and repair procedures for all water-bearing structures in accordance with Good Management Practice.

6.2.13 Preventive Maintenance Activities. All equipment preventive maintenance activities shall, at a minimum, meet the maintenance requirements of the Project Equipment suppliers. As such, all equipment usage shall be logged through the SCADA system or otherwise entered into the CMMS to provide the necessary input to the CMMS. The CMMS shall generate work orders that are specific to the item of equipment. These work orders shall outline the required preventive maintenance, describing the work to be undertaken. These work orders shall be undertaken and completed promptly. The resultant preventive maintenance work shall be logged as to when the work order was issued, when completed, by whom, duration of work, and listing of consumables and spare parts used in providing the required work. This information shall be continuously maintained for all equipment and summarized on an annual basis to SAWS, as part of the annual operations report required by Section 9.11 (Periodic Reports) of this Water Transmission and Purchase Agreement, to confirm the work is being undertaken as required so as to protect the investment in the infrastructure. SAWS, however, may request to review records more frequently. The Project Company, in addition, shall:

- (a) Maintain and replace the Project Equipment in accordance with manufacturer's recommended maintenance procedures and Good Management Practice;
- (b) Maintain accurate records and all other data required for the proper supervision and administration of the maintenance of the Project Equipment;
- (c) Provide continuous inspection of Project Equipment to detect any significant variance from the manufacturer's recommended operating tolerances and specifications of the Project when new. Corrective action shall be taken to prevent damage to the equipment, as well as protect warranties on new equipment;
- (d) Conduct all maintenance, repair, and replacements in a manner that does not endanger the safety of Project Company or SAWS staff and visitors and residents in the vicinity of the Project Sites;

- (e) Maintain and replace any cathodic protection systems at the Project, if installed, at the optimum operating condition at all times to ensure effective corrosion prevention of all underground piping and other Project components installed in corrosive environments;
- (f) Provide the services of factory-trained technicians, tools, and equipment to field-calibrate, test, inspect and adjust all instruments to their specified performance requirements in accordance with the manufacturer's specifications and instructions;
- (g) Maintain and implement a regular gate and valve exercising program. The Project Company shall maintain a log of its gate and valve exercising activities in its CMMS; and
- (h) Perform predictive maintenance on all pumps and motors having over 250 horsepower at least two times per Contract Year. Such predictive maintenance shall include, at a minimum, thermal evaluations and diagnostics of the electrical systems and vibration analysis of the mechanical systems.

6.2.14 CMMS. The Project Company shall maintain and update the CMMS. If the Project Company changes or upgrades its CMMS, it shall provide 60 days prior notice to SAWS about the changes or upgrades to its CMMS.

- (a) Asset Registry. The CMMS program shall be configured to produce an Asset Registry which shall include a complete listing of all assets having an installed cost, defined as the estimated cost to install that asset, that exceeds \$25,000 (Index Linked) that constitute the Project, with Project Equipment grouped separately from Project Structures, including for each such asset:
  - (i) a unique CMMS asset identifier (with each system separately identified, e.g., pump, motor, meter, motor control center, etc.);
  - (ii) an asset descriptor;
  - (iii) the asset's manufacturer and model number;
  - (iv) photographs and video (to the extent reasonably accessible);
  - (v) the asset's service life;
  - (vi) the asset's estimated installed cost, including material, equipment and labor costs;
  - (vii) date of installation; and
  - (viii) service status (i.e., in service or removed from service).

The CMMS program shall be able to prepare an Asset Registry report (hardcopy and exportable in digital spreadsheet or database form) and shall be provided to SAWS in both hardcopy and digital formats within six months following the Commercial Operation Date.

- (b) Updates. The CMMS shall be updated as necessary to reflect all newly added assets, including populating fields with the information identified in clause (a) of this subsection. Assets that are removed from the Project shall be deleted from the CMMS, and assets that are removed from service but left in place shall remain in the CMMS, but be flagged to indicate service status as removed from service. Any asset removed from service but left in place with no defined schedule for returning the asset to service shall be deemed to be abandoned in place. The Project Company shall provide an updated Asset Registry report annually to SAWS in digital format.

At the end of every fifth year, the Project Company shall update the CMMS to reflect the condition, functionality, structural integrity, and accompanying condition status of the existing assets. The Project Company shall consider the updated asset condition information in its evaluation of subsequent updates of the Maintenance, Repair and Replacement Schedule (as defined below).

6.2.15 Maintenance, Repair and Replacement Plan. Within 60 days after the Commercial Operation Date, the Project Company shall prepare and submit for SAWS' review a Maintenance, Repair and Replacement Plan (as defined below). After addressing SAWS' comments, the Project Company shall submit a final Maintenance, Repair and Replacement Plan to SAWS. This plan shall be periodically updated when equipment is replaced, and submitted to SAWS annually with a summary of new equipment in place. If any component identified in the Asset Registry fails prior to its anticipated replacement date, the updated plan shall include a detailed report outlining the cause for the failure and the corrective action undertaken by the Project Company to allow the replacement component to meet the replacement date specified in the plan. Any such component that fails during the warranty period shall be replaced at no cost to SAWS. The Project Company shall comply with the Maintenance, Repair and Replacement Plan throughout the Operating Period except where it can demonstrate to SAWS that changes are in accordance with Good Management Practice.

6.2.16 Minimum Plan Requirements. The Maintenance, Repair and Replacement Plan shall define how the Project Company will achieve the Contract Standards objective of quality performance, including but not limited to the following components of quality performance: (1) availability of spare parts for critical operating systems; (2) energy efficiency; (3) ongoing maintenance and repair; (4) appropriate and timely renewal and replacement of equipment; (5) cost-effective upgrades of obsolete equipment and systems; (6) the minimum standards for performance of its ongoing maintenance, repair and replacement obligations; and (7) an equipment inventory, schedule for shift and preventive maintenance, and related operator training (the "Maintenance, Repair and Replacement Plan"). The Maintenance, Repair and Replacement Plan shall also address how the Project Company shall: (i) maintain and repair the Project, including without limitation, repair or replacement of components, including all maintenance, repair and component replacement which may be characterized as "major" or "capital" in nature; (ii) maintain the Project Equipment substantially in accordance with applicable manufacturer's instructions, the applicable operation and maintenance manuals, and Good Management Practice and using

the CMMS; (iii) perform all maintenance, repairs and replacements reasonably necessary to the continued operation of the Project at all times; (iv) maintain the Project Structures in accordance with Good Management Practice; and (v) keep accurate records and all other data required for the purposes of proper administration and review of the maintenance of the Project Equipment and Project Structures. The Maintenance, Repair and Replacement Schedule shall be provided as part of the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan shall comply with the requirements set forth in Section 11.2(A) (Maintenance, Repair and Replacement Plan) of this Water Transmission and Purchase Agreement.

6.2.17 Maintenance, Repair and Replacement Schedule. For individual items of equipment with an installed repair or replacement value exceeding \$25,000 (Index Linked) (which includes the estimated total cost to repair or replace such equipment, but excludes any on-site labor), the Project Company shall prepare and deliver to SAWS a maintenance, repair and replacement schedule which identifies the projected timing and costs of such major repairs and replacements in defined intervals over the Term (the "Maintenance, Repair and Replacement Schedule"). The Project Company shall not be required to repair or replace a particular piece of equipment in a particular year solely because the projected Maintenance, Repair and Replacement Schedule indicates that timing is the appropriate repair or replacement interval.

6.2.18 One-Year Maintenance, Repair and Replacement Schedule Update. Annually, concurrently with the budgeting performed in accordance with Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement, the Project Company shall have prepared an update of the projected Maintenance, Repair and Replacement Schedule for the next Contract Year for individual items of equipment with an installed repair or replacement value exceeding \$25,000 (Index Linked) (a "One-Year Maintenance, Repair and Replacement Schedule Update"). The One-Year Maintenance, Repair and Replacement Schedule Update shall include the proposed schedule for each such major repairs and replacements projected for the Contract Year by the Project Company. The Project Company and SAWS shall hold a meeting to review each annual One-Year Maintenance, Repair and Replacement Schedule Update. The initial Maintenance, Repair and Replacement Schedule and each One-Year Maintenance, Repair and Replacement Schedule Update thereof shall detail the proposed schedule of major repairs and replacements for the immediately following Contract Year (year one of the update), an updated schedule for the next Contract Year (year two of the update), and updated schedule for each of the following three Contract Years (years three through five of the update).

6.2.19 Changes Proposed by One-Year Maintenance, Repair and Replacement Schedule Update. For all changes to the Maintenance, Repair and Replacement Schedule proposed in a One-Year Maintenance, Repair and Replacement Schedule Update, the Project Company shall indicate to SAWS the reason for the change and provide supporting information including at a minimum the following:

- (a) Operating or test results used by the Project Company to determine the differing repair or replacement need, demonstrating the actual performance of the asset in comparison to that which would be expected by the same asset performing as was anticipated by the current Maintenance, Repair and Replacement Schedule.

- (b) Complete detailed history of the assets in question from the CMMS, indicating actual scheduled and unscheduled maintenance events.
- (c) In the case of Project Equipment or manufactured Project Structures, manufacturer's data indicating recommended maintenance schedules.

In the interest of maintaining the expected reliability level of operation of the Project, SAWS will review the recommended One-Year Maintenance, Repair and Replacement Schedule Updates and supporting information. For Maintenance, Repair and Replacement Schedule changes that would delay previously anticipated repairs or replacements, should SAWS determine (acting reasonably) that the delay could adversely impact the public health and safety, SAWS shall have the right to reject the delay and require that the repair or replacement be performed as previously scheduled. In making such a determination, SAWS will consider whether or not the asset's condition and performance was continuously monitored as required by this Appendix, and whether or not the Project Company performed appropriate levels of ordinary and preventive maintenance on the asset.

6.2.20 Five-Year Capital Plan. Prior to the commencement of the third Contract Year following the Commercial Operation Date, the Project Company shall prepare and provide to SAWS a report that recommends the anticipated major equipment repair and replacement projects at the Project over the course of the next five Contract Years (the "Five-Year Capital Plan"). The Five-Year Capital Plan shall be used as a planning tool by SAWS and the Project Company to consider future proposed major equipment repair and replacement projects at the Project and other long-term work, and to make certain that the Project facilities are being adequately maintained and will be available. The Five-Year Capital Plan shall set forth a description of each project, the rationale for performing each project, the impact or effect of each project on the Project, a preliminary cost estimate or cost allowance for each project, the approximate period of time when each project would be performed and the proposed method or procedure for delivery of each project. The Five-Year Capital Plan shall be updated on an annual basis by the anniversary of each Contract Year concurrent with the budgeting performed in accordance with Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement. Each year, the Five-Year Capital Plan shall be updated by the Project Company and a copy shall be delivered to SAWS. SAWS and the Project Company shall meet and confer regarding each update to the Five-Year Capital Plan and its implementation.

6.2.21 Project Company Obligation to Repair and Replace Not Limited. Notwithstanding the Project Company's performance of its obligations pursuant to Sections 6.2.15 (Maintenance, Repair, and Replacement Plan), 6.2.17 (Maintenance, Repair and Replacement Schedule), 6.2.18 (One-Year Maintenance, Repair and Replacement Schedule), and 6.2.20 (Five-Year Capital Plan) of this Appendix, the Project Company shall repair and replace equipment and structures as needed over the Term, and such obligation shall not be limited in any way.

### 6.3. GENERAL OPERATING PERIOD REQUIREMENTS

6.3.1 Monthly Operations Reports. No later than 60 days prior to initiating the Performance Test, the Project Company shall submit for SAWS' review and approval, the proposed format of the monthly operations report required to be submitted by the Project Company pursuant to Section 9.11 (Periodic Reports) of this Water Transmission and



Purchase Agreement. In addition to the information and data required to be included pursuant to Section 9.11 (Periodic Reports) of this Water Transmission and Purchase Agreement, the monthly operations report shall include all other data or information required to be furnished under the Operating Protocol.

**6.3.2 Identification Badges.** The Project Company shall cause the Operating Service Provider to provide standardized identification badges to all of its on-site employees and all on-site employees of the Project Company and Subcontractors throughout the Operating Period. Such employees shall wear these badges at all times when on the Project Sites. Identification badges shall also be issued to all visitors at the time of arrival with records retained of the name and affiliation of the visitor, purpose of the visit, time of arrival and time of departure. The identification badge shall be surrendered at each time of departure.

**6.3.3 SAWS Office Space.** The Project Company shall cause the Operating Service Provider to designate and reserve an office at or adjacent to the permanent Operating Service Provider offices if located outside of Bexar County (and related reasonable ingress and egress rights) for SAWS' exclusive use, as provided in Section 9.1(C) (SAWS Administrative Space) of this Water Transmission and Purchase Agreement. The Project Company, Operating Service Provider or Subcontractors shall not enter or inhabit such SAWS-designated office without SAWS' prior approval. At a minimum, the office reserved for SAWS shall have the following features:

- (a) 170 square feet (similar in character to that provided for the Operating Service Provider's management personnel).
- (b) three electric duplex receptacle wall outlets.
- (c) Broad band high-speed internet access.
- (d) Three telephone lines and one speakerphone. One of the telephone lines shall be dedicated to a facsimile machine (to be provided by SAWS). If the Operating Service Provider provides wireless internet services for its own use, such service shall also be provided to SAWS.
- (e) Secure, lockable, and uniquely keyed.

The Project Company shall also provide SAWS with access to the multipurpose room, conference room, and administrative areas at the permanent Project Company offices. The parties will coordinate so that SAWS has reasonable access to these facilities.

**6.3.4 SAWS Interface Cabinet.** SAWS has provided and installed the SAWS Interface Cabinet. SAWS shall own and be responsible for the maintenance, repair and replacement of the SAWS Interface Cabinet and its contents after the Performance Test. The Project Company shall provide a power supply to operate the SAWS Interface Cabinet's equipment consistent with its design. Further, the Project Company shall be responsible to continuously provide the signals from the Project in a format that is compatible with SAWS' SCADA system. SAWS will be responsible to provide the PLC programming and human machine interface ("HMI") integration for these signals into its control system. The Project

Company shall provide adequate means of ingress and egress to SAWS for the operations, maintenance, repair and replacement of the SAWS Interface Cabinet.

6.3.5 Risk Management and Safety. To the extent required by Applicable Law, the Project Company shall prepare and maintain a risk management prevention program and a process safety and management plan.

6.3.6 SAWS Communication with Project Contractors. The Project Company shall provide SAWS with access to the Project Contractors and Subcontractors pursuant to Section 13.1(E) (SAWS Access to and Communications with Project Contractors and Subcontractors) of this Water Transmission and Purchase Agreement.

#### 6.4. SAWS REVIEW

6.4.1 General. SAWS will review the Project Company's operation, maintenance, repair and replacement of the Project throughout the Term. SAWS may assign one or more persons to observe the operation and maintenance of the Project, to review repair and replacement records, and to provide coordination assistance to the Project Company to assure that the operation of the Project is fully integrated into the operation of the SAWS Distribution System.

6.4.2 Monthly Coordination Meetings. As required by Section 9.2 (Service Coordination) of this Water Transmission and Purchase Agreement, monthly coordination meetings between the Project Company and SAWS shall be held at the Transmission Pipeline Terminus Site or other location designated by SAWS. The Chief Operator (or other senior representative of the Operating Services Provider acceptable to SAWS) and, if requested by SAWS, a senior management representative of the Project Company who is at a management level above the Chief Operator shall attend these meetings. The purpose of these meetings is to review management, operational, performance, and planning matters for the Project, maintenance issues, the monthly operations reports, condition of the Project, safety, housekeeping of the Project Sites, compliance with Applicable Law, Governmental Approvals and the Performance Guarantees, staffing issues, invoicing issues, public relations, and other relevant issues. The Project Company shall be responsible for producing meeting minutes. The Project Company shall distribute copies of documentation of these meetings to all attendees and shall maintain a chronological file of such documentation, which upon request, will be made available to SAWS.

6.4.3 Governmental Body Submittals. The Project Company shall submit draft copies of all Governmental Approvals and other regulatory submittals required for the Operating Work to SAWS for review and comment at least 14 days prior to submittal to any Governmental Body. The Project Company shall address SAWS' comments prior to submitting the documents to the Governmental Body and shall strictly comply with SAWS comments identifying areas where a statement made in a submittal would be contrary to SAWS policies or would otherwise impose an unreasonable cost or burden on SAWS.

6.4.4 Periodic Maintenance Inspections and Testing. SAWS may perform annual maintenance inspections of the Project as provided in Section 11.4 (Periodic Maintenance Inspections) of this Water Transmission and Purchase Agreement.

6.4.5 Review at End of Term. Requirements for the review of the Project related to the Expiration Date are provided in Sections 11.6 (End of Term Performance Evaluation

Requirements) and 11.7 (Project Assets Transfer Condition) of this Water Transmission and Purchase Agreement and Appendix 11 (End of Term Project Condition Requirements).

## 6.5. SECURITY PLAN

6.5.1 Security Plan. At least 180 days before the initiation of the Performance Test, the Project Company shall prepare and submit for SAWS' review and comment, a Security Plan as required by Section 9.7 (Security) of this Water Transmission and Purchase Agreement. The Security Plan shall address security for the Project Sites and all improvements thereon. After receipt and consideration of SAWS' comments, the Project Company shall submit a final Security Plan to SAWS prior to the initiation of the Operating Period. The Security Plan shall be periodically updated to address changing threat conditions and when security equipment or systems are added or modified. If the Security Plan is changed in any Contract Year, then the updated Security Plan shall be submitted to SAWS with a summary of the new or modified equipment or systems within 60 days of the end of that Contract Year. The Project Company shall comply with the Security Plan throughout the Operating Period. SAWS intends, except as may be required by Applicable Law, to keep confidential all information and materials relating to security at the Project Sites, including the Security Plan, irrespective of whether the Project Company has requested SAWS to keep any such information and materials confidential.

6.5.2 Minimum Requirements for the Security Plan. The Project Company's Security Plan shall include at a minimum, the following information:

- (a) A general description of the Project Company's security threats including (i) security measures and procedures for prevention, detection, and response to terrorism, (ii) vandalism, (iii) sabotage, (iv) natural disasters, (v) theft, (vi) accident, (vii) assault on employees, and (viii) cross-connection contamination.
- (b) A risk analysis of critical areas on the Project Sites and measures to secure them. Critical areas include, but are not limited to, chemical storage and feed facilities, control room and systems, electrical systems (including transformers), clearwells, laboratory, pump stations, and flow control systems.
- (c) A description of the Project Company's zoning or subzoning of the Project Sites into multiple levels of security.
- (d) A description of the intrusion detection and surveillance systems.
- (e) A description of all security alarms and how and where they will be monitored to ensure a rapid and effective response.
- (f) A description of means to track Project Company's staff, vendors, visitors, SAWS staff, and all other persons on the Project Sites.
- (g) A vulnerability assessment of the Project which shall include, but not be limited to, a review of pipes and constructed conveyances, operationally critical long lead time equipment or spare parts, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities,

electronic, computer or other automated systems which are utilized by the SAWS Distribution System, the use, storage, or handling of various chemicals and the operation and maintenance of such system, as consistent with all Applicable Law.

- (h) An emergency response plan for the Project which shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals, as consistent with Applicable Law.
- (i) A description of the Project Company's plan for notifying nearby residents of emergencies at the Project Sites.
- (j) Coordination with SAWS during periods of elevated risk.
- (k) Immediate notification procedures to SAWS of security intrusions and events at the Project, including requirements for a monthly report to be provided to SAWS addressing all security-related events during the preceding month and proposed mitigation strategies.

## 6.6. OPERATING PROTOCOL

6.6.1 Minimum Requirements for the Operating Protocol. The Project Company shall prepare the Operating Protocol in cooperation with SAWS. The Project Company shall be responsible for the preparation of the Operation Protocol, which shall be subject to SAWS' approval. The Operating Protocol shall include at a minimum, the following information:

- (a) A general description of how the Project will be operated in conjunction with the SAWS Distribution System;
- (b) A description of the Project Company's QA/QC procedures during the Operating Period;
- (c) A description of any operational procedures to be implemented in order to comply with the Performance Guarantees;
- (d) Procedures to be verified before routine start-up or shut-down of flow of Product Water from the Project;
- (e) Procedures for emergency start-up or shut-down of flow of Product Water from the Project;
- (f) Procedures for the Project Company to communicate weekly forecast of Product Water production for consideration in SAWS' weekly operating plan development meeting;
- (g) Operations and maintenance communications procedures and requirements;

- (h) Operational procedures including Product Water pump operations to avoid creating material hydraulic transients in accordance with the final hydraulic transient analysis compliant with Appendix 3 (Technical Specifications);
- (i) Procedures for the Project Company's scheduling of planned maintenance outages to provide adequate schedule for warranty inspections and any requisite warranty repairs of the Project and the SAWS Interconnection Improvements after the Commercial Operation Date;
- (j) A list and description of the chemicals to be used at the Project Sites, methods of delivery, on-site storage volume, and procedures for safe storage and use of the chemicals;
- (k) A description of the intended method of Residuals handling and disposal (identifying the approximate amount and type of Residuals that will be generated); and
- (l) Alternative operations procedures reflecting all reasonable SAWS Distribution System operating scenarios.

As required by Section 10.9 (Service Coordination) of this Water Transmission and Purchase Agreement, the Project Company shall update at least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Operating Protocol for the forthcoming Contract Year. In addition, the Project Company shall update the Operating Protocol as directed by SAWS from time to time in order for the document to remain current.

6.6.2 Extended Shutdown. To initiate delivery of Product Water following an extended shutdown of the Project, the Project Company shall limit pumping ramp-up to allow SAWS sufficient time to manage reversal of flow within the SAWS Distribution System, except for initiation of pumping up to the Midrange Partial Flow (as defined in Appendix 5 (Performance Test Procedures and Standards)) during which the ramp-up may occur as quickly as the Project Company may choose. Increasing delivery of Product Water above the Midrange Partial Flow may only occur after the Project Company first notifies SAWS that the Midrange Partial Flow has been reached, and a minimum of 3 hours of subsequent operation at the Midrange Partial Flow has been sustained. The duration of minimum sustained operation prior to ramp-up above the Midrange Partial Flow may be lessened as SAWS may approve. Any Project shutdown exceeding 120 minutes will constitute an extended shutdown and automatically trigger a minimum 24-hour suspension of delivery and availability of Product Water. The Project Company shall provide a minimum 6-hour advance notice prior to resuming pumping following an extended shutdown.

**APPENDIX 7**  
**INSURANCE REQUIREMENTS**

## APPENDIX 7

### INSURANCE REQUIREMENTS

#### 7.1. INSURANCE DURING THE CONSTRUCTION PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance during the Construction Period, in accordance with the terms of this Section. Copies of these policies shall be delivered to SAWS promptly if requested from the Project Company. Each policy shall be obtained and be in force prior to the performance of any work or commencement of any activity intended to be insured by each policy. At the Project Company's option, the Project Company may provide any or all of the following insurance policies by means of a Contractor Controlled Insurance Program ("CCIP"). In such case, (a) the limits for Commercial General Liability insurance shall equal or exceed the limits set forth in subsection 7.1.3 (Commercial General Liability) of this Appendix for on-site activities and (b) the limits for Commercial General Liability insurance may be less than the limits set forth in subsection 7.1.3 (Commercial General Liability) of this Appendix for off-site operations, but in no event less than \$1 million per occurrence/aggregate.

7.1.1 Builder's Risk. A builder's insurance policy obtained on an "all risks" coverage basis, covering all Construction Work, other than design (including testing and commissioning), at the Project Sites. Coverage shall include risks while in transit and at any temporary off-site location; all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project or incidental to the construction; all temporary structures at the Project Sites that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project to the extent the cost thereof is included in the Construction Work upon which the Monthly Water Purchase Payments are based; and risks while on or about the Project Sites awaiting or during construction. The builder's risk policy:

- (a) shall be maintained until the Commercial Operation Date;
- (b) shall be in an amount not less than \$540 million (\$540,000,000);
- (c) shall be written on an all risk basis on a minimum of a LEG2 basis with no co-insurance provisions, including coverage for flood and water damage, and subject to a \$20 million aggregate sublimit for flood coverage);
- (d) shall include coverage for delay costs, including the loss of revenue, loss of investment income, continued payment of debt service and a covered loss ensuing as a result of design error, all subject to a \$64,000,000 sublimit;
- (e) shall include loss arising from earthquake and earth movement, subject to a \$20 million aggregate sublimit;
- (f) shall provide that equipment in transit or stored at off-site locations shall be subject to a \$20 million sublimit;
- (g) shall include reasonable sublimits for increased cost of construction, extra and expediting expenses, debris removal, professional fees, civil authority, hot testing, and prevention in ingress / egress and
- (h) may include deductibles or self-insured retentions not more than \$1,000,000, but such deductible or self-insured retention shall not be a recoverable cost

under this Water Transmission and Purchase Agreement, except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix with respect to loss from earthquakes and earth movement.

Named Insureds: Project Company, Water Supply Corporation and Design Build Contractor

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.1.2 Professional Liability Insurance. A professional liability errors and omissions insurance policy, which policy shall:

- (a) be in an amount not less than \$10 million per claim and in the aggregate;
- (b) be on a “claims-made” basis; and
- (c) have an extended reporting or discovery “tail” period, or be renewed for a period, of not less than ten years after the Contract Date.

Such policy shall have a retroactive date effective before the commencement of any design.

The practice professional liability policy of the primary design professional shall be specifically in excess of any project-specific professional liability errors and omissions policy. However, should the Project professional liability insurance limit be reduced by claims or losses, the design professional’s practice policy shall become excess to any remaining (reduced) portion of the Project professional liability policy. The primary design professional shall maintain its practice policy until the statute of repose expires in an amount not less than \$10 million. Such practice policy shall not include any exclusionary language relating to construction joint ventures or partnerships or both.

Named Insureds: All entities providing professional design services

Indemnified Parties: Project Company, Water Supply Corporation and Design Build Contractor

7.1.3 Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of the Project, including independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract, and (unless covered under separate professional liability insurance) professional services provided in connection with the construction of the Project. The policy shall not contain exclusions for property damage from explosion, collapse or underground hazard, or inadvertent construction defects. The products and completed operations liability coverage shall be maintained for a period of not less than 10 years following the Commercial Operation Date or the Termination Date, whichever occurs first. The insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. This insurance policy shall:

- (a) have coverage for any one occurrence or claim of not less than \$50 million per occurrence and a \$50 million aggregate limit applicable solely to the construction of the Project (including liabilities arising out of the construction of the Project), which requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” or umbrella basis;
- (b) be maintained from the Contract Date until the Commercial Operation Date;



- (c) include a cross liability and severability of interests clause; and
- (d) be renewed for a period of not less than ten years after the Contract Date.

Named Insureds: Project Company, Water Supply Corporation and Design Build Contractor

Additional Insureds: SAWS and Senior Debt Creditors

7.1.4 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$5 million per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the construction of the Project. If transporting Hazardous Substances, the commercial automobile liability insurance shall either be endorsed to provide coverage under the CA 99 48 10 13 endorsement, or the Design Build Contractor’s pollution liability insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the Project Sites.

Named Insureds: The vehicle owner

Additional Insureds: Project Company, Water Supply Corporation, Design Build Contractor, SAWS and Senior Debt Creditors

7.1.5 Worker’s Compensation and Employer’s Liability. A worker’s compensation insurance policy as required by Applicable Law, and employer’s liability insurance having coverage limits of \$1 million for each accident, \$1 million for disease (each employee), and \$1 million for disease (policy limit).

7.1.6 Contractor Pollution Liability. A contractor pollution liability insurance policy, supplied by the Design Build Contractor, written on an occurrence form with limits of not less than \$5 million and a \$5 million project aggregate limit, covering liability due to pollution caused by or exacerbated by construction activities. If the policy is provided on a “claims-made” form, the Project Company shall cause the Design Build Contractor to continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three years following the Commercial Operation Date. The policy shall provide either a “claims made” or an “occurrence based” coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any pollution condition that is in any way related to the Design Build Contractor’s operations, actions or inactions, and completed operations associated with any work performed by the Design Build Contractor, its Subcontractors, or any of their respective employees, agents, representatives, or officers under this Water Transmission and Purchase Agreement.

Named Insured: Project Company, Water Supply Corporation, SAWS, Design Build Contractor and Subcontractors

7.1.7 Pollution Legal Liability. A pollution legal liability insurance policy, supplied by the Project Company, provided on a “claims-made” form with limits of not less than \$5 million and a \$5 million project aggregate limit, covering third party bodily injury and property damage and remediation costs for known and unknown pollution conditions. The Project Company shall continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three years following the Commercial Operation Date.

Named Insured: Project Company, Water Supply Corporation, SAWS, Design Build Contractor and Subcontractors

## 7.2. INSURANCE DURING THE OPERATING PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Operating Period the following insurance coverage:

7.2.1 Property. An all risk property insurance policy (excluding earthquake) on a stated amount basis for the Full Insurable Value insuring all buildings, improvements and equipment that are built or placed on the Project Sites, and including coverage for business interruption, extra expense and expediting expense, subject to a \$20 million aggregate sublimit for flood coverage (\$20 million flood sublimit excluded from Boiler and Machinery coverage as set forth in subsection 7.2.2 (Boiler and Machinery) of this Appendix). Said policy will include coverage for law and ordinance, including demolition and increased cost of construction, extra and expediting expenses, debris removal and professional fees.

Name Insureds: Project Company, Water Supply Corporation, Operating Service Provider and SAWS

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.2.2 Boiler and Machinery. A boiler and machinery insurance policy with limits of liability of not less than \$100 million per loss, insuring those objects as defined in the comprehensive object definition that are in use or connected and ready for use and are located on the Project Sites, and including coverage for business interruption, extra expense and expediting expense.

Name Insureds: Project Company, Water Supply Corporation, Operating Service Provider and SAWS

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.2.3 Business Interruption. The business interruption insurance policies required by subsections 7.2.1 (Property) and 7.2.2 (Boiler and Machinery) of this Appendix shall be provided with limits of liability in such amounts as are necessary to compensate the Project Company for direct loss of income and earnings resulting from or attributable to any of the perils required to be insured against under the policies referred to in subsections 7.2.1 (Property) and 7.2.2 (Boiler and Machinery) of this Appendix, including losses resulting from interference with or prevention of access to the Project Sites or the Project, in each case in whole or in part, as a result of such perils or for any other reason. Said policy will include civil authority and prevention of ingress / egress.

Name Insured: Project Company, Water Supply Corporation and Operating Service Provider

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.2.4 Commercial General Liability. A commercial general liability insurance policy insuring against liability of the Project Company, Water Supply Corporation and the Operating Service Provider with respect to the Project or arising out of the Contract Services, written on an occurrence basis and covering liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The insurance shall (a) apply separately for each insured against whom a

claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability and (b) have coverage for any one occurrence or claim of not less than \$25 million, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. Said policy will include cross liability and severability of interests clause.

Named Insured: Project Company, Water Supply Corporation and Operating Service Provider

Additional Insureds: SAWS and Senior Debt Creditors

7.2.5 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$2 million per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the operation and maintenance of the Project. If transporting Hazardous Substances, the commercial automobile liability insurance shall either be endorsed to provide coverage under the CA 99 48 10 13 endorsement, or the Operating Service Provider’s pollution liability insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the Project Sites.

Named Insured: The vehicle owner

Additional Insureds: Project Company, Water Supply Corporation, SAWS, Senior Debt Creditors and Operating Service Provider

7.2.6 Worker’s Compensation and Employer’s Liability. A worker’s compensation insurance policy as required by Applicable Law, and employer’s liability insurance having coverage limits of \$1 million for each accident, \$1 million for disease (each employee), and \$1 million for disease (policy limit).

7.2.7 Pollution Legal Liability. A pollution legal liability insurance policy having coverage for any one occurrence or claim of not less than \$5 million and a \$5 million project aggregate limit, covering third party bodily injury and property damage, remediation costs for known and unknown pollution conditions, and first party property damage.

Named Insured: Project Company, Water Supply Corporation, SAWS, and Operating Service Provider

7.2.8 Operating Service Provider Pollution Liability. During the Operating Period, the Operating Service Provider shall maintain in full force and effect an accidental pollution liability insurance policy written on an occurrence form with limits of not less than \$5 million and a \$5 million project aggregate limit. The policy shall provide either a “claims made” or an “occurrence based” coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any pollution condition that is in any way related to the Operating Service Provider’s operations, actions or inactions, and completed operations associated with any work performed by the Operating Service Provider, its Subcontractors, or any of their respective employees, agents, representatives, or officers under this Water Transmission and Purchase Agreement.

Named Insured: Operating Service Provider, SAWS

Additional Insured: Project Company and Water Supply Corporation

7.2.9 Earthquake and Earth Movement. An earthquake and earth movement insurance policy, including land movement, landslide, settlement, subsidence, lateral support, and mudslide, having coverage for any one occurrence or claim of not less than \$20 million and a \$20 million project aggregate limit.

Named Insureds: Project Company, Water Supply Corporation and Operating Service Provider

7.2.10 Other. Any other form of insurance and with such limits; in such form, in amounts and for risks as SAWS, acting reasonably, may require from time to time. The Monthly Water Purchase Payment shall be adjusted (through a Direct Payment) to reflect the cost of any such additionally required insurance.

### 7.3. FULL INSURABLE VALUE

7.3.1 Determining Full Insurable Value. For the purposes of this Appendix, "Full Insurable Value" of any building, improvement, equipment or other property shall be determined by the Project Company, acting reasonably, at the time the insurance is initially taken out and thereafter at least once every 12 months, and the Project Company shall promptly notify SAWS in writing of each such determination, provided that SAWS may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the Full Insurable Value of any building, improvement, equipment or other property to be redetermined by an independent qualified appraiser designated by the Project Company's insurance agent/broker and approved by the property insurance company. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to SAWS.

7.3.2 Adequacy of Contemplated Insurance. In addition to the determination of Full Insurable Value, as part of the periodic review contemplated in subsection 7.3.1 (Determining Full Insurable Value) of this Appendix, the Project Company shall determine whether the policies set out in Section 7.2 (Insurance During the Operating Period) of this Appendix and the limits of such policies are adequate for the Project, and the Project Company shall promptly notify SAWS in writing of each such determination, provided that SAWS may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to SAWS. The Operation and Maintenance Charge shall be adjusted to reflect any reduced or increased cost of any SAWS-directed insurance redetermination.

### 7.4. WAIVER OF SUBROGATION RIGHTS, AND OTHER POLICY REQUIREMENTS

7.4.1 Design Build Contractor Waiver of Subrogation. The Design Build Contractor and its insurers providing the insurance required under Section 7.1 (Insurance during the Construction Period) of this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.2 Operating Service Provider Waiver of Subrogation. The Operating Service Provider and its insurers providing the insurance required under Section 7.2 (Insurance during the Operating Period) of this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.3 Project Company and Water Supply Corporation Waiver of Subrogation. The Project Company, Water Supply Corporation and their insurers providing the insurance required under this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.4 Non-Recourse to SAWS. All insurance policies shall provide that the insurers shall have no recourse against SAWS for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Water Transmission and Purchase Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Project Company, of its respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and within the coverages of any liability insurance or self-insurance program maintained by SAWS.

#### 7.5. GENERAL POLICY REQUIREMENTS

Each policy of insurance required under this Appendix shall:

- (a) be written on a project or location specific basis with project or site specific dedicated limits, except for commercial automobile and worker's compensation coverage;
- (b) be issued by a Qualified Insurer;
- (c) be in a form approved by SAWS, such approval not to be unreasonably withheld;
- (d) be non-contributing with and shall apply only as primary insurance and not excess to any other insurance, self-insurance, or other risk financing program available to SAWS;
- (e) contain an undertaking by the insurers to notify SAWS and the Senior Debt Creditors in writing not less than 60 days before any material change, cancellation or termination, except for non-payment of premium whereby 10 days will apply;
- (f) where SAWS is an additional insured, insure SAWS Indemnitees; and
- (g) where SAWS is an additional insured, use Insurance Services Office (ISO) endorsement CG 20 10 and CG 20 37 or equivalent substitutions.

#### 7.6. EVIDENCE OF INSURANCE

Upon the issue of a policy of insurance, and otherwise upon request by SAWS, the Project Company shall deliver to the Operating Service Provider (to the extent of coverage under which it is an additional insured) and SAWS a copy of policy endorsements and certificates. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to SAWS. Upon request by SAWS, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. No review or approval of any insurance certificate or insurance policy by SAWS shall derogate from or diminish SAWS' rights under this Water Transmission and Purchase Agreement.

## 7.7. DEDUCTIBLES

7.7.1 Deductibles During the Construction Period. Except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix, any of the policies of insurance required under Section 7.1 (Insurance During the Construction Period) of this Appendix during the Construction Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by SAWS, such approval not to be unreasonably withheld. During the Construction Period, the Project Company shall pay the amount deducted from the insurance moneys payable in the event of any loss.

7.7.2 Deductibles During the Operating Period. Except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix, any of the policies of insurance required under Section 7.2 (Insurance During the Operating Period) of this Appendix during the Operating Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by SAWS, such approval not to be unreasonably withheld. The Project Company shall pay the amount deducted from the insurance moneys payable in the event of any loss.

7.7.3 Earthquake Insurance Deductibles. The policy of insurance required under subsections 7.1.1 (Builder's Risk) and 7.2.9 (Earthquake and Earth Movement) of this Appendix may, with respect to loss arising from earthquakes and earth movement, provide that the amount payable in the event of such loss shall be reduced by a deductible amount of five percent of the loss or \$250,000, whichever is less, of the \$20 million sublimit insurance requirement.

## 7.8. SUBCONTRACTORS

The Project Company shall be responsible for ensuring that all Subcontractors performing the Construction Work and the Operating Work secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by the laws of the State in connection with their presence at the Project Sites and the performance of their duties pursuant to their respective Subcontracts.

**APPENDIX 8**  
**PERFORMANCE GUARANTEE REQUIREMENTS**

## APPENDIX 8

### PERFORMANCE GUARANTEE REQUIREMENTS

#### 8.1. PURPOSE

This Appendix sets forth the requirements for certain Performance Guarantees in this Water Transmission and Purchase Agreement and the noncompliant Product Water deductions for failure of the Project Company to meet such Performance Guarantees throughout the Operating Period.

The Product Water Quality Sampling Location for Product Water quality compliance monitoring shall be a designated sample tap at a point proximate to the Product Water Delivery Point or at another location approved by the parties. All sampling methodology, holding times and analytical methods used shall be compliant with the latest edition of *Standard Methods for the Examination of Water and Wastewater* unless otherwise approved in advance by SAWS.

#### 8.2. PERFORMANCE GUARANTEES

##### 8.2.1 Product Water Quality Guarantee.

The Product Water that the Project Company delivers to SAWS at the Product Water Delivery Point shall be treated water suitable for immediate distribution as public water supply and shall meet:

- (1) the quality criteria prescribed by the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirement for Public Water System, 30 Texas Administrative Code, Chapter 290, subchapter F;
- (2) all federal drinking water regulations (e.g. primary and secondary maximum contaminant levels) promulgated by the EPA and enforceable in Texas; and
- (3) the Additional Product Water Quality Standards specified in Table 8-1 of this Appendix.

The Project Company shall be responsible for compliance with all then-current drinking water quality regulatory requirements in items (1) or (2) above throughout the Operating Period.

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**Table 8-1. Additional Product Water Quality Standards**

<b>Product Water Quality Parameter</b>	<b>Unit</b>	<b>Concentration at Product Water Delivery Point</b>	<b>Minimum Sampling Frequency</b>
Total Iron	mg/L	≤0.3	Weekly
pH	Standard units	7.0 - 9.0	Continuous
Temperature	° F	≤83	Continuous
Langeliers Saturation Index <sup>1</sup>	Standard units	> 0.1 but ≤ 0.3	Weekly
Free Chlorine	mg/L	≥0.2 but ≤3.0	Continuous
Turbidity	NTU	≤2	Continuous

<sup>1</sup> LSI calculation as specified in Faust, Samuel D. and Aly, Osman M., *Chemistry of Water Treatment*, 2nd ed. (1998), page 459.

**8.2.2 Changes in Applicable Law.**

The Project Company, as provided in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement, shall comply with Applicable Law with regard to Product Water quality as it may be in effect from time to time throughout the Term. SAWS and the Project Company will coordinate in the development of any new treatment processes and methodologies necessary to meet future regulatory requirements.

**8.2.3 Product Water Quality Sampling.**

Sampling and monitoring will be performed following TCEQ regulation requirements or as directed by SAWS.

Continuous monitoring shall be conducted by on-line meters, located at a Product Water Quality Sampling Location that is capable of transmitting real-time information to SAWS' SCADA system. Any parameter not requiring continuous monitoring shall be collected at the minimum frequency specified by the TCEQ and EPA by a grab sample at a Product Water Quality Sampling Location.

If it is determined through routine or SAWS-requested monitoring that delivered water does not comply with one or more of the Additional Product Water Quality Standards listed in Table 8-1, or with items (1) and (2) in subsection 8.2.1 of this Appendix, the Product Water shall be considered Off-Specification Product Water or Unacceptable Product Water as listed in Table 8-2.

Demonstrated noncompliance of any Product Water Quality Guarantee at the Product Water Delivery Point shall give SAWS the right to instruct the Project Company to sample at any point(s) from the Well Field Facilities to the Product Water Delivery Point. The results of all such sampling shall be provided to SAWS within two Business Days following receipt by the Project Company.

All water quality analytical methods used to demonstrate compliance with the Product Water Quality Guarantee shall be performed according to methods approved by TCEQ or EPA, or otherwise approved in advance by SAWS. For routine process control analysis or routine Product Water analysis, SAWS may require the Project Company to use the SAWS Analytical Laboratory to perform the water quality testing. An independent third-party laboratory should be used if the Project Company reasonably believes that water quality may become noncompliant with any Product Water Quality Guarantee or for any reanalysis of Product Water. Any external laboratory analyzing Product Water samples must be a certified, independent, third-party laboratory preapproved in writing for use by SAWS. Approvals of laboratories for Product Water quality analysis shall not be unreasonably delayed by SAWS.

#### 8.2.4 Raw Groundwater Sampling from Wells.

The Project Company shall sample all Wells during each Contract Year at least once for total coliforms. Each Well that returns a positive detection of coliforms shall require a resampling for coliforms from that Well within one month. If any of the Wells show coliforms on the resampling results, the following minimum safety protocol will be undertaken by the Project Company:

- (1) If coliforms are deemed migrating from the Well, the Well will be temporarily put out of service or the Raw Groundwater coming out of it shall be treated in a manner to protect from transfer downstream.
- (2) The Project Company will investigate the possible causes, define the need and the type of mitigation, and conduct the mitigation work.
- (3) If the resampling results show coliforms presence after mitigation is complete, a plan will be developed by the Project Company in coordination with the prior investigation results in order to define the most cost-effective solution to such issue. Proper resolution steps to be taken may include, but are not limited to, flushing the Well three or more times, chemical disinfection of the Well, shutting down the Well and drilling new Wells, and installing a water treatment system guaranteeing coliform-free water downstream. Repeated failures of the mitigation efforts will require the Project Company to develop new plans to progressively move toward more significant or costly efforts to eliminate the presence of coliforms coming from a Well. Any such plan to move towards more costly mitigation efforts shall be submitted to SAWS for review and comment prior to implementation.
- (4) Once the coliform presence in the Raw Groundwater has been mitigated, the Project will return to normal operation ending the current mitigation efforts and returning to annual Raw Groundwater sampling efforts.

#### 8.2.5 Off-Specification Product Water Deductions.

Pursuant to Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement, SAWS shall have the right to impose Deductions in the amounts specified in Table 8-2 of this Appendix in the event SAWS takes delivery of any Off-Specification Product Water. Such Deduction amounts shall be Index Linked.

This Appendix provides for Deductions, which are intended as liquidated damages for the relevant circumstances herein described. The parties agree that actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. Such Deductions shall constitute the only damages payable by the obligated party in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit any party's right to exercise its remedies herein provided, including remedies associated with a Project Company Event of Default or a SAWS Event of Default under Section 20.1 (Project Company Events of Default) and Section 21.1 (SAWS Events of Default) of this Water Transmission and Purchase Agreement, respectively. The parties acknowledge and agree that the additional remedies specifically provided for in this Water Transmission and Purchase Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows:

- (1) that the Deductions are not a penalty, and are fair and reasonable and such Deductions represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstances of non-performance or breach; and
- (2) that, in recognition of the acknowledgments above, the Project Company is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

Any parameters requiring continuous measurement shall be noncompliant for a minimum of 4 hours before any Off-Specification Product Water Deductions are to be assessed by SAWS at SAWS sole discretion, or the water is determined to be Unacceptable Product Water. If the Project Company can demonstrate to SAWS' satisfaction that the period of noncompliance was the result of a faulty meter or detector, or any other cause that SAWS believes adequately demonstrates that the reported value was not indicative of the actual Product Water quality delivered, then SAWS shall have the right to waive any Off-Specification Product Water Deductions.

Water that remains in an off-specification condition will be assessed a Deduction for each 24-hour period that the off-specification condition exists.

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**Table 8-2. Deductions for Product Water that is Not Compliant with  
 Additional Product Water Quality Standards**

Parameter	Table 8-1 Compliance Standards	Off-Specification Product Water		Unacceptable Product Water
	limits	limits	Deduction per day <sup>1</sup>	limits
Total Iron	≤0.3 mg/L	NA	NA	>0.3 mg/L
pH	7.0 - 9.0 units	NA	NA	<7.0 or >9.0 units
Temperature	≤83 °F	≥ 84 but ≤ 89 °F	\$5000	>89 °F
Langeliers Saturation Index	> 0.1 but ≤ 0.3 units	≤0.1 units	\$8000	≤0.1 units
Free Chlorine	≥0.2 but ≤3.0 mg/L	< 0.2 or >3.0 mg/L	\$1000	>4 mg/L
Turbidity	≤2 NTU	> 2 but < 4 NTU	\$5000	≥4 NTU

<sup>1</sup> Index Linked

**APPENDIX 9**  
**GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND**

## **APPENDIX 9**

### **GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND**

#### **9.1 INTRODUCTION**

This Appendix is being included in this Water Transmission and Purchase Agreement to outline the current understanding of the electrical requirements of the Project and the performance requirements for efficient design and operational power consumption that will be required of the Project Company.

#### **9.2 PURPOSE**

The purpose of this Appendix is to define the electric power needs of the Project to be fulfilled by the electricity service providers based on the power service contracts to be secured by SAWS, to establish the Guaranteed Maximum Electricity Utilization (GMEU) and Guaranteed Maximum Electricity Demand (GMED) in the first Contract Year of the Operating Period of the Project, and to define an approach for establishing a revised, efficient GMEU and GMED through the involvement of the O&M Budget Panel (defined in Appendix 19) for subsequent Contract Years. A methodology using measured performance data in a flow-based calculation is presented as a suggested option for determination of the GMEU and GMED for the subsequent Contract Years of operation.

Following the end of each Contract Year of the Operating Period, the O&M Budget Panel will evaluate the operation of the project, meet with SAWS and the Project Company, and (1) determine any electrical costs resulting in a Monthly Water Purchase Payment Deduction for that completed Contract Year; and (2) establish the GMEU and GMED values for the subsequent Contract Year based on historical periods of efficient operation and anticipated aquifer levels. Any electrical power consumption that exceeds the established GMEU or GMED in a given Contract Year will be a Monthly Water Purchase Payment Deduction constituting a portion of the Deductions Credit (as defined in Section 17.6 of this Water Transmission and Purchase Agreement) at the average of the current electrical rates by the electrical providers at the time.

The parties agree to cooperate with the O&M Budget Panel in the annual refinement of the calculation methodology and to obtain the necessary and accurate input parameters to establish a precise GMEU and GMED. It is a goal of the O&M Budget panel to establish the GMEU and GMED values that ensure highly efficient operation of the Project overall.

#### **9.3 POWER SUPPLY**

SAWS will establish service agreements with the electricity service providers to provide the electrical supply to the Project as needed. The electricity service providers will bill SAWS directly for all electrical costs.

The Project Company will be responsible to work directly with the electrical service providers and to supply all technical information necessary to establish the specific power delivery requirements and the interconnection points between the service providers and the Project Company. SAWS will be responsible for ensuring that electrical service is constructed and adequate to meet the Commercial Operation Date.

The Project Company will be responsible to design and operate the Project in the most efficient manner possible which minimizes electrical demand, minimizes the total electrical consumption and minimizes the total electrical costs to operate the Project. This Appendix assumes that electrical service will be provided by power utilities or direct generators at a

wholesale rate. This Appendix also assumes that the Project Company will not provide back-up generators as alternate power supplies for the Well Field Facilities and pump stations after the Commercial Operation Date. In the event that back-up generators are included, the period of use of the generators will be excluded from the calculation of the guarantees.

SAWS will be responsible for ensuring that electrical service is constructed and adequate to allow the Performance Tests to be performed in accordance with the Performance Test Protocol.

In the event that SAWS develops other customers on the Transmission Pipeline, this Appendix will be updated in accordance with the electrical demand and use of those other projects.

#### 9.4 POWER NEEDS

The Project will require power supply from the grid at several locations. Power supply availability and stability must be at any time sufficient so as to not limit the Project normal operations (start-up, base load production and transportation, peaking production, transportation, operation and maintenance and others required for the Project Company to be able to supply Product Water under the terms of this Water Transmission and Purchase Agreement).

Power supply quality will be determined through the final engineering design process and established through negotiations with the power service providers.

The anticipated power supply quality requirements are as follows:

Power supply will not produce power shortages. SAWS will work with the Project Company and the electricity service providers to provide a high quality service with the minimum number of micro interruptions. The Project anticipates using a single power source with no double ended switchgear or dual service drops intended.

All power quality and quantity information is draft in this version of this Appendix.

		Separate Acceptable Deviations	Combined Acceptable Deviations
Phases	3	-	-
Frequency (Hz)	60Hz	±2%	±2%
Voltage (V)	4160	±5%	±3%

Separate deviations means that only one of the parameters is deviating and combined means that two or more parameters are deviating from the requirement.

If required, the Project Company will assist SAWS on its power supply negotiations providing the most accurate power needs and power quality data available.

At each of the electric meters where the electricity service providers determine the power factor for Project electrical loads, the Project Company agrees to meet the electricity service providers' minimum allowable power factor that is not subject to penalty or surcharge.

Connection points will be required at every location as follows:

Well Field Facilities Site

At each wellhead site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. Table 1 includes the electrical requirements for each of the nine wellhead sites. Each wellhead site will have two pumps, one 350 hp pump and one 1,250 hp pump. Both pumps will be on variable frequency drives for startup and operation.

Power supply provided at those connectors based on the initial operation must be as follows:

Table 1  
Individual Well Head Connected Load

Parameter	Required Value
Power (KW)	1,345

Pump Stations

At each pump station site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider.

Power supply provided at those connectors based on the initial operation must be as follows:

Table 2  
HSPS Connected Load Requirements

Parameter	Required Value
Power (KW)	7,700

Table 3  
IPS #1 Connected Load Requirements

Parameter	Required value
Power (KW)	5,425

Table 4  
IPS #2 Connected Load Requirements

Parameter	Required value
Power (KW)	8,210



Product Water Delivery Point

At the Product Water Delivery Point site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. The power requirements shown in Table 5 only account for Project Company delivery infrastructure. Power required for SAWS pumping and distribution will be additional to the power listed.

Power supply provided at those connectors based on the initial operation must be as follows:

Table 5  
Delivery Point Site Power Connected Load  
Requirements

Parameter	Required value
Phases	3
Frequency (Hz)	60Hz
Voltage (V)	208/120
Power (KW)	75

**9.5 GUARANTEED POWER USAGE IN THE FIRST CONTRACT YEAR OF COMMERCIAL OPERATION**

This section establishes the GMEU and GMED in the first Contract Year of the Operating Period based on an assumption of maximum Product Water delivery (subject to the daily volume limits in Section 10.4(B) of this Water Transmission and Purchase Agreement) and peak production electricity demand in every month. Attachment 9A dated March 17, 2017 to this Appendix 9 outlines the anticipated power consumption calculated for the first Contract Year of the Operating Period estimating 177,558,107 kWh as the GMEU and 22,918 kW as the GMED. The parties agree that Attachment 9A will be updated prior to the Commercial Operation Date based on current aquifer levels, information obtained through the Performance Test period, and agreed operating procedures.

The annual GMEU and GMED presented therein will be pro-rated for the number of days of actual production in the first Contract Year of the Operating Period ending December 31.

**9.6 SUGGESTED METHODOLOGY FOR GUARANTEED POWER USAGE IN CONTRACT YEARS SUBSEQUENT TO THE FIRST CONTRACT YEAR OF COMMERCIAL OPERATION**

This section describes a suggested calculation methodology that the O&M Budget Panel may consider for determination of the Guaranteed Maximum Electricity Demand and Guaranteed Maximum Electricity Utilization in Contract Years following the first Contract Year of the Operating Period. Major components for this methodology cannot be established until historical data has been collected at efficient modes of operation during Performance Testing and subsequent Contract Years of the Operating Period. Therefore, this methodology will remain as a conceptual outline until further developed and finalized by the O&M Budget Panel as part of the annual budget review process. The information included at this time is intended to outline a suggested GMEU and GMED calculation methodology and reasonable estimates for input parameters.

It is understood that delivery of Product Water will typically vary by season and by year depending on Supply/Demand Shortfalls or Make-Up Units delivery. To account for these variations and reasonably motivate efficient operation, the calculation of GMEU and GMED will be established as a function of the delivered flow (i.e. volume of Product Water delivered per unit of time). Accordingly, it is anticipated that the O&M Budget Panel will establish a set of GMEU and GMED values as a function of delivered flow rate, adjusting the values each year based on aquifer levels or other parameters that are expected to change over time and that impact the following year's power consumption. These GMEU and GMED values may be presented in tabular or a graphical format (i.e. GMEU and GMED plotted against delivered flow).

Calculation of theoretical utilization and demand for each load in the system based on design and manufacturer data would involve assumptions of various parameters including pump efficiencies, motor efficiencies, tank levels, pipe roughness, aquifer levels, and pipeline water leakage. To avoid the uncertainties associated with theoretical estimates, the calculation of GMEU and GMED for subsequent Contact Years of operation will be based on actual measurements obtained at several operating points under standard, efficient operating conditions including the Performance Testing prescribed in Appendix 5. To establish the GMEU and GMED as a function of delivered flow, a series of tables or plotted curves, each patterned after Table 6 (for GMEU) and Table 7 (for GMED), will be developed based on measured data for each of the operating points defined across the expected pumping range of Project operation. It is anticipated that the O&M Budget Panel will define approximately 7 operating points and establish standard, efficient operating conditions as part of the Performance Test Protocol and as annual operational experience dictates.

Since power consumption varies due to total volumes delivered, aquifer level fluctuations, deterioration of pump efficiencies, increasing pipe roughness, and changes in water leakage throughout the Transmission Pipeline, re-measurement of actual utilization and demand will be made at the various operating points under standard, efficient operating conditions during subsequent commercial operation of the Project conducted at frequencies mutually agreed by the parties and at times convenient for the Project Company (e.g. during startup from a planned shutdown).

Water losses will be measured at the various operating points defining the GMEU and GMED and will be assumed constant throughout a Contract Year. Water losses of 2% for evaporation and 4% for leakage are contemplated as maximums for the purposes of hydraulic design, but the trends of change in water losses over time will be monitored by the O&M Budget Panel and adjusted in keeping with efficient operating practice. Water losses in excess of the maximums established will result in discounting the GMEU and GMED in a manner consistent with the Hazen-Williams equation relating pressure and flow.

## **9.7 CALCULATION OF WATER PAYMENT DEDUCTIONS**

A power consumption balance performed at the end of every Contract Year during the Operating Period will ascertain the balance between the GMEU and GMED and the actual electricity utilization and demand at the delivered flow.

Three types of parameters will be used in the power consumption balance:

- Guaranteed Parameters (in kWh/task and in kWh/acre-ft)

- Measurable Parameters (volumes of Product Water delivered or delivered flow, aquifer levels, metered usage, metered Product Water delivery, and water losses calculated as the difference between meter readings)
- Operating Tolerances (a margin accounting for reasonable operational deviations from most efficient operation)

The payment deduction, if any, for actual power consumption that exceeds the GMEU and GMED will be computed as described below for each Contract Year. The methodology for payment deductions may be modified by the O&M Budget Panel if agreed to by both parties.

$$\text{Payment Deduction} = \text{Net GMEU \& GMED Deduction} + \text{ESP Penalties}$$

Where:

**Net GMEU & GMED Deduction** = absolute value of (Utilization Deduction + Demand Deduction) if that value is negative, or 0 if positive

**Utilization Deduction** = Utilization Balance (kWh) × Operating Tolerance Factor × Average Utilization Cost (\$/kWh)

**Utilization Balance** = GMEU (kWh) – Total Actual Utilization (kWh)

**GMEU** is the calculated value in kWh representing the guaranteed power consumption at the actual volume of delivered flow. It is computed as the GMED determined for the delivered flow rate multiplied by the number of operating hours. Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve would be used.

**Average Utilization Cost** is the cost in US dollars paid by SAWS for the electricity utilization (i.e. for kWh) supplied to the Project divided by Total Actual Utilization

**Operating Tolerance Factor** is a number representing a reasonable accounting for a reasonable margin of error for an efficiently operated Project. For the first Contract Year of the Operating Period the factor will be equal to 1.000; for subsequent years, a suggested value of 1.015 is suggested, but may be adjusted as the O&M Budget Panel determines.

**Demand Deduction** = Demand Balance (kW) × Operating Tolerance Factor × Average Demand Cost (\$/kW)

**Demand Balance** = GMED (kW) – Total Actual Demand (kW)

**GMED** is the calculated value in kW representing the guaranteed power demand at the actual volume of delivered flow. Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve will be used.

**Average Demand Cost** is the total power demand cost in US dollars paid by SAWS for the electricity demand (i.e. for kW) supplied to the Project divided by Total Actual Demand.

**ESP Penalties** is the sum of all penalties and surcharges billed to SAWS by the electricity service providers for operation that does not meet minimum power factor requirements.

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Table 6 – GMEU Calculation Matrix

Power users in the system	Power Utilization (Guaranteed kWh/acre-ft)	Delivered Flow (acre-ft)	Guaranteed Utilization (kWh)
Wellfield			
Simsboro/Carrizo Meter 1	Y1	P1	$S1 = Y1 * P1$
Simsboro/Carrizo Meter 2	Y2	P2	....
...			
Simsboro/Carrizo Meter 8			
Simsboro/Carrizo Meter 9			
Other users			
HSPS Meter	<b>Yj</b>	<b>Pj</b>	<b>Sj = Yj * Pj</b>
IPS# 1 Meter			
IPS# 2 Meter			
Terminus Meter			
Cathodic Protection			
Rectifier Meter 1			
Rectifier Meter 2...			
....			
			The sum of this column is the <b>GMEU</b>

Table 7 – GMED Calculation Matrix

Power users in the system	Guaranteed Demand at the Delivered Flow (kW)
Wellfield	
Simsboro/Carrizo Meter 1	Y1
Simsboro/Carrizo Meter 2	Y2
...	
Simsboro/Carrizo Meter 8	...
Simsboro/Carrizo Meter 9	
Other users	
HSPS Meter	<b>Yj</b>
IPS# 1 Meter	
IPS# 2 Meter	
Terminus Meter	
Cathodic Protection	
Rectifier Meter 1	
Rectifier Meter 2...	
....	
	The sum of this column is the <b>GMED</b>

### **Additional Design Guarantees**

In order to provide SAWS with additional guarantees for energy efficiency, the Project Company commits to the following:

- At Project commissioning, the pipe will have physical properties resulting in an average Hazen-Williams coefficient ( C ) of no less than 135.
- When selecting equipment, for functionally equivalent equipment (matches the functional needs of the Project), the Project Company will select those providing the best efficiency average at an annual theoretical operation regime. If the price difference between the most efficient and the second most efficient is higher than 5%, then the selected item will be the second most efficient.

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**ATTACHMENT 9A**

**MARCH 17, 2017 LETTER REGARDING ANTICIPATED POWER CONSUMPTION  
CALCULATED FOR THE FIRST CONTRACT YEAR OF THE OPERATING PERIOD**



March 17, 2017

Mr. Steve Clouse  
 San Antonio Water System  
 2800 U.S. Highway 281 North  
 San Antonio, Texas 78212

RE: VRRSP  
 Appendix 9- Updated Spreadsheet

Dear Mr. Clouse:

We have modified the spreadsheet as follows:

- The delivered flow is 50,000 ac-ft/year (as opposed to a peak year flow of 53,000 ac-ft/year).
- The wellfield represents current estimated aquifer levels.
- The spreadsheet divides the well calculation into a separate tab.
- A summary sheet has been added.
- A tab showing the headloss through a butterfly valve in the system has been added.
- The footnotes have been disaggregated to allow for easier understanding of each equation and to allow the application of “what-if” scenarios.

Based on the current First Year scenarios, at delivered flow of 50,000 ac-ft/year, the electric usage is as follows:

		<b>Year N, equipment guaranteed usage</b>	<b>Percent of total</b>	<b>Demand</b>	<b>Percent of total</b>
		<b>(KWh)</b>		<b>(kW)</b>	
Wells		61,517,937	35%	7,750	34%
System					
	HSPS Pumps	31,308,906	18%	4,279	19%
	Remaining HSPS usage	11,989,639	7%	1,369	6%
	IPS 1 Pumps	24,930,453	14%	3,274	14%
	Remaining IPS 1 usage	1,914,060	1%	218.5	1%
	IPS 2 Pumps	42,027,382	24%	5,587	24%
	Remaining IPS 2 usage	2,330,160	1%	266	1%
	Terminus Site	374,490	0%	43	0%
	Remaining Usage	1,165,080	1%	133	1%
	Subtotal	116,040,170	65%	15,168	66%
	Total	177,558,107		22,918	

There was a concern that an operator may try to operate the system against a partially closed valve. Although final pump selection has not been made, we do have the estimated shut-off heads for the pumps currently being proposed. (These are provided on the Valve Equation tab.) In the case of the HSPS and IPS2, any butterfly valve closed beyond 60-degrees will trigger a head condition that shuts down the pumps. (IPS1 has a higher shut off head, so this is not the case.)

There are certain assumptions that need to be taken into consideration when using this spreadsheet:

- Final pumps have not been selected. They will have a minor effect on the overall numbers.
- The VFDs will have a beneficial effect on the base flow condition, once selected.
- The aquifer levels are estimates, and will change once each well is drilled and actual data is available.

We believe these findings support our position that establishing the maximum electricity utilization and demand should be included as part of the operation and maintenance panel. Please feel free to contact Kim Keefer should you have questions or comments on the spreadsheet or data contained therein.

Sincerely,  
VRRSP Consultants, LLC

Kim S. Keefer, PE  
Administrative Program Manager

Attachments (if applicable)

Cc: M. Vergara (CP&Y)

P:\77\74\03\WTPA\_Requirements\Appendix\_9\170317\_LTR\_Clouse\_Dawson\_Appendix 9 spreadsheet revised.docx

**APPENDIX 10**

**RESERVED**

**APPENDIX 10**

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**APPENDIX 11**  
**END OF TERM PROJECT CONDITION REQUIREMENTS**

## **APPENDIX 11**

### **END OF TERM PROJECT CONDITION REQUIREMENTS**

#### 11.1. PURPOSE

The purpose of this Appendix, along with Sections 11.3 (Project Evaluations), 11.6 (End of Term Performance Evaluation Requirements) and 11.7 (Project Assets Transfer Condition) of this Water Transmission and Purchase Agreement, is to detail the protocol and procedures to be followed (1) upon the assignment and conveyance of the Project Assets on the Expiration Date pursuant to Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) of this Water Transmission and Purchase Agreement, or (2) if SAWS exercises its right to purchase the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options) of this Water Transmission and Purchase Agreement.

The Project Company and SAWS shall jointly retain the services of the Independent Evaluator to perform the assessments set forth in this Appendix to determine whether (i) the Project operationally meets the Minimum Performance Criteria, and (ii) the Project has been maintained in accordance with the terms and conditions of this Water Transmission and Purchase Agreement. The Independent Evaluator will assess the Project's performance and condition in accordance with Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement, Section 11.6 (End of Term Performance Evaluation Requirements) of this Water Transmission and Purchase Agreement, and Section 11.7 (Project Assets Transfer Condition) of this Water Transmission and Purchase Agreement.

All costs and expenses with respect to the tests, reports, audits and any other testing or assessment services, including the services of the Independent Evaluator, performed pursuant to this Appendix shall be borne equally by the parties. The Project Company shall remain responsible for the costs and expenses for all repairs and replacements necessary for the Project to achieve the Minimum Performance Criteria, in the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, in accordance with Section 11.6(C) (Non-Compliance with End of Term Performance Evaluation Requirements) of this Water Transmission and Purchase Agreement. SAWS shall have the right to hold back and retain the Transfer Condition Retainage as set forth in Section 11.7 (Project Assets Transfer Condition) of this Water Transmission and Purchase Agreement.

#### 11.2. INDEPENDENT EVALUATOR RESPONSIBILITIES

The Independent Evaluator shall have the following responsibilities in connection with the final evaluation of the Project in accordance with Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement and Section 11.6 (End of Term Performance Evaluation Requirements) of this Water Transmission and Purchase Agreement:

- (a) Conduct the final evaluation of the Project using the listing of Project Structures created by the Project Company in the Asset Registry.
- (b) Perform the functional evaluation of the Project Structures and include in the Final Project Structure Evaluation Report (as defined in Section 11.4 of this Appendix).
- (c) Perform the structural integrity evaluation of the Project Structures and include in the Final Project Structure Evaluation Report.

- (d) Perform an evaluation of whether the Project met the End of Term Performance Evaluation Requirements (as defined below) during the End of Term Performance Evaluation Period.
- (e) Conduct a Joint Inspection and Survey (as defined below).

### 11.3. FINAL EVALUATION OF THE PROJECT STRUCTURES

Project Structures are required to be transferred to SAWS in the condition and state of repair in accordance with this Appendix. The Independent Evaluator shall conduct the final evaluation of the Project Structures using the listing created by the Project Company in the Asset Registry in accordance with this Appendix and Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement.

11.3.1 Functionality Evaluation. As part of the final evaluation of the Project at the end of the Term, the Independent Evaluator shall determine the functionality of the Project Structures. The functionality evaluation shall determine if the Project Structures operate properly and perform the function for which they were intended. The Project Structures to be evaluated as part of the functionality evaluation are the following (excluding Project Structures that have been abandoned in place, as determined pursuant to Section 6.2.14(b) of Appendix 6 (Operating and Maintenance Standards)):

- (a) All buildings (including HVAC ducts and louvers, and architectural features), and concrete tanks.
- (b) All piping with an original service life greater than 20 years, both underground and exposed, including the Transmission Pipeline System.
- (c) All valves, gates and weirs with an original service life greater than 20 years together with hydraulic systems.

Pipes must pass the Performance Test pursuant to Appendix 5 (Performance Test Procedures and Standards) during the Independent Evaluator's evaluation.

As part of the functionality evaluation of the Project Structures, the Independent Evaluator will assign a functionality rating of Level 1 to 5. The rating shall utilize the following criteria:

- (i) 5 - Excellent Overall Condition. Asset or structure fully functional as designed with no visible defects or wear.
- (ii) 4 - Good Overall Condition. Asset or structure functions as needed for current operating conditions, visible signs of minor defects and wear are less than expected.
- (iii) 3 - Fair Overall Condition. Asset or structure functions as needed for current operating conditions, visible sign of moderate defects and expected wear.
- (iv) 2 - Poor Overall Condition. Asset or structure operable, but does not function as needed for current operating conditions. Visible signs of major defects and wear are more than expected. There may be personnel safety issues.

- (v) 1- Inoperable. Asset or structure is non-functional, requires major repair or replacement to restore operation.

The Independent Evaluator shall review the CMMS to ensure that the reports are functioning and the historical records are in place and accessible to SAWS.

The Independent Evaluator shall note its field observations on SAWS-approved functional evaluation data collection forms. The findings of the functionality evaluation shall be tabulated on a spreadsheet such as in the Asset Registry. An example tabulation is presented in Table 11-1 of this Appendix.

For purposes of this Water Transmission and Purchase Agreement, Level 3 (Fair Overall Condition) of a Project Structure shall be characterized by normal wear and tear related to the damage that naturally and inevitably occurs as a result of normal use or aging. This is a form of wear that occurs when a Project Structure is used according to manufacturer’s instructions and is properly maintained. Examples of Level 3 (Fair Overall Condition), Level 2 (Poor Overall Condition), and Level 1 (Inoperable) (each also referred to as an “Unacceptable Condition”) are characterized in the following table:

<b>Table 11-1 EXAMPLES OF UNACCEPTABLE CONDITIONS</b>		
<b><u>Project Element</u></b>	<b><u>Level 3 Fair Overall Condition</u></b>	<b><u>Level 1 or 2 Poor Overall Condition or Inoperable</u></b>
Concrete	Abrasion, minor hairline cracks, small chips, and isolated small stains	Exposed rebar; spalling; water leakage; compromised structural integrity; chipping and peeling of coatings or paint on coated or painted concrete
Steel	Faded paint, discoloration, minor nicks	Compromised structural integrity; visible bending; corrosion that adversely affects function; chipping and peeling of coatings or paint on coated or painted steel; rust
Architectural	Faded paint or discoloration on surfaces	Cracked windows; chipping and peeling of coatings or paint on coated or painted surfaces; broken or missing tiles
HVAC ducts and louvers	Minor bending or nicking on ducts and louvers	Corroded or cut ducts, non-connected duct sections; clogged or non-functional louvers; missing pieces of insulation on insulated ducts



11.3.2 Structural Integrity Evaluation. As part of the final evaluation of the Project, the Independent Evaluator shall determine the structural integrity of the Project Structures. The structural integrity evaluation shall include visual inspection with photographic and video recording of all Project Structures, including, but not limited to:

- (a) Buildings and concrete structures, both above and below ground, including doors, hatches, stairways, and windows;
- (b) All piping with an original service life greater than 20 years, both underground and exposed, including the Transmission Pipeline System; and
- (c) All valves, gates and weirs with an original service life greater than 20 years together with hydraulic systems.
- (d) Walkways, roads and other paved areas;
- (e) Fencing and screens;
- (f) Finish system – paint, sealants and other liquid applied finishes; and
- (g) Floor, ceiling, roofs and wall system – tiles, carpeting, raised floors and drop ceilings.

Structures and paved areas shall be checked for structural defects and damage, such as cracks and concrete deterioration that could reduce their remaining life. Finished systems shall be visually inspected to assure that they provide adequate coverage and afford the desired protection. Occurrence of flaking, corrosion, rot and inadequate coverage should be noted. Floor, ceiling, roofs and wall systems shall be visually inspected for excess wear and damages.

As part of the structural integrity evaluation of each Project Structure, the Independent Evaluator will assign a structural integrity rating of Level 1 to 5. The rating shall utilize the following criteria:

- (a) 5 – Excellent Overall Condition. No visible defects, cracking or wear.
- (b) 4 – Good Overall Condition. Visible signs of minor defects and wear are less than expected.
- (c) 3 – Fair Overall Condition. Visible sign of moderate defects and expected wear.
- (d) 2 – Poor Overall Condition. Visible signs of major defects and wear are more than expected.
- (e) 1 – Imminent Failure. Extremely poor overall condition; may be significant structural concerns.

The Independent Evaluator shall note its field observations on SAWS-approved structural integrity evaluation data collection forms. The Independent Evaluator's findings of the structural integrity evaluation shall be tabulated on a spreadsheet derived from the Asset Registry. An example tabulation is presented in Table 11-2 of this Appendix. Digital photographs and videotape records made of the condition of assets, whether or not structural or other physical defects are revealed, shall be included as part of the final evaluation. The location on the digital photograph or videotape corresponding to any listed defect shall be

entered in the spreadsheet with each listing. The spreadsheet shall include a repair or replacement estimate for each asset that is assigned a structural integrity rating of Level 1, 2 or 3 to return the asset to a structural integrity rating of Level 4 or 5.

<b>Table 11-2</b>				
<b>STRUCTURAL INTEGRITY EVALUATION</b>				
<b>(Hypothetical Example for Final Evaluation)</b>				
<b><u>Asset Number *</u></b>	<b><u>Asset Name (&amp; Manufacturer)</u></b>	<b><u>Structural Integrity Defect(s)</u></b>	<b><u>Structural Integrity Rating**</u></b>	<b><u>Video Location</u></b>
ABOVEGROUND SYSTEMS				
S4	Building A	Cracked and leaking foundation	1	B-RO tape, index 310
S5	Building B	Broken concrete steps	2	B-J tape 1, index 130
S6	Building B	Collapsed building wall	1	B-J tape 2, index 100
UNDERGROUND STRUCTURES				
S17	Building A	Foundation wall (east) cracked	2	B-OP tape, index 1340
S13	Pump Station	Concrete dry well in pumping station is cracked and seeping	2	RPS tape, index 560
WALKWAYS, ROADWAYS, FENCING AND OTHER PAVED STRUCTURES				
S14	Fencing	Numerous holes and broken gate.	2	RWPS tape, index 25
S15	Driveway	Numerous cracks and heaving	2	D1 tape, index 1300
S17	Concrete sidewalk	Numerous cracks, heaving and broken curbing	2	RWPS tape, index 670
FINISH SYSTEMS (INCLUDING PAINTS AND COATING)				
S17	Building A	Interior structures need paint	3	RES tape, index

<b>Table 11-2</b>				
<b>STRUCTURAL INTEGRITY EVALUATION</b>				
<b>(Hypothetical Example for Final Evaluation)</b>				
<b>Asset Number *</b>	<b>Asset Name (&amp; Manufacturer)</b>	<b>Structural Integrity Defect(s)</b>	<b>Structural Integrity Rating**</b>	<b>Video Location</b>
				2500
S18	Building B	Inadequate coating of walkways	2	OP tape, index 1100
S19	Building B	Exterior paint flaking	2	B-B tape, index 1400
WALL, ROOFS AND FLOORING SYSTEMS				
S20	Building C ceiling	Flaking ceiling in building C	3	B-C tape, index 250
S21	Building A office floor	Tile severely cracked in numerous locations. Significant overall wear.	2	B-A tape 2, index 450
S22	Building B	Plywood walls buckling and cracking	1	B-C tape, index 190

\*Asset numbers shall be assigned in accordance with the Project Company’s CMMS identification system and SAWS’ standards.

11.4. PROJECT STRUCTURE EVALUATION REPORT

The procedures followed to perform the evaluation set forth in Section 11.3 (Final Evaluation of the Project Structures) of this Appendix, together with the findings and results of the formal Project Structure evaluation process, shall be presented in a final evaluation report (the “Final Project Structure Evaluation Report”). Text, spreadsheets and databases shall all be prepared using a computer software program mutually agreed to by SAWS and the Project Company. The Independent Evaluator shall provide SAWS and the Project Company with preliminary drafts of all evaluation documents for review and comment.

Both SAWS and the Project Company shall sign final documents on each page for authentication and shall receive an authenticated copy of all final reports, databases, spreadsheets, video documentation and handwritten notes.

The Final Project Structures Evaluation Report shall consist of at least the following clearly delineated sections:

- (a) Functionality and structural integrity of the Project Structures; and
- (b) Supplemental information as may be determined by the Independent Evaluator.

11.4.1 Functionality Evaluation and Structural Integrity Evaluation. The Final Project Structure Evaluation Report shall provide the results of the functionality evaluation and the structural integrity evaluation of the Project Structures as set forth in Section 11.3 (Final Evaluation of the Project Structures) of this Appendix. Those assets that do not exhibit physical or structural defects, and are therefore rated Level 4 or above, shall be noted as such in the Final Project Structure Evaluation Report with a statement regarding the overall condition. The findings of the functionality evaluation shall be tabulated on a spreadsheet. The Independent Evaluator shall, for structures with a functionality or structural integrity rating of Level 1, 2 or 3, indicate in each instance what repairs would be needed to bring both functionality and structural integrity ratings to a minimum Level of 4, or as may be required pursuant to applicable Transfer Condition Requirements.

11.4.2 Supplemental Information. This section of the Final Project Structures Evaluation Report shall include all supplemental information used by the Independent Evaluator, including, but not limited to, results of diagnostic testing, Inflation Index values used, equipment supplier information, and notes and calculations to support its findings and conclusions. This supplemental information may be included as appendices or attachments to the Final Project Structure Evaluation Report.

#### 11.5. END OF TERM PROJECT PERFORMANCE EVALUATION

The Independent Evaluator shall conduct an evaluation of the Project's performance to verify whether the End of Term Performance Evaluation Requirements (as defined below) have been met pursuant to this Appendix and Section 11.6 (End of Term Performance Evaluation Requirements) of this Water Transmission and Purchase Agreement.

11.5.1 Evaluation of Six Months of Project Performance. During the End of Term Performance Evaluation Period, the Project Company shall deliver to the Independent Evaluator relevant Project performance information on a monthly basis or as otherwise requested by SAWS or the Independent Evaluator. This performance information will include sufficient information regarding Product Water delivery capacity, Product Water quality production capability, energy consumption, and chemical usage. Using such data, the Independent Evaluator will assist in determining whether the Project met the End of Term Performance Evaluation Requirements. The Independent Evaluator shall validate the adequacy of the Project performance information provided by the Project Company. If at any point during the End of Term Performance Evaluation Period the Project Company or the Independent Evaluator determines that the Project will not be able to meet the End of Term Performance Evaluation Requirements, the Project Company shall promptly notify SAWS and promptly begin conducting the Exit Performance Test.

11.5.2 End of Term Performance Evaluation Requirements. The following shall constitute the requirements the Project must meet during the End of Term Performance Evaluation Period (the "End of Term Performance Evaluation Requirements"):

- (a) No Monthly Unexcused Supply Shortfall Units were recorded.
- (b) The Project's total energy demand and utilization did not exceed 110%, as determined pursuant to Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).
- (c) The Product Water Quality Guarantee was never violated, except upon the occurrence of an Uncontrollable Circumstance.

- (d) Each pump and motor combination shall function within 85% of their original performance capacity and shall pass an electrical and mechanical predictive maintenance evaluation in accordance with Section 11.8.2 (Predictive Testing) of this Appendix.
- (e) Each Well will have a minimum 2-hour pump test demonstrating at least 75% of the rated capacity of the Well established on the Commercial Operation Date.
- (f) The Project met the requirements set forth in items (a) through (d) of this Section without needing extraordinary operational or maintenance requirements.

#### 11.6. FAILURE TO MEET THE END OF TERM PERFORMANCE EVALUATION REQUIREMENTS

If the Project fails to meet each of the End of Term Performance Evaluation Requirements, the Project Company shall be required to promptly correct any Project deficiencies and demonstrate, by conducting a Performance Test in accordance with Appendix 5 (Performance Test Procedures and Standards) and taking into account the actual aquifer drawdown, that the corrections are adequate to restore the Project capability to meet the Minimum Performance Criteria (the "Exit Performance Test"). The Exit Performance Test shall be conducted over a duration agreed upon by both parties and in accordance with all other applicable terms and conditions of this Water Transmission and Purchase Agreement and Appendix 5 (Performance Test Procedures and Standards) and taking into account the actual aquifer drawdown. Any amounts of Product Water produced by the Project in excess of that established by the firm daily demand orders during the Exit Performance Test (i) shall be the responsibility of the Project Company, (ii) shall not be delivered to SAWS without SAWS prior agreement, and (iii) if not delivered, shall not be included in the calculation of Monthly Water Purchase Payments. At SAWS option, if during the Exit Performance Test, the Product Water produced in excess of the maximum allowable volume for delivery in place at that time meets all quality requirements, can be integrated into the SAWS system and is delivered, then SAWS may accept and pay for the excess water delivered. If the Project fails to meet the requirements of the Exit Performance Test, the Project Company shall be required to repeat the test as many times as needed until the Termination Date. SAWS may retain from Monthly Water Purchase Payments the Transfer Condition Retainage as set forth in Section 11.7(D) (Determination of Transfer Condition Retainage) and Section 11.7(E) (Establishment and Use of Transfer Condition Retainage Account) of this Water Transmission and Purchase Agreement for any uncompleted repair work.

#### 11.7. PROJECT TRANSFER CONDITION REQUIREMENTS

11.7.1 General. The Project is required to be transferred to SAWS in the condition and state of repair that would be in accordance with the performance of the Contract Services if the Project was customarily maintained by an operator for similar equipment, and operated under an operation, maintenance, repair and replacement contract with similar operations, maintenance, repair, and replacement requirements as detailed below:

- (a) To have maintained appropriate staff who have the training, experience and proficiency in the management, maintenance, repair and replacement of water treatment and conveyance systems which shall be sufficient to maintain the Project in accordance with the Contract Standards, and at appropriate staffing levels.

- (b) To have operated, maintained and repaired the Project, including without limitation, repair or replacement of components, including all maintenance, repair and component replacement which may be characterized as “major” or “capital” in nature.
- (c) To have operated and maintained the Project in accordance with the Contract Standards, the manufacturer’s recommended maintenance procedures, the Electronic Operation and Maintenance Manual and the CMMS.
- (d) To have arranged and paid for the procurement, delivery and storage of all materials, machinery, equipment, filters, any applicable manufacturer’s specialty tools, an adequate supply of spare parts, tools and other consumables and supplies associated with operating, maintaining and repairing the Project.
- (e) Each pump and motor combination shall function within 85% of their original performance capacity and shall pass an electrical and mechanical predictive maintenance evaluation in accordance with Section 11.8.2 (Predictive Testing) of this Appendix.

11.7.2 Transfer Condition Requirements. The Independent Evaluator shall determine if the Project Company has maintained the Project in accordance with the operations, maintenance, repair, and replacement requirements established in this Water Transmission and Purchase Agreement and that it meets the Transfer Condition Requirements. The Independent Evaluator shall also identify the costs necessary to complete any additional work required to meet the Transfer Condition Requirements to assist SAWS in determining the Transfer Condition Retainage pursuant to Section 11.7(D) (Determination of Transfer Condition Retainage) of this Water Transmission and Purchase Agreement.

## 11.8. TRANSFER CONDITION JOINT INSPECTION AND SURVEY

### 11.8.1 General.

SAWS and the Project Company shall jointly cause the Independent Evaluator to conduct the Joint Inspection and Survey in accordance with Section 11.7(C) (Transfer Condition Survey and Work Plan) in this Water Transmission and Purchase Agreement.

SAWS shall have the right, but not the obligation, to attend or participate in any inspection and survey activities conducted by the Independent Evaluator, the Project Company or the Operating Service Provider and to any communications or meetings between the Project Company and the Operating Service Provider held on the subject of the Joint Inspection and Survey. Further, SAWS shall be provided access to and a copy, upon request, of all relevant information, data, material or reports prepared to document and support the Joint Inspection and Survey.

The Joint Inspection and Survey for any piece of Project Equipment shall be based upon its ability to perform its intended function, taking into consideration its performance history, renewals and replacements, time of utilization, physical condition, availability for service, service life, replacement costs and maintenance costs. The Project Company shall facilitate and allow the Independent Evaluator to conduct the following activities to establish the asset condition of the Project Equipment at the end of the Term:

- (a) Visually inspect the Project Equipment while it is in operation for:

- (i) Appearance of Project Equipment components;
  - (a) Appearance of Project Equipment surfaces;
  - (b) Excessive wear of components;
  - (c) Excessive corrosion;
  - (d) Excessive temperature of the Project Equipment or its components;
  - (e) Condition of coatings and paint; and
  - (f) Presence of leaking fluids.
- (b) Inspect the Project Equipment while it is in operation for excessive vibration by computer analysis,
- (c) Inspect the electrical system and motor control centers by thermal analysis and motor diagnostic evaluations;
- (d) Have the original manufacturers evaluate the generators for performance and functional reliability;
- (e) Document the condition of the Project Equipment with photographs;
- (f) Observe the SCADA and other instrumentation for condition of the Project Equipment and its operating characteristics;
- (g) Monitor related instrumentation to determine the assets' physical condition and operation characteristics;
- (h) Collect any measurements, amperage draw or other readings, or other pertinent information which the Independent Evaluator deems appropriate;
- (i) Review CMMS records on applicable Project Equipment assets including, but not limited to the following;
  - (i) Complete up-to-date spare parts and consumable maintenance equipment and materials inventory;
  - (ii) Data available from any interface with energy management and control systems that provides condition based monitoring and component energy use profiles;
  - (iii) Project Equipment repair tracking by Asset Registry and its components;
  - (iv) Historical tracking of all work orders generated and sortable by equipment, date, and other equipment maintenance historic data;
  - (v) CMMS statistical data and query reports available.

- (j) Review relevant Project Equipment repair, rebuild and replacement records, and consult with manufacturers' maintenance manual and technical guidance documents;
- (k) Determine the degree of repair, replacement and renewals each applicable piece of Project Equipment has received during the Term;
- (l) Determine the utilization of the equipment (i.e. did the equipment operate for 24 hours per day or 6 hours per day); and
- (m) Inspect all readily accessible parts and surfaces for any material fit and alignment problems; excessive vibration, noise or temperature; the condition of coatings; signs of wear or excessive corrosion; and excessive leakage of any fluids.

The Joint Inspection and Survey shall also take into consideration the following:

- (a) The appropriate level of spare parts and maintenance consumables for continued reliable operation.
- (b) Obsolete and unused assets.
- (c) Normal wear and tear given the age of the Project Equipment and expected useful life.

The Independent Evaluator shall review the Project Company's Project Equipment maintenance, repair and replacement performance and compare that performance with the then-current Good Management Practices ensuring a Level 4 or 5 condition for the maintenance, repair and replacement of comparable water treatment and conveyance Project Equipment.

#### 11.8.2 Predictive Testing

The Independent Evaluator shall perform predictive testing to better assess the compliance with the Transfer Condition Requirements of all items in the Asset Registry. Such diagnostic testing could include, but is not limited to, vibration analysis, thermography, oil sampling, power systems assessments, and motor circuit analysis. The diagnostic testing shall be conducted by manufacturer-approved personnel or other appropriate qualified service technicians. The Independent Evaluator shall independently test each well pump and motor combination, each high service pump and motor combination, and all major electrical switchgear to ensure end of Term performance. Each pump and motor combination shall function within 85% of their original performance capacity and shall pass an electrical and mechanical predictive maintenance evaluation. The Project Company and Independent Evaluator shall, to the maximum extent possible, test equipment in a manner that does not impact the Project Company's ability to deliver water at the maximum allowable quantities in effect at that time. ally affect Project operations.

#### 11.9. INDEPENDENT EVALUATOR'S JOINT INSPECTION AND SURVEY REPORT

The Independent Evaluator shall produce and deliver to SAWS and the Project Company within 45 days after the completion of the Joint Inspection and Survey a report of its findings and conclusions regarding the Project Equipment conditions in a Joint Inspection and Survey report, which shall contain: (i) an opinion as to whether the condition of any component



of Project Equipment has not been maintained in accordance with the Transfer Condition Requirements; (ii) a detailed description of the basis upon which any component of Project Equipment has been determined not to have been maintained in accordance with the Transfer Condition Requirements; and (iii) an estimate of the cost for the work required, for any component of Project Equipment determined not to have been maintained in accordance with the Transfer Condition Requirements, to meet the Transfer Condition Requirements (the “Joint Inspection and Survey Report”).

#### 11.10. PROJECT EQUIPMENT TRANSFER CONDITION PLAN

If the Joint Inspection and Survey Report indicates that the Project will not be in a condition in accordance with the Transfer Condition Requirements or the Final Project Structures Evaluation Report indicates deficiencies that need to be corrected by the Termination Date, then within 60 days of completion of the Joint Inspection and Survey Report, the Project Company shall deliver to SAWS the plan that details the work the Independent Evaluator has determined is necessary to meet the Transfer Condition Requirements, and that details the work to correct any deficiencies identified in the Final Project Structures Evaluation Report together with a cost estimate and schedule for performing the proposed work (the “Transfer Condition Plan”). SAWS shall have the opportunity to review, comment on and amend the Transfer Condition Plan in accordance with Section 11.7(D) (Determination of Transfer Condition Retainage) of this Water Transmission and Purchase Agreement. The Project Company shall cause the implementation of the Transfer Condition Plan in accordance with Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) of this Water Transmission and Purchase Agreement.

**APPENDIX 12**  
**PROJECT ASSETS AND LIABILITIES**

## **APPENDIX 12**

### **PROJECT ASSETS AND LIABILITIES**

#### 12.1. DEFINITIONS

In addition to the definitions set forth in Section 1.1 (Definitions) of this Water Transmission and Purchase Agreement, the following definitions have the meaning set forth below in this Appendix:

12.1.1 “Indebtedness” means all (1) indebtedness of the Project Company for borrowed money, including purchase money indebtedness, bonds, debentures, capital or financing leases, equipment operating leases, non-trade payables and credit facilities, or obligations for or in respect of the deferred purchase price of goods or services, (2) obligations of the Project Company under any guaranty, letter of credit, performance credit or other contract having the effect of assuring a creditor against loss, (3) obligations of the Project Company under any interest rate, currency or other hedging contract, and (4) any prepayment penalties, premiums or fees under any of the foregoing items described under clause (1), (2) or (3).

12.1.2 “Liability” means any and all direct or indirect Indebtedness, liability, assessment, claim, loss, damage, deficiency, obligation or responsibility, expense (including, without limitation, reasonable attorneys’ fees, court costs, accountants’ fees, environmental consultants’ fees, laboratory costs and other professionals’ fees), Order, settlement payments, Taxes, fines and penalties, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, accrued, absolute, actual or potential, contingent or otherwise (including any Liability under any guaranties or letters of credit, or with respect to insurance loss accruals).

12.1.3 “Litigation” means any action, arbitration, mediation, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before or otherwise involving any Governmental Body, arbitrator or mediator.

12.1.4 “Order” means any order, judgment, preliminary or permanent injunction, temporary restraining order, award, citation, decree, consent decree or writ.

#### 12.2. PROJECT ASSETS

The Project Assets consist of the Project Real Property and the Other Project Assets.

#### 12.3. PROJECT REAL PROPERTY

“Project Real Property” has the meaning set forth in this Water Transmission and Purchase Agreement.

#### 12.4. OTHER PROJECT ASSETS

“Other Project Assets” consist of the following assets, rights, claims, properties and interests other than the Project Real Property that the Project Company or the Water Supply Corporation owns or in which the Project Company or the Water Supply Corporation has any right, title or interest (other than the Excluded Assets):

12.4.1 Assumed Project Contracts. To the extent SAWS so elects, all right, title and interest of the Project Company to and under the Project Contracts (and any related contracts which govern the obligations between the Project Company and a Project Contractor or Subcontractor whose obligations have been assumed (such as a confirmation or interface agreement)) (the “Assumed Project Contracts”).

12.4.2 Governmental Approvals. To the extent permitted by Applicable Law, all right, title and interest of the Project Company to and under all Governmental Approvals issued, granted, given, applied for on and before the Project Assets Transfer Date or otherwise made available by or under the authority of any Governmental Body for the ownership or operation of the Project, including those Governmental Approvals specified in Appendix 2 (Governmental Approvals) of this Water Transmission and Purchase Agreement to the extent such Governmental Approvals are assignable.

12.4.3 Books and Records. Subject to Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement, copies of the Project Company’s books, records, data, ledgers, files, documents, and correspondence, lists, plats, architectural plans, drawings, specifications, studies, reports, maintenance records, and other printed or written materials (in either hardcopy or electronic form) required to be kept by the Project Company pursuant to this Water Transmission and Purchase Agreement, unless such documents are:

- (a) income statements showing profit or loss;
- (b) financial information regarding the Project Contractors and Subcontractors; or
- (c) privileged from production pending resolution of any outstanding dispute, in which case copies of such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Contract Obligations will be delivered to SAWS no later than the Termination Date.

All of such information delivered to SAWS will be delivered only to the extent there is no duty owed by the Project Company to an unrelated third party as of the Contract Date to not disclose such information.

12.4.4 Set of Construction Drawings Showing Alterations. Subject to Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement, all right, title and interest of the Project Company in and to one complete set of existing construction drawings accurately showing the current configuration of the Project and depicting and identifying all alterations made to the Project since the Commercial Operation Date.

12.4.5 Maintenance, Operation and Training Manuals. Subject to Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement, all right, title and interest of the Project Company in and to one complete set of existing, up-to-date maintenance, operation and training manuals for the Project.

12.4.6 Intangible Assets and Goodwill. All right, title and interest of the Project Company in and to all of the Project Company’s intangible assets which are necessary for the use and operation of the Project Assets, and the Project Company’s goodwill directly related to the Project.

12.4.7 Pre-Purchase Claims - Project Assets Purchase Options Before the Expiration Date. If SAWS exercises its right to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of this Water Transmission and Purchase Agreement or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) of this Water Transmission and Purchase Agreement, all right, title and interest of the Project Company in and to all of the Project Company's claims, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of set-off, and rights of recoupment of the Project Company, for a recovery of physical damage to the tangible Project Assets ("Pre-Purchase Claims"), including Pre-Purchase Claims under any insurance policies or otherwise existing at law or equity. The amount of the Pre-Purchase Claims shall be reduced by an amount equal to the reasonable costs incurred by the Project Company prior to the Project Assets Transfer Date in pursuing such claims.

12.4.8 Post-Purchase Claims - All Project Assets Purchase Options. All right, title and interest of the Project Company in and to all of the Project Company's claims, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of set-off, and rights of recoupment of the Project Company in each case relating to the Project Assets to the extent attributable to the period from and after the Project Assets Transfer Date.

12.4.9 Computer Hardware and Software. All right, title and interest of the Project Company in and to all computer hardware and software, in each case, used solely in the Contract Services, and all user's manuals, training manuals, sales programs, literature and other system and operations documentation relating to such hardware and software in the possession of the Project Company.

12.4.10 Domain Names. All right, title and interest of the Project Company in and to all internet domain names used in any Project website implemented by the Project Company to communicate the details of the Project with the public pursuant to Appendix 15 (Public Communications).

## 12.5. EXCLUDED ASSETS

Notwithstanding anything to the contrary contained in Section 12.2 (Project Assets) of this Appendix or elsewhere in this Water Transmission and Purchase Agreement, the assets identified below shall not be part of the sale and purchase contemplated by this Water Transmission and Purchase Agreement, are excluded from the Project Assets, and shall remain the property of the Project Company immediately after the Project Assets Transfer Date (collectively, the "Excluded Assets"):

12.5.1 All credit balances on any bank or trust accounts held by or on behalf of the Project Company on the Project Assets Transfer Date and the value of any amounts due and payable from third parties (but only when received from third parties) that would be deposited in such bank accounts.

12.5.2 Any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit, and the Groundwater Transportation Permit or rights with respect to the Groundwater Leases.

## 12.6. ASSUMED LIABILITIES

On the Project Assets Transfer Date, SAWS shall assume liability for and agree to pay, perform and discharge, in a timely manner and in accordance with the terms thereof, all of the following (collectively, the "Assumed Liabilities"):

- (a) the Assumed Project Contracts with respect to all periods from and after the Project Assets Transfer Date, except any Liability arising from the Project Company's performance or non-performance under any Assumed Project Contract at any time prior to the Project Assets Transfer Date, whether asserted before or after such date;
- (b) all Liabilities arising out of the ownership and operation of the Project Assets subsequent to the Project Assets Transfer Date; and
- (c) all Liabilities arising out of the ownership and operation of the Project Assets on or after the Project Assets Transfer Date for materials or goods to be delivered to be used in the operations of the Project after the Project Assets Transfer Date.

#### 12.7. EXCLUDED LIABILITIES

Except for the Assumed Liabilities, SAWS shall not assume, and shall not be deemed to have assumed by anything contained in this Appendix or this Water Transmission and Purchase Agreement or otherwise, any Liability of the Project Company whatsoever (the "Excluded Liabilities"). Without limiting the generality of the foregoing, SAWS shall not assume, and shall not be deemed by anything contained in this Water Transmission and Purchase Agreement or otherwise to have assumed any of the following Excluded Liabilities:

- (a) all Liabilities and obligations of the Project Company under this Water Transmission and Purchase Agreement;
- (b) all Liabilities arising out of the operation and ownership of the Project Assets prior to the Project Assets Transfer Date;
- (c) all Liabilities or demands for any Taxes in respect of the Project Assets that are due and payable for periods at or prior to the Project Assets Transfer Date, regardless of when assessed;
- (d) all Liabilities or demands arising out of any Liability or demand (whether or not asserted) or threatened or pending Litigation relating to the Project Assets for any period ending at or prior to the Project Assets Transfer Date to the extent such liability or demand relates to actions or omissions of the Project Company occurring prior to the Project Assets Transfer Date;
- (e) all Liabilities or demands arising out of any work or Contract Obligations that were to be performed by the Project Company at or prior to the Project Assets Transfer Date, including any warranty claims relating thereto;
- (f) all Liabilities or demands, including for any interest, penalties, late charges, prepayment charges or termination fees relating to any Indebtedness outstanding as of the Project Assets Transfer Date, or Taxes resulting from cancellation of such Indebtedness, and all Liabilities relating to any arbitrage rebate Liability, audit, examination or other enforcement action by the Internal Revenue Service or other Governmental Body with respect to any Indebtedness of the Project Company;
- (g) all Liabilities or demands for fees, costs or expenses incurred by the Project Company in connection with the preparation and negotiation of the transfer of the Project Assets and the consummation of the purchase and sale of the Project

Assets, including without limitation, attorneys', accountants' and consultants' fees, finder's fees, costs and expenses, regardless of when incurred;

- (h) all Liabilities or demands (contingent or otherwise) arising out of any Applicable Law with respect to the Project Assets attributable to events occurring at any time before the Project Assets Transfer Date, including Liabilities arising under the Governmental Approvals relating to the Project and under Applicable Law relating to Regulated Substances;
- (i) all other Liens, Liabilities or demands of the Project Company arising out of or relating to the ownership, use or operation of the Project that are not Assumed Liabilities;
- (j) any Liabilities arising out of or otherwise in respect of any employee benefit plan, any programs or arrangements that pay bonus, severance, change of control or similar payments, health care continuation coverage and any employment action or practice of the Project Company in connection with persons previously employed, employed or seeking to be employed by the Project Company, whether incurred prior to, on or after the Project Assets Transfer Date; and
- (k) all sales and use, transfer-related taxes, stamp, real property recordation fees or taxes and all other fees and costs associated with the transfer of title of the Project Assets from the Project Company to SAWS.

## 12.8. WATER SUPPLY CORPORATION

12.8.1 Water Supply Corporation Assets. "Other Project Assets" also include any of the assets, rights, claims, properties and interests of type or kind described in Section 12.4 (Other Project Assets) of this Appendix 12 (Project Assets and Liabilities) as assets, rights, claims, properties and interests of the Water Supply Corporation.

12.8.2 Excluded Assets, Assumed Liabilities and Excluded Liabilities. Excluded Assets, Assumed Liabilities and Excluded Liabilities also include, respectively, assets and liabilities of the type or kind described in Section 12.5 (Excluded Assets), Section 12.6 (Assumed Liabilities) and Section 12.7 (Excluded Liabilities) of this Appendix 12 (Project Assets and Liabilities) or excluded assets, assumed liabilities and excluded liabilities of the Project Company, as applicable to the assets, rights, claims, properties, interests and liabilities of the Water Supply Corporation.

**APPENDIX 13**

**SAWS INTERCONNECTION IMPROVEMENTS**



## APPENDIX 13

### SAWS INTERCONNECTION IMPROVEMENTS

#### 13.1. PROJECT COMPANY RESPONSIBILITIES REGARDING TRANSMISSION PIPELINE TERMINUS SITE

13.1.1 Terminus Site Lot 3. Pursuant to Section 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations), the Project Company shall convey, or shall cause the Water Supply Corporation to convey, Terminus Site Lot 3 to SAWS. The parties intend Terminus Site Lot 3 to provide sufficient land and legal access thereto for SAWS to construct pumping facilities, SCADA communication facilities and other necessary treatment facilities as part of the SAWS Interconnection Improvements. Terminus Site Lot 3 must have a shape and grading necessary to adequately house the SAWS Interconnection Improvements and provide delivery truck drive-through access to delivery or maintenance points throughout the SAWS Portion of the Transmission Pipeline Terminus Site. Sufficient space shall also be provided to include fluoride, chlorine, iron and calcium treatment systems and to allow SAWS to add an additional storage tank if SAWS determines such a tank is necessary.

13.1.2 Terminus Site Lot 2 and Project Company Storage Tank. Pursuant to Sections 5.14 (Project Company Storage Tank) and 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations) of the Water Transmission and Purchase Agreement, the Project Company shall design and construct the Project Company Storage Tank on Terminus Site Lot 2 in conformance with the Design Requirements, including the requirements of Attachment 13A (Project Company Storage Tank Specifications), and convey, or cause the Water Supply Corporation to convey, the Project Company Storage Tank and Terminus Site Lot 2 to SAWS on the Notice of Acceptance Date.

13.1.3 Grading the Transmission Pipeline Terminus Site. The Project Company shall grade Terminus Site Lot 2 and Terminus Site Lot 3 in order to allow for the construction of the SAWS Interconnection Improvements, including the Project Company Storage Tank, and shall grade the Transmission Pipeline Terminus Site in accordance with the grading plan in Attachment 13B (Grading Plan for Transmission Pipeline Terminus Site) and the grading and compaction specifications in Attachment 13C (Grading Specifications for Transmission Pipeline Terminus Site).

13.1.4 Platting the Transmission Pipeline Terminus Site. The Project Company shall separately plat Terminus Site Lot 1, Terminus Site Lot 2 and Terminus Site Lot 3 and pay all fees required as a condition of platting.

13.1.5 Transmission Pipeline Terminus Site Preparation. Except as specifically provided in Section 13.2 (SAWS Interconnection Improvements), the Project Company shall construct all necessary improvements for the Transmission Pipeline Terminus Site, including off-site drainage and on-site stormwater detention, and other site preparation work, including grading as provided in Section 13.1.3, to prepare the site for construction of the Project Improvements and SAWS Interconnection Improvements. In designing and constructing such improvements and preparing the Transmission Pipeline Terminus Site, the Project Company shall take into account off-site impacts and potential easements for flushing of the SAWS Storage Tank and Project Company Storage Tank, including providing a method for adequate drainage to flush the SAWS Storage Tank and Project Company Storage Tank as necessary.

13.1.6 Mitigation. The Project Company shall acquire tree preservation, flood plain, stormwater and other permits and acquire other land that may be necessary to satisfy drainage, tree, endangered species or other mitigation requirements, or may be necessary for

construction of the SAWS Interconnection Improvements, at the Transmission Pipeline Terminus Site, all as required or necessary under Applicable Law.

13.1.7 Project Flow Meter and Product Water Delivery Point. The Project Company shall construct, operate and maintain the Project Flow Meter on Terminus Site Lot 1 and the Product Water Delivery Point at a point in the pipe between the Project Flow Meter and the Project Company Storage Tank proximate to the property line separating Terminus Site Lot 1 and Terminus Site Lot 2 (as designated by the parties pursuant to a Contract Administration Memorandum). The Product Water Delivery Point will mark the transition of Product Water ownership from the Project Company to SAWS. The Product Water Delivery Point will remain accessible to both the Project Company and SAWS.

13.1.8 Product Water Quality Sampling Locations. Immediately prior to the Product Water Delivery Point on Terminus Site Lot 1, the Project Company shall provide Product Water Quality Sampling Locations for testing Product Water quality in accordance with Appendix 8 (Performance Guarantee Requirements). The Project Company shall provide necessary facilities for treating or discharging Product Water that fails to meet the Product Water Quality Guarantee.

13.1.9 Project Company Bypass Pipe. The Project Company shall install a flanged Tee to accommodate the operation of the SAWS Storage Tank.

13.1.10 Temporary Roads and Other Temporary Services Required to Facilitate Construction Work on the Transmission Pipeline Terminus Site. The Project Company shall construct any and all temporary roads necessary to provide access to the Transmission Pipeline Terminus Site during the Construction Period, including internal service roads, and provide any and all other temporary facilities, structures, equipment, utilities or other services as required to facilitate the proper performance of the Construction Work on the Transmission Pipeline Terminus Site during the Construction Period.

13.1.11 Perimeter Fencing. The Project Company shall install permanent 5-strand barbed wire fencing around the perimeter of the Transmission Pipeline Terminus Site.

13.1.12 Site Landscaping. The Project Company shall provide all landscaping or facility visual improvements for the Transmission Pipeline Terminus Site as required by the City of San Antonio building codes or other Applicable Law.

13.1.13 Schedule for Completion of Transmission Pipeline Terminus Site Work by the Project Company. The schedule for the Construction Work to be performed by the Project Company on the Transmission Pipeline Terminus Site is set forth in Attachment 13D (Schedule for Transmission Pipeline Terminus Site Work By The Project Company). The Project Company shall complete grading as described in Section 13.1.3 and all prior tasks as indicated in Attachment 13D by February 27, 2018 (the "Scheduled Grading Completion Date"), and make the flange connection available to SAWS for connecting the SAWS Distribution System to the Project Company Storage Tank by February 2, 2019 (the "Scheduled Connection Availability Date"). When the Project Company believes that it has achieved completion of the grading and related site preparation work, it shall deliver to SAWS and the SAWS Engineer a written notice thereof (the "Notice of Grading Completion"). The Notice of Grading Completion shall contain a report signed and sealed by a Texas registered professional engineer, in a form acceptable to SAWS and the SAWS Engineer, and with sufficient detail to enable SAWS and the SAWS Engineer to determine the achievement by the Project Company of all such work.

## 13.2. SAWS INTERCONNECTION IMPROVEMENTS

13.2.1 SAWS Interconnection Improvements. SAWS shall design and build the SAWS Interconnection Improvements (excluding the Project Company Storage Tank) necessary to be able to take delivery of Product Water and introduce the delivered Product Water into the SAWS Distribution System. The Project Company Storage Tank shall be constructed by the Project Company and shall become part of the SAWS Interconnection Improvements on the Notice of Acceptance Date as provided in Section 5.14(A) (Construction and Conveyance of Project Company Storage Tank) in the Water Transmission and Purchase Agreement.

13.2.2 SAWS Storage Tank and Other Facilities. SAWS Interconnection Improvements are expected to include storage and treatment facilities and piping or pumping facilities on the SAWS Portion of the Transmission Pipeline Terminus Site. SAWS shall design and construct a SAWS Storage Tank that is hydraulically and operationally compatible with the Project Company Storage Tank.

13.2.3 Permanent Internal Roads, Fencing, Lighting and Surveillance for Terminus Site Lot 2 and Terminus Site Lot 3. SAWS shall construct any and all permanent internal service roads necessary to provide access within the SAWS Portion of the Transmission Pipeline Terminus Site, and provide any and all interior fencing, security gates, lighting, surveillance equipment and other services as required to facilitate the proper operation of the SAWS Interconnection Improvements on the SAWS Portion of the Transmission Pipeline Terminus Site. The Project Company shall be responsible for providing the foregoing as required for Terminus Site Lot 1 and Terminus Site Lot 1 Improvements.

13.2.4 Water Mains. SAWS Interconnection Improvements are expected to include any water mains necessary to convey Product Water from the Transmission Pipeline Terminus Site to other mains within the SAWS Distribution System to ensure the capacity to take delivery of Product Water in volumes and in a manner consistent with SAWS' Product Water purchase obligations under this Water Transmission and Purchase Agreement.

13.2.5 Sewer Service. SAWS shall construct domestic sewer service mains to the Transmission Pipeline Terminus Site capable of providing service to both SAWS and the Project Company.

## 13.3. TRANSMISSION PIPELINE TERMINUS SITE PLAN

13.3.1 Transmission Pipeline Terminus Site and Plan. The Transmission Pipeline Terminus Site consists of Terminus Site Lot 1, Terminus Site Lot 2 and Terminus Site Lot 3. The site plan is attached as Attachment 13E. This site plan completely and fully supersedes all prior versions of the site plan, including Figure 2-9 in Appendix 1.

13.3.2 Modifications to Site Plan. As the Project design develops, the parties shall make modifications the Transmission Pipeline Terminus Site plan that SAWS reasonably requests.

## 13.4. SCADA

SCADA information shall be transmitted by the Project Company from IPS2 and the Transmission Pipeline Terminus Site to SAWS. SAWS shall provide the Project Company with SCADA information from relevant points within the SAWS Distribution System to facilitate good system operation for both parties.

### 13.5. JOINT USE AND COOPERATION

13.5.1 Cooperation. The Project Company agrees to cooperate with SAWS and any other contractor engaged by SAWS (“Separate Contractor”), and SAWS agrees to (or shall cause any Separate Contractor to) cooperate with the Project Company, in connection with the work to be performed toward completion of the Project and SAWS Interconnection Improvements. The parties recognize that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and agree to use their best efforts to work with all such other persons toward fostering such an environment.

#### 13.5.2 Joint Use.

- (a) SAWS Access during Construction of Project Company Storage Tank and Site Preparation Work. The Project Company shall construct the Project Company Storage Tank on Terminus Site Lot 2 and prepare Terminus Site Lot 3, including grading, for construction of SAWS Interconnection Improvements in accordance with the schedule in Attachment 13E. During this period, SAWS expects to visit and inspect the Project, conduct tours, and perform engineering, analysis and such additional surface, subsurface and geotechnical studies or tests as deemed necessary by SAWS in accordance with Section 4.1(B)(2) (Transmission Pipeline Terminus Site Acquisition and Preliminary Site Plan; SAWS Right of Entry), Section 5.14(B) (Operation, Maintenance and Insurance of the Project Company Storage Tank) and Section 9.9 (SAWS Access to Project) of the Water Transmission and Purchase Agreement.
- (b) Concurrent Projects. The Project Company acknowledges that SAWS may construct certain SAWS Interconnection Improvements (“Concurrent Projects”) at the Transmission Pipeline Terminus Site concurrently with the construction of certain Project Improvements by the Project Company at the Transmission Pipeline Terminus Site, and agrees to coordinate the Construction Work with the work associated with any Concurrent Projects in accordance with this Attachment and any Concurrent Projects Coordination Protocol (as described below) to the extent SAWS requires the Separate Contractors to do the same.
- (c) Equipment and Materials Storage at Transmission Pipeline Terminus Site. The Project Company, SAWS and any Separate Contractors shall provide reasonable opportunity for the introduction and storage of their respective equipment and materials and the execution of their respective work at the Transmission Pipeline Terminus Site. The Project Company, SAWS and any Separate Contractors shall coordinate to store apparatus, materials, supplies and equipment in such orderly fashion at the Transmission Pipeline Terminus Site as will not unduly interfere with the progress of all activities taking place on the Transmission Pipeline Terminus Site.
- (d) Concurrent Projects Coordination Protocol. Upon the reasonable request of SAWS, the Project Company shall develop with the Separate Contractors a joint use protocol that is intended to establish a management framework for creating a cooperative and collaborative project environment and facilitate the coordination of schedules, laydown areas, and other issues as necessary (the “Concurrent Projects Coordination Protocol”).
- (e) Internal Layout of Transmission Pipeline Terminus Site. SAWS and the Project Company shall consult and cooperate with each other with respect to the

internal layout of the SAWS Interconnection Improvements and Project Improvements on the Transmission Pipeline Terminus Site.

13.5.3 Coordination Meetings. SAWS intends to have coordination meetings among the Project Company and the various Separate Contractors in an effort to coordinate the work being performed at the Transmission Pipeline Terminus Site and avoid or mitigate cost and time impacts. The Project Company agrees that it will attend and participate in any such logistics meetings with the Separate Contractors, and the Project Company shall cooperate with SAWS and the Separate Contractors, and SAWS shall cooperate with the Project Company, to the extent reasonably necessary for the performance by the Separate Contractors of their work and the Project Company of the Construction Work.

13.5.4 Relationship of Project Company and Separate Contractors. Notwithstanding anything to the contrary in any Concurrent Projects Coordination Protocol or this Water Transmission and Purchase Agreement, the Project Company's agreement to comply with the provisions of this Section 13.5 or any Concurrent Projects Coordination Protocol shall not be construed to: (1) confer upon the Project Company any liability for the acts or omissions of the Separate Contractors; (2) impose upon the Project Company joint or several liability for the acts or omissions of the Separate Contractors; (3) create a partnership, consortium or joint venture relationship among the Project Company and any Separate Contractor; or (4) expand the Project Company's liabilities beyond those set forth in this Water Transmission and Purchase Agreement. Nothing in this Attachment or any Concurrent Projects Coordination Protocol shall limit or excuse the Project Company's performance of the Contract Services, except to the extent the Project Company is entitled to Uncontrollable Circumstance relief as specified in this Water Transmission and Purchase Agreement.

## **ATTACHMENT 13A**

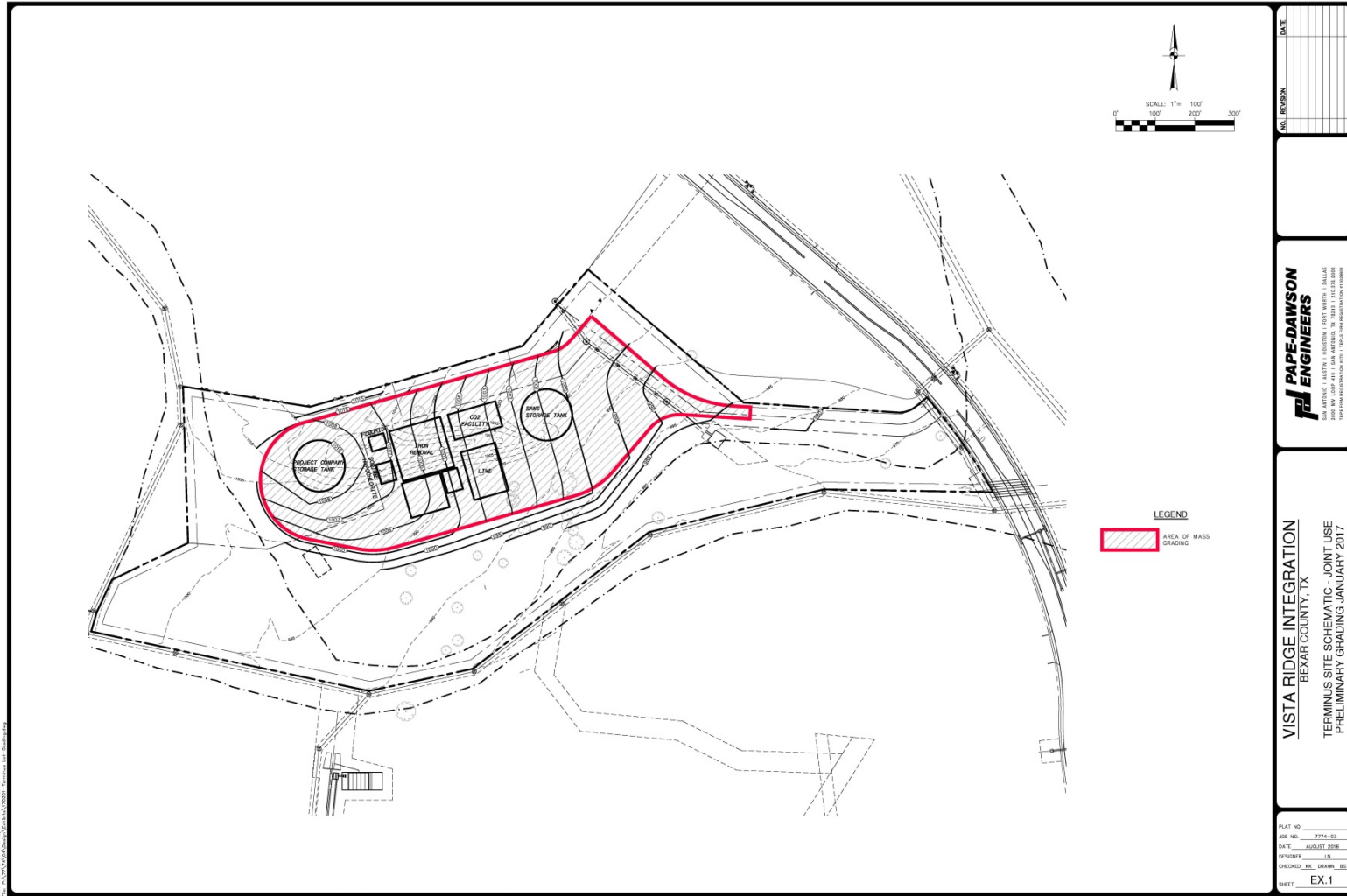
### **PROJECT COMPANY STORAGE TANK SPECIFICATIONS**

1. In accordance with Attachment 3A of Appendix 3 (Technical Specifications), the Project Company Storage Tank will be a AWWA D110, Type III precast, prestressed, concrete circular tank with steel diaphragm, and appurtenances shall be industry standard.
2. The Project Company Storage Tank will follow the recommendations of the “Geotechnical Engineering Study for Vista Ridge Regional Supply Project Terminus Site San Antonio, Texas” by Raba-Kistner Consultants dated December 10, 2015, for the foundation of the tank. The parties acknowledge and agree that the study does not require a pier supported structure.
3. The external ladder will have a vandal guard and ladder-up safety post (but no cage), as well as a landing every 45 feet, or half-way for tanks taller than 45 feet. The Project Company will provide an additive alternate price for the provision of specifically the DBI- Sala Safety Climb System.
4. The internal ladder will have a landing every 45 feet, or half-way for tanks taller than 45 feet. The Project Company will provide an additive alternate price for the provision of specifically the DBI- Sala Safety Climb System.
5. The Project Company will provide an additive alternate price for the provision of handrails encompassing the pie shaped area from the ladder, to vent, to hatch, and back to the ladder along the perimeter of the Project Company Storage Tank, per the typical SAWS standard for safety railing at the top of the tank.
6. Redundant level controls will be provided.
7. The internal stand pipe will be made of steel. The Project Company will provide an additive alternate for the provision of a 316 stainless steel stand pipe.
8. The Project Company will provide a “stilling well” for the level control measurements.
9. The overflow weir will be constructed of 304 stainless steel. The Project Company will provide an additive alternate for the provision of a 316 stainless steel overflow weir.
10. The overflow pipe will be made of ductile iron. The Project Company will provide an additive alternate for the provision of a 316 stainless steel overflow pipe.
11. Overflow structures will meet requirements of TCEQ.
12. Overflow/drain will have erosion design consideration; these may or may not include piping.
13. Space will be available for lay down and construction under the current plat.

14. If SAWS chooses to pursue any of the optional items described above for which additional payment is required, such additional payment will be payable as a Direct Payment to the Project Company.

**ATTACHMENT 13B**

**GRADING PLAN FOR TRANSMISSION PIPELINE TERMINUS SITE**





## **ATTACHMENT 13C**

### **GRADING SPECIFICATIONS FOR TRANSMISSION PIPELINE TERMINUS SITE**

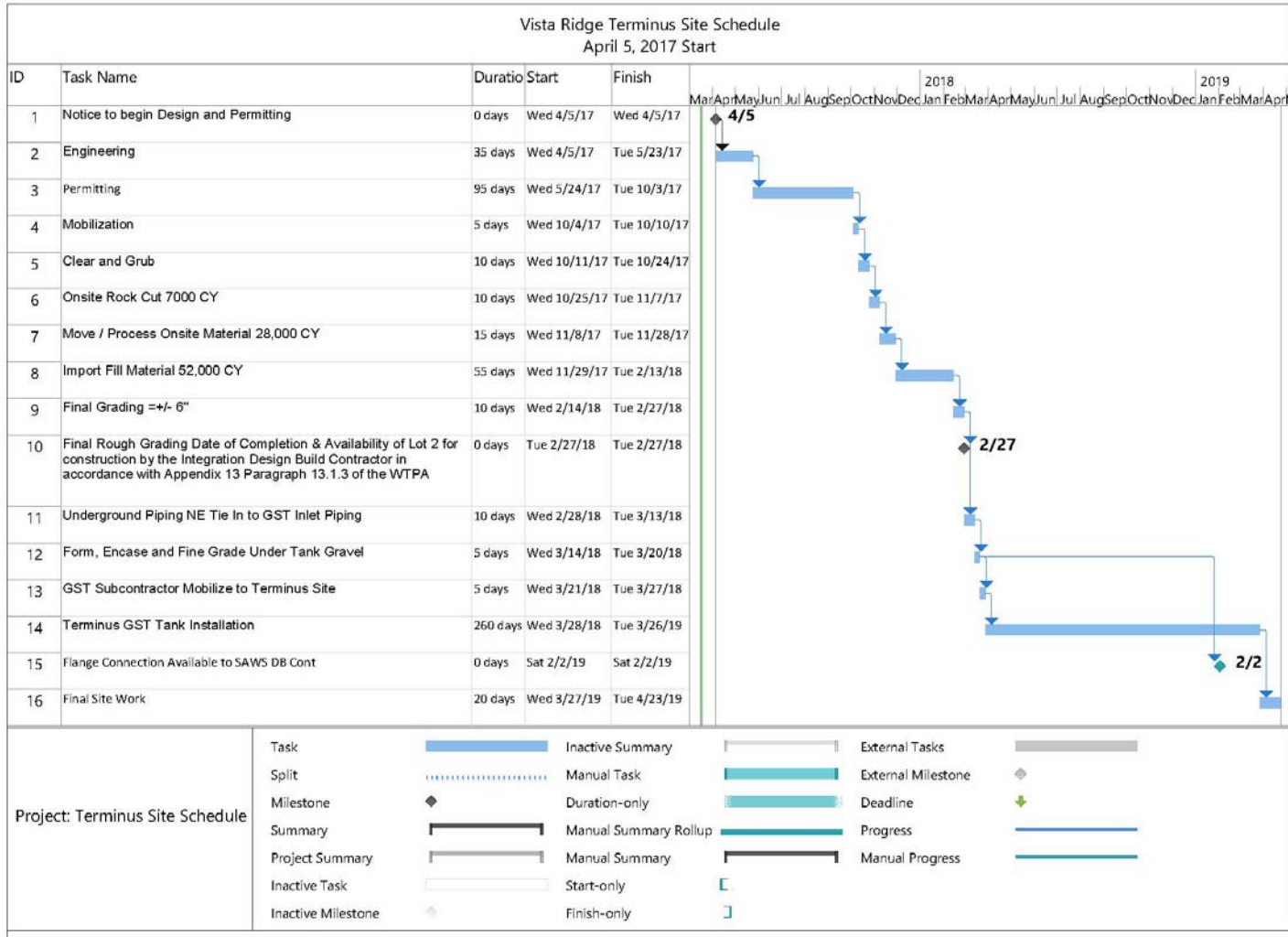
In accordance with the “Geotechnical Engineering Study for Vista Ridge Regional Supply Project Terminus Site,” San Antonio, Texas by Raba Kistner Consultants dated December 10, 2015, the grading and compaction on the Transmission Pipeline Terminus Site shall be as follows:

In general, select fill and onsite material should be placed in loose lifts not exceeding 8 inches in thickness and compacted to at least 95 percent of maximum density as determined by TxDOT, Tex-113-E, Compaction Test. The moisture content of the fill should be maintained within the range of 2 percentage points below to 2 percentage points above the optimum moisture content until final compaction for imported crushed limestone base. For low PI materials, the moisture content of the fill should be maintained within the range of optimum to plus 3 percentage points above the optimum moisture content until final compaction and until permanently covered.

Fills to support the SAWS Storage Tank and Project Company Storage Tank should be placed in loose lifts not exceeding 8 inches in thickness and compacted to at least 95 percent of maximum density as determined by ASTM D 1557, Modified Compaction Test.

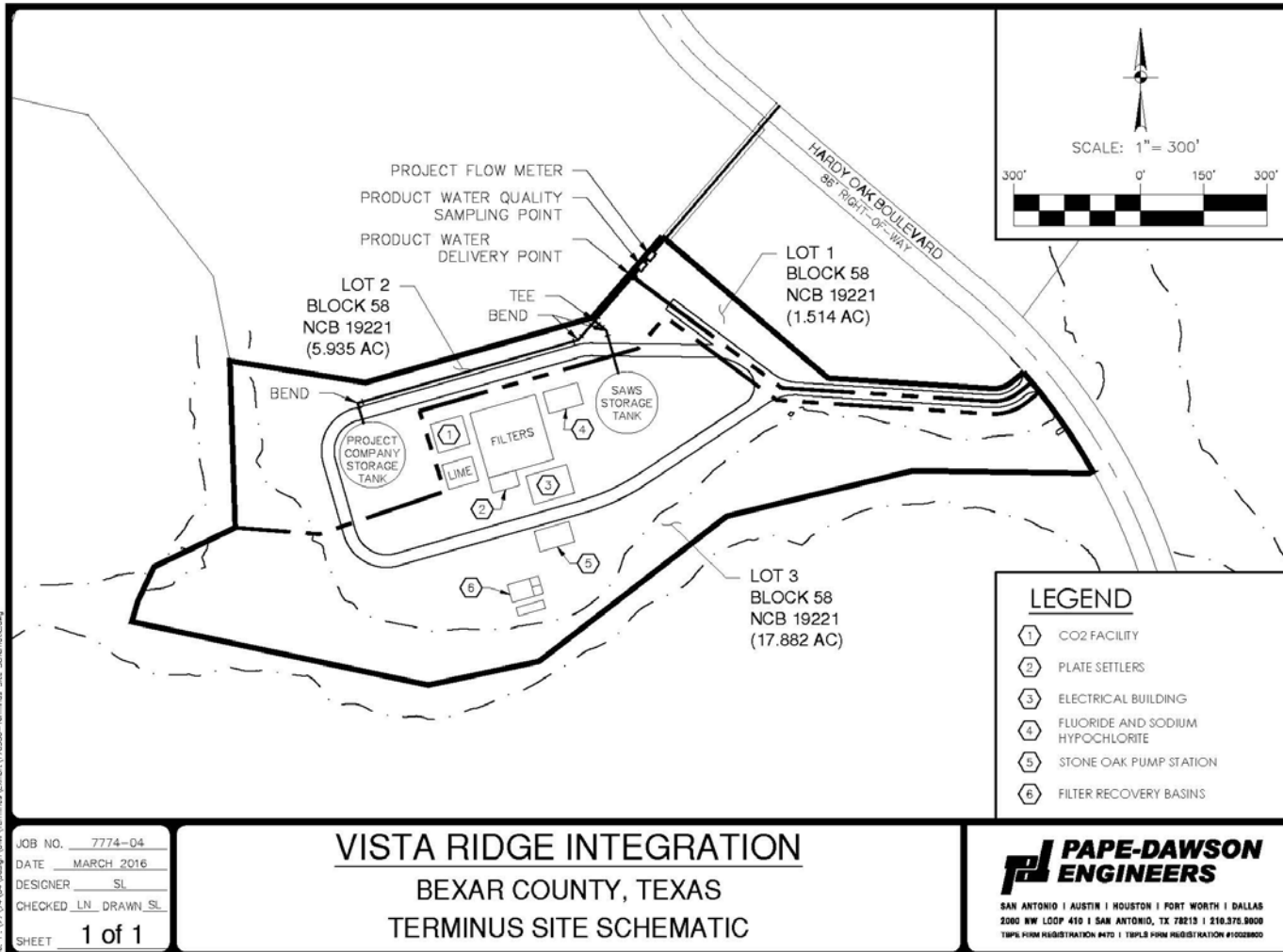
## ATTACHMENT 13D

### SCHEDULE FOR TRANSMISSION PIPELINE TERMINUS SITE WORK BY THE PROJECT COMPANY



**ATTACHMENT 13E**

**TRANSMISSION PIPELINE TERMINUS SITE PLAN**



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THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADEQUATELY ALTERED. RELY ONLY ON FINAL HARD COPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

**APPENDIX 14**

**PROJECT COMPANY AND  
PROJECT CONTRACTORS INFORMATION**

**APPENDIX 14**

**PROJECT COMPANY AND  
PROJECT CONTRACTORS INFORMATION**

14.1. PURPOSE

14.1.1 Purpose. The purpose of this Appendix is to identify: (1) the Project Company's formation and other relevant entity-related information; (2) those Project Contractors that SAWS has approved for use by the Project Company in performing the Contract Services; and (3) the key management and supervisory personnel proposed to be used by the Project Company in performing the Construction Work.

14.2. PROJECT COMPANY INFORMATION

14.2.1 Project Company Information. Project Company represents and warrants that the following information regarding Project Company is true and complete as of the Contract Date:

1.	Name:	Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC)
2.	Date of Formation:	September 15, 2014
3.	State of Formation:	Delaware
4.	Registration/File Number:	5603609
5.	Managers:	
	<u>Name</u>	<u>Address</u>
	Scott Parrish	Garney Construction 1333 NW Vivion Road Kansas City, MO 64118
	Matt Foster	Garney Construction 1333 NW Vivion Road Kansas City, MO 64118
	Bill Williams	Garney Construction 1333 NW Vivion Road Kansas City, MO 64118
	Mike Gardner	Garney Construction 1333 NW Vivion Road Kansas City, MO 64118
	Jeff Lacy	Garney Construction 1333 NW Vivion Road Kansas City, MO 64118
6.	Subsidiaries at the Contract Date:	None

14.3. PROJECT CONTRACTORS

14.3.1 Project Contractors Generally. As provided in Article 13 (Contracting and Labor Practices) of this Water Transmission and Purchase Agreement, the Project Contractors shall be used by the Project Company in connection with the performance of the Contract Services. At any time during the Construction Period or the Operating Period, as applicable, the Project Company may request SAWS to update the list of approved Project Contractors. SAWS will review any suggested changes to such list in accordance with the provisions of Article 13 (Contracting and Labor Practices) of this Water Transmission and Purchase Agreement. SAWS will have the right at any time to review and revise the then-current list of approved Project Contractors consistent with Article 13 (Contracting and Labor Practices) of this Water Transmission and Purchase Agreement.

14.3.2 Approved Project Contractors. The Project Contractors that SAWS has approved as of the Contract Date, and the Project Company is permitted to engage for the roles set forth below, are the following:

	Project Contractor	Role
1.	Garney Companies, Inc.	Design Build Contractor
2.	The Operating Service Provider will be identified in the manner set forth in subsection 13.1(F) of the WTPA.	Operating Service Provider
3.	Central Texas Regional Water Supply Corporation	Water Supply Corporation

14.4. KEY INDIVIDUALS

14.4.1 Generally. As referenced in subsection 13.1(C) (Use of Project Contractors, Subcontractors and Key Individuals) of this Water Transmission and Purchase Agreement, certain key management and supervisory personnel will be used by the Project Company in connection with the performance of the Construction Work and the Operating Work (the “Key Individuals”). The Project Company shall provide SAWS with written notice in advance of the selection of (and any change in) the Key Individuals holding the positions listed in the table below, subject to review and approval (such approval not to be unreasonably withheld or delayed) of SAWS in accordance with subsection 13.1(C) (Use of Project Contractors, Subcontractors and Key Individuals) of this Water Transmission and Purchase Agreement. Resumes for the Key Individuals are included in Attachment 14A (Key Individuals Resumes) of this Appendix and establish the general level of qualifications for the role identified. At a minimum, all Key Individuals shall meet the registration, licensing, and certification requirements of Section 5.6(C) (Registration, Licensing and Certification Requirements) of this Water Transmission and Purchase Agreement. Further, the Chief Operator shall meet the registration, licensing, and certification requirements of Section 9.2(A) (Project Company’s Chief Operator) of this Water Transmission and Purchase Agreement, and all key operations staff shall meet the minimum qualification requirements of Section 9.3 (Staffing and Personnel) of this Water Transmission and Purchase Agreement and Appendix 6 (Operating and Maintenance Standards) of this Water Transmission and Purchase Agreement.

14.4.2 Key Individuals. The Key Individuals and the positions that the Project Company intends them to hold are the following:

**Project Company**

	Project Company Party	Position	Name
1.	Project Company	Project Company Representative/Principal In Charge	Scott Parrish
2.		Operations Manager	Bill Williams
3.		Vice President of Pipe	Matt Foster
4.		Vice President of Plant	Mike Gardner
5.		Commissioning Manager	Scott Setter

**Project Subcontractors**

	Project Company Party	Position	Name
1.	Pape-Dawson Engineers, Inc.	Professional Engineer	Gene Dawson Jr.
2.	BlueWater Systems, LP	Water Developer	Ross Cummings
3.	CP&Y	Professional Engineers	Pete Patel
4.	R.W. Harden & Associates	Professional Engineers	James Bene
5.	Garney Companies	Project Construction Firm	Matt Foster

14.5. SPECIFIED PERSONNEL

14.5.1 Additional Specified Personnel. The Project Company shall provide SAWS with written notice in advance of the selection of (or any change in) the personnel positions listed in the table below (“Specified Personnel”). SAWS shall deliver written notice to the Project Company promptly (but in no event later than 14 days from receipt of such notice) describing any reasonable concerns regarding the qualifications of individuals proposed to hold such positions (or to replace the current Specified Personal). Within seven days of the delivery of SAWS’s notice, the parties shall meet to resolve SAWS’s concerns.

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	Position	Name
1.	Construction Manager – Facilities	Marcus Grace
2.	Construction Manager – Pipe	Jason Jansen
3.	Construction Superintendent	
4.	All Operations Supervisors	
5.	Chief of Security	
6.	Safety Supervisor – Pipe	Dan Stanton
7.	Safety Supervisor – Facilities	Jamie Blystone

14.5.2 Unnamed Specified Personnel as of the Contract Date. To the extent not identified prior to the Financial Closing Date, within 60 days after the Financial Closing Date, the Project Company shall provide the names of the individuals proposed to hold the positions set forth in subsection 14.5.1 (Additional Specified Personnel) of this Appendix and shall provide resumes for each such individual. SAWS shall have the same approval rights set forth in subsection 14.5.1 of this Appendix as for a change in Specified Personnel.

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**ATTACHMENT 14A**  
**KEY INDIVIDUALS RESUMES**

See attached.



## SCOTT PARRISH PRINCIPAL-IN-CHARGE

### Contact Information

Phone: (816) 746-7224  
Email: sparrish@garney.com

### Career Summary

Employed by AVR since: 1988  
Employed in industry since: 1988

### Education

Art Institute of Dallas  
Applied Science  
May 1986

### Affiliations & Certifications

- OSHA Competent Person
- OSHA 10-Hour Trained
- Confined Space Safety Trained
- First Aid and CPR Trained

### PROFESSIONAL SUMMARY

Scott oversees AVR's Central and Western Region pipe operations. He is responsible for strategic direction, coordination of resources, work procurement, profits and collaboration between all AVR Profit Centers. Scott started with Garney in 1988 as a laborer. In 1989, he served in a management support role on water and sewer pipeline projects in Virginia, Missouri, Alabama, and Texas. In 2000, he became a Senior Project Manager, was promoted to Vice President in 2009, and was appointed COO in 2012.

### References

#### Ridge Kaiser

R.W. Harden & Associates  
Ph: (512) 345-2379

#### Rusty Gibson

Freese & Nichols Engineering  
Ph: (817) 735-7300

#### Ross M. Cummings

BlueWater Systems  
Ph: (512) 459-7100

#### William F. Nabak

City of Green Bay, WI  
Ph: (920) 448-3480

### RELEVANT EXPERIENCE

#### NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas

##### Lake Texoma Outfall to Wylie WTP Pipeline (CMAR)

\$281.4 M

CMAR project for the installation of 253,500 LF of 96" and 84" steel waterline, 240 MG balancing reservoir, 200 MG blending facility, ground storage tanks, metering, blending, and chemical feed systems.

##### Lake Tawakoni Water Supply – East Pipeline

\$17.4 M

Installation of 50,690 LF of 60" AWWA C303 bar wrapped concrete cylinder pipe. Also included three 84" tunnels and an impressed current cathodic protection system.

#### MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 – Midland, Texas

##### T-Bar Well Field Development & Delivery Project (Design-Build)

\$97.1 M

Installation of 60 miles of 48" steel and C303 water transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 205,500 LF of 48" steel waterline, 105,250 LF of 48" C303 waterline, and 130,000 LF of 6" to 36" PVC pipe. The project includes rock excavation, auger bores and several manholes.

#### TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas

##### Section 15-1 of the Integrated Pipeline Project

\$92.9 M

Installation of 82,010 LF of 108" waterline via open cut and tunneling, valves, connections, construction of the Richland Chamber Interconnection Facility, various roadway improvements and site improvements.

#### CITY OF CORPUS CHRISTI – Corpus Christi, Texas

##### Mary Rhodes Pipeline Phase II

\$86.2 M

Section A includes 73,000 LF of 54" Class 150 bar-wrapped pipe and 1,900 LF of HDD 48" Class 200 steel pipe. Section B includes 75,000 LF of 54" Class 150 bar-wrapped pipe. Section C included 67,000 LF of 54" Class 150 bar-wrapped pipe, 1,700 LF of HDD 48" Class 200 steel pipeline and 6 MG ground storage tank.



(Parrish continued)

<u>Southside Water Transmission Main – Phases 2, 2A &amp; 3</u>	\$17.0 M
Installation of 30,400 LF of 54" C303 pipe, 36,910 LF of 48" DIP, and 5,930 LF of 42" DIP. Included 1,020 LF of 72" tunnels installed by hand and machine tunneling, extensive dewatering, and a creek crossing.	
<b>CALIFORNIA AMERICAN WATER – Pacific Grove, California</b>	
<u>Monterey Peninsula Water Supply Project</u>	\$69.9 M
Installation of 85,000 LF of 36" mortar-lined steel water pipe and 13,000 LF of 42" PVC pressure water pipe.	
<b>TARRANT REGIONAL WATER DISTRICT – Fort Worth, Texas</b>	
<u>Eagle Mountain Connection Pipeline, Contract B</u>	\$43.5 M
Installation of 47,400 LF of 78" and 84" mortar-lined, polyurethane-coated steel pipe and construction of several large underground cast-in-place concrete structures and two above ground electrical buildings.	
<b>CROSS COUNTY WATER SUPPLY CORPORATION – Austin, Texas</b>	
<u>30" Transmission Line and High Service Pump Station (Design-Build)</u>	\$42.5 M
Installation of 283,000 LF of 30" C303 pipe, a pre-stressed concrete ground storage tank, high service pump station, electrical building, chemical steel arch structure, sodium hypochlorite system, and electrical.	
<b>SAN ANTONIO WATER SYSTEM – San Antonio, Texas</b>	
<u>Water Resources Integration Program Pipeline Segment 2B and 2A</u>	\$30.8 M
Included installation of 72,000 LF of 60" pipeline, multiple steel casing bores, and multiple tunnel liner plate bores.	
<u>Carrizo ASR Wellhead and Wellfield Project, Phases I and II</u>	\$27.9 M
Installation of 87,000 LF of 12" to 60" steel and PVC pipe and 17 vertical line shaft pump installations in existing wells. Included 928 LF of 84" auger bores.	
<u>Market Street Pump Station (CMAR)</u>	\$5.7 M
Refurbishing of an existing pump station with new piping and valves, refurbishing three deep wells, adding new pumps and new meters, and updating the electrical controls.	
<b>CITY OF ABILENE – Abilene, Texas</b>	
<u>O.H. Ivie Water Supply Pipeline</u>	\$20.4 M
Installation of 51 miles of 36" C303 pre-tensioned concrete pipeline from O.H. Ivie Lake to the City of Abilene to meet water demands during a severe drought. Included 1,041 LF of 48" jack and bores.	
<b>CITY OF GREEN BAY – Green Bay, Wisconsin</b>	
<u>54" Parallel Raw Water Transmission Main</u>	\$16.9 M
Installation of 76,455 LF of 54" mortar-lined, tape-wrapped steel pipeline. Included a swamp crossing.	
<b>CITY OF LUBBOCK – Lubbock, Texas</b>	
<u>Lake Alan Henry Water Supply Transmission Pipeline, Contract C</u>	\$16.6 M
Installation of 80,500 LF of 48" bar wrapped concrete cylinder waterline, fiber optic conduit and fiber pull boxes for future SCADA, five 66" hand tunnels totaling 500 LF, and several appurtenances.	
<u>Bailey County Well Field Supply Pipeline – Contract B</u>	\$9.7 M
Installation of 36,645 LF of 30" and 7,923 LF of 36" C303 bar wrapped pipe and 990 LF of 54" tunnel bores.	



**BILL WILLIAMS**  
 OPERATIONS MANAGER

**Career Summary**

Employed by AVR since: 2010  
 Employed in industry since: 1990

**Education**

University of Southern Colorado  
 B.S. in Civil Engineering  
 Technology, Cum Laude  
 May 1991

**Affiliations & Certifications**

- OSHA 10-Hour Trained
- FMI Project Manager Skills College
- SII Construction Schedules

**PROFESSIONAL SUMMARY**

Bill brings over two decades of experience in the municipal water industry managing large complicated and unique projects that include open cut, bored, CIPP lining, and pump stations throughout the western United States. As Operations Manager, Bill is responsible for complete oversight of AVR's Western Region including project acquisition, staffing, safety, scheduling, procurement, subcontractor management, and client satisfaction.

**References**

**Jackie Chambers**

Colorado Springs Utilities  
 Ph: (719) 668-2890

**Randy Parks, PE**

Dewberry  
 Ph: (303) 651-0613

**Dennis Auge**

MWH (Formerly with Colorado Springs Utilities)  
 Ph: (719) 492-8200

**Keith Riley**

Colorado Springs Utilities  
 Ph: (719) 668-8677

**RELEVANT EXPERIENCE**

**COLORADO SPRINGS UTILITIES** – *Colorado Springs, Colorado*

Southern Delivery System Program

\$111.5 M

The \$841 million Southern Delivery System Program was one of the biggest water projects in Colorado consisting of 50 miles of pipeline, three pump stations and a water treatment plant. It delivers water from the Pueblo Reservoir to Colorado Springs, Fountain, Security and Pueblo West. Installed 22 miles of pipeline ranging in size from 24" to 66" over a five-year period starting in 2010. The majority of the project was throughout busy streets and highways of Colorado Springs requiring extensive traffic control and multiple bores.

Homestake Suction Pipeline Replacement (CM/GC)

\$10.0 M

Installation of 1,200 LF of slip lining and 3,200 LF of open cut replacement of 66" carbon steel waterline.

Pikeview to Mesa Raw Water Pipeline (Design-Build)

\$8.8 M

Installation of 12,500 LF of 24" steel waterline to deliver 10 MGD, and 2,000 LF of 12" PVC potable waterline.

South Catamount Reservoir Transfer Pipeline Replacement

\$2.4 M

Installation of 2,650 LF of 36" HDPE pipe across the reservoir using the float and sink method. Two ARVs were installed, as well as one air break manhole, 800 LF of 30" PVC into reservoir via open cut, and 1,000 LF of 32" steel waterline via open cut.

Pine Valley Pipeline Improvements

\$1.1 M

Included the rehabilitation of three PRV vaults and replacement of distressed portions of the pipeline, reconditioning the 70 MGD PRVs, design of a new 2 MGD bypass PRV system capable of reducing head from 350 psi to atmospheric, replacement of vault piping, design of new concrete pipe supports for the 30" PRVs to withstand vibration, and design and installation of a removable covers to facilitate equipment maintenance.

Post-Fire Mitigation for Stanley Canyon Road and Pipeline (Design-Build)

\$6.8 M

Repairs to the Pine Valley and Northfield Pipelines, restoration of Forest Road 303 access road, modifications to drainage conveyance crossings, construction of flood control and conveyance along West Monument Creek, and mitigation and defensive measures to protect roadway and pipeline infrastructure.

# AVR

(Williams continued)

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<u>Little Mesa Tank Replacement Project (Design-Build)</u>	\$5.0 M
Includes the design and replacement of the existing Little Mesa Tank with a 5 MG wire-wound prestressed aboveground concrete D110 Type III tank.	
<u>Tesla EDS Structure Phase 2 &amp; Stanley Canyon Tunnel Inspection &amp; Repairs (Design-Build)</u>	\$3.5 M
Inspect and make minor repairs to Stanley Canyon Tunnel, installing operational pressure control valves in the EDS facility, and develop 60% design documents for any necessary major tunnel repairs.	
<u>Twin Rock 68 MGD Pump Station, Phases I and II</u>	\$552 K
Installation of 72" steel exterior intake piping, 67" steel discharge piping, 6" fire line, and associated appurtenances for the pump station. This project included four 2,000 HP pumps with VFD's.	
<b>CITY OF GREELEY, CO – Greeley, Colorado</b>	
<u>Bellvue Transmission Pipeline Northern Segment - Phase 1</u>	\$22.1 M
Installation of 28,677 LF of 60" treated steel water pipeline, as well as installation of a flow meter, appropriate air vacs and blow-offs, and extensive dewatering due to very heavy ground water.	
<b>CLIMAX MOLYBDENUM COMPANY – Climax, Colorado</b>	
<u>Mill Water Return and PDWTP Pipeline Project</u>	\$10.9 M
Included the installation of 3,468 LF of 30" welded steel pipe, 7,230 LF of 36" welded steel pipe, and 8,072 LF of 24" welded steel pipe and was located in the mountains of Colorado at an elevation of 10,000 feet.	
<b>CITY OF EL PASO, TX – El Paso, Texas</b>	
<u>Artcraft Tanks No. 2 and 3</u>	\$10.5 M
Installation of 11,000 LF of 20" to 30" water line, two 2 MG storage tanks, 20,000 SY of drainage channel and rip-rap, tie-in connections, pavement installation and all associated appurtenances.	
<b>NORTHERN COLORADO WATER CONSERVANCY DISTRICT – Fort Collins, Colorado</b>	
<u>Pleasant Valley Pipeline Project</u>	\$10.3 M
Furnish & install 19,650 LF of 67" welded steel pipe which included one crossing of the Poudre River, a complete turnout structure, BFV's, blowoff assemblies, AR/AV assemblies, and 90 LF of 78" bored casing.	
<b>BASIN ELECTRIC – Beulah, North Dakota</b>	
<u>AVS Raw Water Pipeline Replacement</u>	\$10.0 M
Installation of 47,000 LF of 42" steel pipe, 810 LF of 54" bored casing, manholes, connections, and all associated appurtenances.	
<b>PUBLIC SERVICE COMPANY OF NEW MEXICO – Waterflow, New Mexico</b>	
<u>42" Ductile Iron Waterline – River Pump Station to SJGS's like</u>	\$6.4 M
Installation of 25,027 LF of 42" ductile iron waterline running from the River Pump Station to the San Juan Generating Station's Lake and connects to an existing pipeline at the pump station. There were two jack and bore operations, including bores underneath Hwy 64 and CR 6700, and an open cut crossing of CR 6800.	
<b>CITY OF CAÑON CITY, CO – Cañon City, Colorado</b>	
<u>Cañon City Tank and Pipeline</u>	\$4.8 M
Installation of a 5.0 MGD pre-stressed tank, pump station, and yard piping.	



**MATT FOSTER**  
VICE PRESIDENT OF PIPE

**Contact Information**

Phone: (816) 746-7219  
Email: mfooster@garney.com

**Career Summary**

Employed by AVR since: 1993  
Employed in industry since: 1993

**Education**

Kansas State University  
B.S. in Construction Science and  
Management  
May 1993

**Affiliations & Certifications**

- NUCA Member
- OSHA Competent Person
- OSHA 10-Hour Trained
- Confined Space Safety Trained
- First Aid and CPR Trained

**PROFESSIONAL SUMMARY**

Matt has responsibility for the organization and management of AVR's pipe operations in the Western United States. He estimates, negotiates, and manages operations for multiple projects throughout this area. These projects include large diameter water and sewer pipelines in varying ground conditions and levels of difficulty. He is also responsible for material approval and procurement, scheduling and tracking performance, and coordination and communication between his project team members. Matt is a tremendous team-builder and pays close attention to safety, quality, and customer satisfaction. He was appointed Senior Project Manager in 2000 and Vice President in 2009.

**References**

**Tom Roode**

Denver Water  
Ph: (303) 628-7033

**Randy Parks**

Dewberry  
Ph: (303) 951-0613

**Daniel Rice, P.E.**

Providence Infrastructure  
Ph: (303) 997-5035

**Jay Edwards**

Midland County FWSD No. 1  
Ph: (432) 697-1447

**RELEVANT EXPERIENCE**

**NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas**

Lake Texoma Outfall to Wylie WTP Pipeline (CMAR)

\$281.4 M

CMAR project for the installation of 253,500 LF of 96" and 84" steel waterline, 240 MG balancing reservoir, 200 MG blending facility, ground storage tanks, metering, blending, and chemical feed systems.

**MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 – Midland, Texas**

T-Bar Well Field Development & Delivery Project (Design-Build)

\$97.1 M

Installation of 60 miles of 48" steel and C303 water transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 205,500 LF of 48" steel waterline, 105,250 LF of 48" C303 waterline, and 130,000 LF of 6" to 36" PVC pipe. The project includes rock excavation, auger bores and several manholes.

T-Extension Project (Design-Build)

\$22.9 M

Installation of 24,000 LF of 48" C303 and L301 water transmission main, 57,000 LF of 12" C900 and 16" C905 PVC water distribution line, three hand tunnels, two auger bores, five horizontal directional drills, 5 MG elevated water storage tank, chlorination injection facility, flow control valve structure, and two hot taps.

**TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas**

Section 15-1 of the Integrated Pipeline Project

\$92.9 M

Installation of 82,010 LF of 108" waterline via open cut and tunneling, valves, connections, construction of the Richland Chamber Interconnection Facility, various roadway improvements and site improvements.

Section 14-1 of the Integrated Pipeline Project

\$48.1 M

Installation of 78,641 LF of 108" mortar-lined steel waterline, manholes, air release valves, blow-off valves, and 1,981 LF of 130" to 168" hand tunneling for a tunneled crossing of Interstate 35E, a railroad, and existing high pressure gas lines.



(Foster continued)

**CITY OF AURORA – Aurora, Colorado**

Prairie Waters Project North Campus BPI1 \$52.2 M

20 MGD facility that included 18 recovery wells, five miles of 60" steel pipeline.

Prairie Waters Project Conveyance System Pipeline \$31.1 M

Installation of 56,745 LF of 60" mortar-lined steel pipe with more than 6,000 LF located in a right-of-way. Challenges included creek, railroad, and highway crossings, dewatering, and two 72" hand mined tunnels.

Picadilly Road 24" Waterline \$3.9 M

Installation of 21,027 LF of 24" PVC and 4,843 LF of 12" PVC sanitary force main.

Gun Club 42" Waterline \$2.5 M

Installation of 8,000 LF of 42" steel waterline completely within a busy roadway right-of-way.

**CITY OF ABILENE – Breckenridge, Texas**

PK Second Stage Drought Strategy – Transmission System (CMAR) \$38.1 M

Installation of 143,000 LF of 12" SDR-21 PVC RO concentrate pipeline, 82,000 LF of 36" C-303 bar-wrapped pipe, 55 each 14" HDDs totaling 13,720 and a 3,374 LF 36" HDD under Hubbard Creek Reservoir, 16 auger bores totaling 1,870 LF, rock trenching, outfall structure, tie-ins, pressure sustaining valve vault structure, flow meter vault structure, replacing 6,000 LF RCCP, and surge modifications to existing RCCP lines.

**COLORADO SPRINGS UTILITIES – Colorado Springs, Colorado**

Southern Delivery System Raw Water Pipeline Segment S2 \$26.9 M

Installation of 33,865 LF of 66" steel pipe with 355 LF of cased crossing by tunneling.

Southern Delivery System Raw Water Pipeline Segment S4A East-West \$26.3 M

Installation of 40,000 LF of 66" cement mortar-lined and polyurethane-coated spiral weld steel pipe.

Southern Delivery System Raw Water Pipeline Segment S4A Central (Design-Build) \$21.2 M

Installation of 5,207 LF of tunnel for a 66" raw water carrier pipe under a major state highway, two railroad tracks, a creek, and nearby environmentally-sensitive areas, and 2,106 LF of open cut 66" steel pipe.

Southern Delivery System Raw Water Pipeline Segment N2B \$11.5 M

Installation of 3.2 miles of 66" welded steel raw waterline, 150 LF of trenchless crossing of Hwy 94, 170 LF of open trench cased installation, 16,845 LF of fiber optic conduit, surface grading and restoration, connections to other segments, and cathodic protection system.

Pueblo Dam Connection 1B, Pueblo West Connection & RPSSI \$10.0 M

Extension of 1,560 LF of 90" welded steel pipeline to the Bureau of Reclamation future interconnection point, 55 LF of 36" welded steel pipeline that wyes off the PDC1B pipeline, two 24" reducers, 30 LF of 24" pipeline, meter vault, and 24" meter. The River Pump Station Suction Side Improvements (RPSSI) includes 290 LF of 36" pipeline, two flow balancing vaults and valves, connection to existing 24" line, and new manifold.

Southern Delivery System Finished Water Pipelines Segment FW1 \$4.0 M

Installation of 3,700 LF of parallel 42" and 54" steel waterlines, extensive traffic control, and dewatering.

South Catamount Reservoir Transfer Pipeline Replacement (Design-Build) \$2.4 M

Installation of 36" HDPE pipe across reservoir (float/sink), two ARVs, air break manhole, and 30" PVC outlet.

**CHEYENNE BOARD OF PUBLIC UTILITIES – Cheyenne, Wyoming**

Southern Water Transmission Main, Phase II \$21.2 M

Installation of 38,000 LF of 42" steel waterline, 23,075 LF of 12" to 18" PVC waterline, connections to existing pipeline, hand tunneling, bored steel casing, and pavement removal and replacement.



**MIKE GARDNER**  
VICE PRESIDENT OF PLANT

**Career Summary**

Employed by AVR since: 2004  
Employed in industry since: 1988

**Education**

Kansas State University  
B.S. in Construction Science

**Affiliations & Certifications**

- First Aid & CPR
- NCCER Master Trainer
- Certified Erosion & Sediment Control Inspector
- ABC Member
- Texas WEAT Member

**PROFESSIONAL SUMMARY**

Mike has served as Field Engineer, Project Engineer, Mechanical Superintendent, General Superintendent, Construction Manager, Estimator, Project Manager, and Area Manager. Mike has more than 25 years of experience in constructing water and wastewater treatment facilities, including projects with various types of delivery methods, including CMAR and design-build. His major responsibilities include contract negotiations and personnel management. Mike is responsible for overseeing all plant projects in Texas and the central region.

**References**

**Michael Orth**

Black & Veatch  
Ph: (913) 458-3473

**Alicia Gilley, P.E.**

Metro Wastewater Reclamation Dist.  
Ph: (303) 286-3439

**Hanley Barker**

Water District No. 1  
Ph: (913) 895-5826

**Bill HagenBurger**

Beaver Water District  
Ph: (479) 756-3651

**RELEVANT EXPERIENCE**

**NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas**

Lake Texoma Outfall to Wylie WTP Pipeline (CMAR) \$281.4 M

Installation of 206,000 LF of 96" and 47,500 LF of 84" steel waterline, 240 MG balancing reservoir, ground storage tanks, metering, blending, and chemical feed systems.

Trinity River Main Stem Raw Water Pump Station & Pipeline (CMAR) \$98.0 M

Installation of a 120 MGD pump station, upgrades to diversion pump station hydraulics and conveyance pump station, and associated raw water pipeline.

High Service Pump Station 2-2 and 2-3 Mechanical Improvements \$4.9 M

Improvements to mechanical and structural components with two high service pump stations at a potable water treatment plant, new construction related to electrical advancements, and cathodic protection in the plant yard. Construction includes carbon fiber repairs on sections of 24" to 36" steel piping, replacement of check valves, several butterfly valves, steel pipe couplings, internal joint seals on 30" and 36" steel pump discharge piping, and paint removal and recoating of piping and ferrous surfaces with the pump stations.

**CITY OF CORPUS CHRISTI – Edna, Texas**

Mary Rhodes Pipeline Phase II \$84.7 M

Installation of 215,000 LF of open cut 54" Class 150 bar-wrapped pipeline, 3,600 LF of horizontal directional drilled 48" Class 200 steel pipeline, and a 6 MG D110 Type III pre-stressed concrete buried storage tank.

**WATER DISTRICT NO. 1 OF JOHNSON COUNTY – Kansas City, Kansas**

Facility 3 (Phase V) Water Treatment Plant \$74.1 M

This new 10 MGD (expandable to 30 MGD) plant included two aerators, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chlorine contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.



# AVR

(Gardner continued)

Refurbishment of Filter Gallery Piping and Valves \$268 K

Demolition of influent, effluent, backwash, drain piping and valves at six filters, and replacement with new piping. After installation, all existing and new piping was coated.

**CITY OF ST. JOSEPH – St. Joseph, Missouri**

Ammonia Removal Improvements and Biosolids Dryer \$50.3 M

Industrial aeration basin, DAF feed pump wet well, filtrate equalization basin, grit removal and screening building, meter vault, biosolids dryer building, industrial final clarifier, aeration basins, primary effluent diversion splitter box and meter vault, and intermediate pump station.

Disinfection Facilities and Effluent Pump Station \$18.2 M

Addition of a new UV disinfection facility and effluent pump station to an existing 54 MGD wastewater treatment plant. Included excavations reaching 30' deep, extensive sheet piling, dewatering, 260 H-pile beams driven into bedrock, concrete foundation with 3,000 CY of concrete, treatment equipment including submerged bulb racks, concrete wet well, and three new 36" discharge pumps.

Eastside Sewer Phase 4 – Candy Creek Gravity Sewer, Pump Station & Force Main \$8.7 M

Construction of a new 3 MGD pump station with five 300 HP influent lift progressive cavity pumps, equalization basin, HVAC, electrical, yard piping, 12,350 LF of 36" to 24" Hobas sanitary sewer, 13,460 LF of 16" PVC sanitary force main, directional drilling, sheet piling, bypass pumping and auger boring.

Digester No. 1 Cover Replacement \$963 K

Removal and replacement of 85' diameter fixed cover, removal of three mixers, installation of four new external draft tube mixers along with piping, electrical, instrumentation, and controls, and rehabilitation and repair of concrete digester wall and brick façade.

**CITY OF MIDWEST CITY – Midwest City, Oklahoma**

Pollution Control Facility Improvements \$47.7 M

This 10.2 MGD facility uses the first moving bed biofilm reactor (MBBR) approved for wastewater treatment in Oklahoma. The work to be performed under this contract consists of constructing a new headworks building, MBBR basins, process air blower building, UV building, biosolids pumping complex, and concrete flow diversion structures. The project also includes the renovation of several process structures such as primary and secondary clarifiers, primary sludge pump station, four digesters, de-chlorination basin, main control building, chlorine building, and secondary digester pumping complex.

**CITY OF LAWRENCE – Lawrence, Kansas**

Wakarusa Wastewater Treatment Plant & Conveyance Corridor \$45.2 M

New 14 MGD wastewater treatment facility with headworks facility, BNR flow splitter box, two BNR basins, final clarifier flow splitter box, two 95' clarifiers, final sludge pumping station, chemical storage and feed building, UV flow meter structure, UV disinfection building, 5 MG peak flow storage basin, solids thickening facility, liquid sludge application, combined pumping station, plant-wide control system, electrical service, and interceptor sewer lines.

**TARRANT REGIONAL WATER DISTRICT – Fort Worth, Texas**

Eagle Mountain Connection Pipeline, Contract B \$43.5 M

Installation of 47,400 LF of 78" and 84" mortar-lined, polyurethane-coated steel pipe and construction of several large underground cast-in-place concrete structures and two above ground electrical buildings.



## SCOTT SETTER COMMISSIONING MANAGER

### Career Summary

Employed by AVR since: 2011  
Employed in industry since: 1988

### Affiliations & Certifications

- OSHA 10-Hour Trained
- Confined Space Safety Trained
- First Aid and CPR Trained
- OSHA Excavation Competent Person Training
- Journeyman Electrician License
- Master Electrician License

### PROFESSIONAL SUMMARY

Scott has extensive experience in the construction industry with a strong background in industrial facilities. He has held many positions within the electrical field from journeyman, foreman, superintendent, estimator, and project manager. Scott's roles have included developing and maintaining field installation crews, complete project management duties, close coordination with electrical and instrumentation contractors, owners and engineers. Scott has been thoroughly trained in estimating by Accubid and BHS Estimating Systems and has completed multiple construction management programs. He has taught 8–10 week classes covering electrical control systems ranging from basic electric control equipment, to motor control center wiring, RVSS and VFDs, and PLC based control systems.

### References

**Tom Crowley**  
Carollo Engineers  
Ph: (913) 663-1788

**Hanley Barker**  
Water District No. 1 of Johnson County  
Ph: (913) 895-5826

### RELEVANT EXPERIENCE

#### **NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas**

Lake Texoma Outfall to Wylie WTP Pipeline (CMAR) \$281.4 M

CMAR project for the installation of 253,500 LF of 96" and 84" steel waterline, 240 MG balancing reservoir, 200 MG blending facility, ground storage tanks, metering, blending, and chemical feed systems.

Trinity River Main Stem Pump Station & Pipeline (CMAR) \$29.3 M

CMAR project that includes an intake, pump station with horizontal split case pumps, 87,000 LF of 72" raw water pipeline, upgrades to existing pumping facilities with vertical turbine pumps, micro-tunnel to the Trinity River with T-screen intake, access road, bank stabilization, wier box structure, electrical, SCADA, and communications infrastructure.

#### **WATER DISTRICT NO. 1 OF JOHNSON COUNTY – Kansas City, Kansas**

Wolcott Water Treatment Plant \$74.1 M

10 MGD (ultimate capacity 30 MGD) plant included two aerators, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chlorine contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.

#### **CITY OF ST. JOSEPH – St. Joseph, Missouri**

Ammonia Removal Improvements and Biosolids Dryer \$51.3 M

Industrial aeration basin, DAF feed pump wet well, filtrate equalization basin, grit removal and screening building, meter vault, biosolids dryer building, industrial final clarifier, aeration basins, primary effluent diversion splitter box and meter vault, and intermediate pump station.

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<b>COLORADO RIVER MUNICIPAL WATER DISTRICT – Big Spring, Texas</b>	
<u>Ward County Water Supply Expansion Project Pump Stations (CMAR)</u>	\$28.9 M
Development and construction of pump station and ground storage tank project that included construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station between the well fields and the proposed pump station with a 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, placement of a concrete slab, tying into existing piping, and electrical work.	
<b>CITY OF MIDLOTHIAN – Midlothian, Texas</b>	
<u>Water Treatment Plant No. 2 Phase II (CMAR)</u>	\$18.1 M
Construction of a new 9 MGD plant, including a sedimentation basin, chemical building, recycle pump station, three sludge lagoons, raw water control building, administration building with membrane process equipment, admin offices, laboratory, meeting space and shop, electrical, instrumentation and controls, mechanical work, site work, and a raw water pipeline that will tap a 72" and 90" TRWD raw water line.	
<b>SAN ANTONIO WATER SYSTEM – Elmendorf, Texas</b>	
<u>Water Resources Integration Program: Twin Oaks Pump Station Phase 1</u>	\$13.4 M
Construction of a high service pump station with three 15 MGD vertical turbine pumps at 1,250 HP each, 2,110 LF of 78" to 48" steel mortar-lined waterline, 180 LF of 6" sanitary PVC gravity pipe, 340 LF of small diameter process stainless steel pipe, 500 LF of 48" process steel pipe, concrete foundations and pads, underground and above ground suction and discharge piping, electrical equipment building, and electrical and controls systems.	
<b>GULF COAST WATER AUTHORITY – Dickinson, Texas</b>	
<u>Industrial Reservoir Improvements Project</u>	\$10.8 M
Demolition of two existing reservoir intake control structures, Bleeder Structure on the intake channel, existing reservoir outlet structures, and associated electrical demolition.	
<b>ENABLE MIDSTREAM PARTNERS – Bradley, Oklahoma</b>	
<u>Bradley Gas Plant</u>	\$5.2 M
This project included 134 various sized foundations requiring 14,500 CY of excavation and backfill complicated by the close proximity of the structures. These structures included the forming of 58,231 SF and the placement of 4,300 CY of structural concrete. To facilitate future equipment and piping packages, 2,400 various sized anchor bolts (with the largest being 3" x 62" long) were cast-in-place. These structures will support equipment and piping for processing raw material to a finished propane product.	
<b>RURAL WATER DISTRICT NO. 3 OF DOUGLAS COUNTY – Berryton, Kansas</b>	
<u>Big Springs Water Treatment Facility Expansion</u>	\$2.4 M
Demolition of the existing floor, installation of all structural footings, pipe, and other underground equipment, installation of treatment equipment including pressure filter system by Pureflow Filtration and softening membrane system by Harn R/O Systems, interior and exterior piping, chemical feed systems and equipment, control vaults, and site grading.	
<b>CITY OF LAWRENCE – Lawrence, Kansas</b>	
<u>WTP Electrical/Mechanical Modifications Project</u>	\$1.2 M
Electrical gear modifications and mechanical modifications to the low service pump station at the Kaw WTP. Electrical gear modifications and mechanical piping replacements are also being done at Clinton WTP.	



## MARCUS GRACE PROJECT MANAGER - PLANT

### Career Summary

Employed by Garney since: 2008  
Employed in industry since: 1985

### Education

Colorado State University  
B.S. in Civil Engineering  
Technology

### Affiliations & Certifications

- OSHA 30-Hour Trained
- Certified Erosion & Sediment Control Supervisor
- Surveyor in Training State of New Hampshire No. 281
- Oklahoma Class D Waterworks Operator
- Associate DBIA Professional
- Nebraska WEF Member

### PROFESSIONAL SUMMARY

Marcus has served as Field Engineer, Project Engineer, Estimator, Assistant Project Manager, and Project Manager, and now Senior Project Manager. Marcus has extensive experience in constructing water and wastewater treatment facilities. His industry expertise includes various project delivery methods, including CMAR and design-build, contract negotiations, personnel management, and managing Primavera scheduling software.

### References

**Jade Dundas**  
City of Sioux City, IA  
Ph: (712) 279-6957

**Michael Graves**  
Garver  
Ph: (405) 245-0042

**Nick Lester**  
Freese & Nichols  
Ph: (817) 680-9993

**Marvin Strong**  
City of Grand Island, NE  
Ph: (308) 385-5430

### RELEVANT EXPERIENCE

#### CROSS COUNTY WATER SUPPLY CORPORATION – *Caldwell, Texas*

Cross County 30" Transmission Line & High Service Pump Station (Design-Build) \$42.5 M

Installation of 283,000 LF of 30" C303 pipe, a 1 MG pre-stressed concrete ground storage tank, high service pump station with two 150 HP and two 75 HP vertical turbine pumps with variable frequency drives, an electrical building, chemical steel arch structure, and a sodium hypochlorite system.

Cross County High Service Pump Station \$6.2 M

included a 1 MG D110 Type III pre-stressed concrete aboveground storage tank, high service pump station, electrical building, chemical steel arch structure, sodium hypochlorite system, electrical, instrumentation, SCADA control, cooling tower, and site work including site clearing, site paving and grading, yard piping, site electrical, fencing, and erosion control. Pump station included two 150 HP vertical turbine pumps with VFDs and two 75 HP vertical turbine pumps.

#### COLORADO RIVER MUNICIPAL WATER DISTRICT – *Big Spring, Texas*

Ward County Water Supply Expansion Project Pump Stations \$28.6 M

Construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station with a 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, placing a concrete slab, tying into existing piping, and electrical work.

#### CITY OF WICHITA – *Wichita, Kansas*

Mid-Continent Water Quality Reclamation Facility \$23.3 M

Installation of owner-procured Zenon submerged membrane filtration equipment, fine screening, activated sludge basins with aeration and mixing, chemical feed systems, UV disinfection, and various pumping systems.



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Cowskin Creek Pump Station & Force Main Modifications \$4.1 M  
New ductile iron piping headers, flow meter vaults, moving existing pumps, and new electrical controls and HVAC at the existing Cowskin Creek Pump Station. Installation of 10,000 LF of 18" and 24" C-905 PVC, eight air relief assemblies, 980 LF directional drill under an airport runway, two auger bores under Cowskin Creek, 5,600 LF of electrical duct bank, and associated manholes.

**CITY OF GRAND ISLAND – Grand Island, Nebraska**  
Wastewater Treatment Plant Headworks Improvements \$16.9 M  
New 13 MGD raw wastewater pump station facility with six submersible pumps, new masonry building to house the screening equipment, influent meter vault to house valves and magnetic flow meters for two 30" force mains, grit facility, grit dewatering, electrical room, meter vault, magnetic flow meter, flow distribution structure to distribute effluent from the new grit basins to the primary clarifiers and bypass to the mixed liquor pump station/aeration basins, odor control systems, engine generator, demolition of existing Parshall flume, sampler building and aerated grit basins, abandoning plant interceptors and yard piping, site work, piping, electrical, plant control system, and utility improvements.

**CLAREMORE PUBLIC WORKS AUTHORITY – Claremore, Oklahoma**  
Claremore Wastewater Treatment Plant \$15.9 M  
Construction of new facilities including a 75' aerobic digester, 35' secondary sludge gravity thickener, 20' thickened sludge blend tank, 16' primary sludge gravity thickener, six 149' x 98' aeration basins, 95' secondary clarifier, final clarifier splitter box, re-lift and RAS/WAS pump station, recirculation pump station, blower and solids facility with a new belt filter press, polymer system and conveyors, headworks with screens, vortex grit removal units, grit pumping and washing, and new 350 kW standby generator system.

**SAN ANTONIO WATER SYSTEM – San Antonio, Texas**  
Water Resources Integration Program: Twin Oaks Pump Station Phase 1 \$13.4 M  
Construction of three high service, vertical turbine pump stations at 1,250 HP, 15 MGD each, 2,110 LF of 78", 60" and 48" steel mortar-lined waterline, 180 LF of 6" sanitary PVC gravity pipe, 340 LF of small diameter process stainless steel pipe, 500 LF of 48" process steel pipe, concrete foundations and pads, underground and above ground suction and discharge piping, electrical equipment building, installation of equipment including pumps and fabricated surge tanks, electrical, and controls systems.

DSP Southeast Tank and Pump Station Project \$10.7 M  
Installation of four 2.33 MGD pumps and three 1.67 MGD pumps, including motors, yard piping, piping connections to existing pipelines, valves, flow meters, concrete slabs, and all appurtenances, as well as a 3.5 MG D110 Type III pre-stressed concrete aboveground storage tank.

**CITY OF LINCOLN – Ashland, Nebraska**  
Lincoln Water System Horizontal Collector Well house 14-1 \$1.9 M  
Includes the construction of a horizontal collector well pump house (HCW 14-1), which is located in the Island and East Well fields on a caisson constructed by others. The pump house contains three vertical diffusion vane pumping units – one unit in each is equipped with an adjustable frequency drive, associated piping, valves, motor control center, instrumentation and HVAC. HCW 14-1 is a stand-alone structure with a stair tower and suspended walkway.

Ozone Chemical Feed Systems Modifications \$136 K  
Modifications to the ozone system for safe purging of the ozone feed trains while the rest of the system remained in use, with installation of stainless steel pipe and valves and oxygen cleaning of the system.



## JASON JANSEN CONSTRUCTION MANAGER

### Career Summary

Employed by Garney since: 2004  
Employed in industry since: 1999

### Education

Central Missouri State University  
B.S. in Construction Management  
May 2004

### Affiliations & Certifications

- OSHA 10-Hour Trained
- OSHA Competent Person
  - Confined Space
- ACI Certification
- Plastic Pipe Welder Qualification (Butt Fusion)
- NPDES Certified Construction and Erosion Inspector

### PROFESSIONAL SUMMARY

Prior to joining Garney, Jason worked extensively in the field focusing on utility infrastructure including water, storm, and sanitary sewer mains. Jason currently works alongside our traveling pipe crews. His daily activities include coordinating with owners and engineers, projecting contract costs, procuring materials, ascertaining quotes, scheduling subcontractors, monitoring progress of work, maintaining strong lines of communication with the project superintendent to ensure quality, and serving as a liaison between Garney and property owners.

### References

**Don Rundell**  
City of Round Rock  
Ph: (512) 218-5554

**David Davenport**  
Canyon Regional Water Authority  
Ph: (830) 609-0543

**Lance Webb, P.E.**  
City of Mesa  
Ph: (480) 644-2399

**Jeff Payne, P.E.**  
Freese & Nichols, Inc.  
Ph: (214) 298-2255

### RELEVANT EXPERIENCE

#### **NORTH TEXAS MUNICIPAL WATER DISTRICT – Lake Tawakoni, Texas**

Lake Texoma Outfall to Wylie WTP Pipeline (CMAR) \$281.4 M  
CMAR project for the installation of 253,500 LF of 96" and 84" steel waterline, 240 MG balancing reservoir with HDPE membrane liner installed, 200 MG blending facility, ground storage tanks, metering, blending, and chemical feed systems.

Lake Tawakoni Water Supply – East Pipeline (Contract 7) \$17.4 M  
Installation of 50,690 LF of 60" AWWA C303 bar-wrapped concrete cylinder pipe, three 84" diameter tunnels totaling over 500 LF, and an impressed current cathodic protection system. This pipeline also contains multiple air releases, blow-offs, and access manholes consistently seen on this type of work. Additional challenges included several creek crossings requiring rip-rap and gabion stabilization as well as approximately 10,000 CY of flowable fill backfill.

Lake Texoma Outfall to Wylie WTP Pipeline – Segment D \$15.2 M  
This project includes the construction of 206,000 of 96" steel pipe, 47,500 miles of 84" steel pipe, 240 MG balancing reservoir, and a multitude of ground storage tanks, metering, blending, and chemical feed systems to allow the treatment plant to accept and blend the water directly from the source.

Trinity River Main Stem Pump Station & Raw Water Pipeline \$6.8 M  
CMAR project that includes an intake, pump station with horizontal split case pumps, 87,000 LF of 72" raw water pipeline, upgrades to existing pumping facilities with vertical turbine pumps, micro-tunnel to the Trinity River with T-screen intake, access road, bank stabilization, weir box structure, electrical, SCADA, and communications infrastructure.



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<b>CROSS COUNTY WATER SUPPLY CORPORATION – Caldwell, Texas</b>	
<u>Cross County 30" Transmission Line &amp; High Service Pump Station (Design-Build)</u>	\$42.5 M
Installation of 283,000 LF of 30" C-303 pipe, a pre-stressed concrete ground storage tank, high service pump station, electrical building, chemical steel arch structure, sodium hypochlorite system, and electrical.	
<b>CITY OF LUBBOCK – Lubbock, Texas</b>	
<u>Lake Alan Henry Water Supply Transmission Pipeline, Contract C</u>	\$16.6 M
Installation 80,514 LF of 48" bar wrapped concrete cylinder waterline, six 8" blowoff assemblies, 20 combination air release assemblies, one 48" gate valve, 50 LF of concrete encasement, and other miscellaneous appurtenances. There were five hand tunnels totaling 506 LF of 66" ID steel casing and another 91 LF of open cut 66" ID casing.	
<b>CITY OF MESA – Mesa, Arizona</b>	
<u>Val Vista Water Transmission Main – Phase 3 (CMAR)</u>	\$15.7 M
Garney will self-perform the 48" water transmission main and the surge tank installations.	
<u>Val Vista Water Transmission Main – Phase 2 (CMAR)</u>	\$15.7 M
Installation of 2.9 miles of mainline C303 piping, including 14,611 LF of 60", 75 LF of 48", and 452 LF of 42" pipe, three tunnels totaling 325 LF, as well as associated appurtenances consisting of access manways, air releases, dewatering structures, and cathodic protection test stations.	
<u>Val Vista Water Transmission Main – Phase 1 (CMAR)</u>	\$14.0 M
Installation of 530 LF of 72" C303 through liner plate tunnels and 12,553 LF of 72" and 60" C303 open cut.	
<b>CANYON REGIONAL WATER AUTHORITY – New Braunfels, Texas</b>	
<u>Wells Ranch 30" Water Transmission Line</u>	\$12.6 M
Installation of 85,000 LF of 24" and 30" C303 pipe. Included several bores totaling 2,486 LF.	
<b>JACKSONVILLE ELECTRIC AUTHORITY – Jacksonville, Florida</b>	
<u>Kernan Boulevard Improvements</u>	\$9.3 M
Installation of 13,500 LF of 24" and 18,700 LF of 30" ductile iron waterline and HDPE directional drills.	
<u>Nocatee Force Main</u>	\$4.1 M
Installation of 10,000 LF of 36" HDPE and 6,500 LF of 36" PVC pipe with 6,000 LF installed through wetlands, which involved restrictions on right-of-way access and disturbance due to condition / sensitivity of the area.	
<b>CITY OF ROUND ROCK – Round Rock, Texas</b>	
<u>Raw Water Delivery System</u>	\$8.3 M
Installation of 17,424 LF of 48" and 54" tape-coated, mortar-lined welded steel raw water line.	
<b>CITY OF BARTLESVILLE – Bartlesville, Oklahoma</b>	
<u>Raw Water Transmission Line / Finished Water Transmission Line</u>	\$5.0 M
This project consisted of the installation of approximately 19,600 LF of 42" prestressed concrete cylinder pipe (PCCP), 10,000 LF of 36" PCCP, and 4,000 LF of 30" PCCP through heavily wooded regions and included many vertical deflections due to varying elevations, as well as all necessary valves and appurtenances. It also entailed the installation of approximately 2,000 LF of 4" sanitary force main, two separate open cut road crossings, six separate creek crossings, and 50 LF of 54" hand tunnel.	



## DAN STANTON SAFETY MANAGER - PIPE

### Career Summary

Employed by Garney since: 2007  
Employed in industry since: 1996

### Education

NW Missouri State University  
B.S. in Education

### Affiliations & Certifications

- First Aid/CPR/AED Certified
- First Aid/CPR/AED Instructor's card
- Confined Space Competent
- Excavation Training
- OSHA 10-Hour Trained
- OSHA 300-Hour Trained
- OSHA 10 Trainer
- ASSE Construction Safety Level I
- ASSE Construction Safety Level II

### PROFESSIONAL SUMMARY

Dan has 20 years of experience in the construction industry ranging from laborer to site safety coordinator. He has experience operating heavy equipment and has past experience in the geotechnical field for materials testing. He started his Garney career as a Site Quality Control representative and has since moved onto becoming a site safety coordinator as well as an OSHA 10 trainer. He is currently studying to take his CHST Certification in Construction Safety.

### References

**Mark Semonisck**  
Lockton Companies  
Ph: (303) 414-6182

**Sonny Buczek**  
Xcel Power  
Ph: (720) 273-9390

**Louis Bristowe**  
Veolia Water Solutions & Technologies  
Ph: (412) 370-9950

**Carlos Dominguez**  
Lockton Companies  
Ph: (303) 414-6182

### RELEVANT EXPERIENCE

#### METRO WASTEWATER RECLAMATION DISTRICT – Brighton, Colorado

##### PAR 1088 Northern Treatment Plant (Design-Build)

\$98.9 M

Construction of a 24 MGD WWTP including two odor control facilities with biofilters, chemical storage facility, headworks building, primary splitter structure, two primary clarifiers with 1.8 MG capacity, a primary pump station, bioreactors with four basins at 2.85 MG each, aeration blower building, four secondary clarifiers with 1.52 MG capacity, a RAS/WAS pump station, tertiary pump station, four tertiary flocculation sedimentation basins at 148 KG each, tertiary filters, UV disinfection building, PRW/FBS pump station, effluent meter vault, two gravity thickening basins at 0.42 MG each, gravity thickening pump station, WAS thickening, one 0.67 MG digester and two 1.96 MG digesters, dewatering building, centrate handling, cogeneration facility, and outfall structure.

#### CITY OF AURORA – Aurora, Colorado

##### Prairie Waters North Campus Facilities, BPT1

\$52.2 M

Installation of 18 recovery wells and five miles of 60" steel pipeline to deliver the pretreated raw water to Pumping Station No. 1. The project required the installation of more than 100,000 LF of pipeline ranging in size from 8" to 60," a three-mile-long by 50' deep slurry wall that is 6,632,256 SF, and the excavation and off-site disposal of more than 600,000 CY of granular soils.

#### TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas

##### Section 14-1 of the Integrated Pipeline Project

\$48.1 M

Installation of 78,641 LF of 108" mortar-lined steel waterline, manholes, air release valves, blow-off valves, and 1,981 LF of 130" to 168" hand tunneling for a tunneled crossing of Interstate 35E, a railroad, and existing high pressure gas lines.





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**LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT – Fountain, Colorado**

Harold D. Thompson Water Reclamation Facility \$23.1 M

Included construction of a headworks building, aeration and digester structures, two clarifiers, blower building structure, pumping and disinfection structure, administration building, and maintenance facility. The project also included the installation of all treatment equipment, site utility piping to convey process waters, process pipe, valves, pumps and ancillary process materials.

**CLIMAX MOLYBDENUM COMPANY – Climax, Colorado**

Mill Water Return and PDWTP Pipeline Project \$10.9 M

Included the installation of 3,468 LF of 30" welded steel pipe, 7,230 LF of 36" welded steel pipe, and 8,072 LF of 24" welded steel pipe and was located in the mountains of Colorado at an elevation of 10,000 feet.

**FREEMPORT-MCMORAN – Empire, Colorado**

Urad Mine Flood Bypass Project at Lower Woods Creek \$6.0 M

Included the rebuilding of existing disposal cells and addition of new geomembrane liner, installation of bypass piping consisting of 1,416 LF of 54" HDPE, 1,196 LF of 18" HDPE, open channels for wetlands creation, and a spillway to carry the water down the face of an existing dam into the Lower Urad Reservoir.

**NEWFIELD EXPLORATION COMPANY – Myton, Utah**

Newfield – Beluga Injection \$5.1 M

Installation of a ROSS treatment facility for a 20,000 BPD water system. The major equipment scope of supply includes Multiflo chemical softening, ceramic membrane ultrafiltration, de-aeration, hazardous sludge dewatering and waste disposal, chemical dosing and storage tanks, one new 12,000 square foot building, electrical, and all supporting systems. The concrete and metal building were constructed in extreme winter conditions.

**UNION PACIFIC RAILROAD – Strauss, New Mexico**

East and West Industrial Water Treatment Plant Facilities \$5.0 M

This project included the construction of two new 0.25 MGD industrial wastewater (stormwater) treatment facilities including headworks screening, oil/water separation, and dissolved air flotation separation (DAFT) solids removal treatment systems for Union Pacific Railroad Company's Strauss Fueling Facility, Block Swap Yard and Intermodal Facility Project.

**CITY OF LOVELAND – Loveland, Colorado**

Loveland 4 MG Water Storage Tank \$4.3 M

This project included the construction of a 4 MG potable water concrete D115 internal post-tensioned buried storage tank and related facilities including excavation and backfill, site civil improvements, overflow and drain piping, water mains, site restoration, and all appurtenances associated with the mains and tank.

**CITY OF HOBBS – Hobbs, New Mexico**

Effluent Reuse Phase II Booster Pump Station Improvements \$3.7 M

This project included the construction of an effluent reuse booster pump station, effluent reuse pipelines, electrical and other improvements, including miscellaneous demolition and clearing, a concrete wet well, vertical turbine pump installation, mechanical and stationary screening equipment, site grading, and the removal and replacement of asphalt.



## JAMIE BLYSTONE, CSP, CHST SAFETY MANAGER - PLANT

### Career Summary

Employed by Garney since: 2007  
Employed in industry since: 2001

### Education

University of Central Missouri  
B.S. in Occupational Safety/Health

### Affiliations & Certifications

- BCSP – Certified Safety Professional #22806
- CCHEST – Construction Health and Safety Technician
- OSHA 500 Trainer
- Scaffolding Competent Person Instructor
- Respiratory Protection Competent Person
- ASSE Member
- NUCA Member

### PROFESSIONAL SUMMARY

Jamie has several years of experience in the construction industry, and all positions have been within the safety field. He has experience in water, wastewater and commercial construction in addition to experience in environmental remediation and hazardous materials handling. Jamie has received training in excavation, fall protection, scaffolding, confined space, hazardous materials, and cranes. In addition, he is responsible for developing and teaching company safety-related courses and is a vital member of the company safety committee. Jamie's role is 100% devoted to overseeing safety on Garney's job sites. Jamie reports to Steve McCandless, Vice President

### References

#### Dave Redlin

Progressive Environmental  
Ph. (913) 406-2825

#### Don Sanders

Denovo Constructors  
Ph: (573) 489-8542

#### Rob Kellogg

Safety Consulting & Training Services  
Ph. (815) 766-0885

### RELEVANT EXPERIENCE

#### MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 – Midland, Texas

##### T-Bar Well Field Development & Delivery Project (Design-Build)

\$97.1 M

Installation of 60 miles of 48" steel and C303 water transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 205,500 LF of 48" steel waterline, 105,250 LF of 48" C303 waterline, and 130,000 LF of 6" to 36" PVC pipe. The project includes rock excavation, auger bores and several manholes.

##### T-Bar Water Supply System Disinfection Facility

\$6.2 M

Construction of a 2 MG composite elevated tank along with the construction of a disinfection facility. The disinfection facility contains a chlorine scrubber, ammonia scrubber, electrical room, chlorinator room, ammoniator room, two ammonia storage tanks, emergency generator with the capacity of 500 kW, and a chlorine container storage island.

#### WATER DISTRICT NO. 1 OF JOHNSON COUNTY – Kansas City, Kansas

##### Wolcott Water Treatment Plant

\$74.1 M

10 MGD (ultimate capacity 30 MGD) plant included two aerators, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chlorine contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.

#### KENTUCKY AMERICAN WATER – Lexington, Kentucky

##### High Service Mains for WTP on Pool 3 – Contracts A & B

\$56.7 M

Installation of 66,000 LF of 42" ductile iron pipe with polyethylene encasement, four 42" flex ring gate valves, 10 air valve assemblies, and 970 LF of 60" bore with casing pipe with one bore descending a 120' bluff to a creek bottom.



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**CITY OF MIDWEST CITY – *Midwest City, Oklahoma***

Pollution Control Facility Improvements \$47.7 M

This 10.2 MGD facility uses the first moving bed biofilm reactor (MBBR) approved for wastewater treatment in Oklahoma. The work to be performed under this contract consists of constructing a new headworks building, MBBR basins, process air blower building, UV building, biosolids pumping complex, and concrete flow diversion structures. The project also includes the renovation of several process structures such as primary and secondary clarifiers, primary sludge pump station, four digesters, de-chlorination basin, main control building, chlorine building, and secondary digester pumping complex.

**CITY OF OLATHE – *Olathe, Kansas***

Cedar Creek Wastewater Treatment Plant \$35.0 M

Expansion of an existing wastewater treatment plant from 14.25 MGD to 30 MGD that included new influent sewer, 45' deep influent pumping station in solid rock, 6 MG extraneous flow basin, headworks building with screening and grit removal, two five-stage BNR basins, blower building to house single-stage Siemens centrifugal blowers, two 130' diameter final clarifiers, RAS/WAS sludge pumping station, replacement of UV equipment in existing UV building, modifications to existing control building, and new chemical feed systems.

**COLORADO RIVER MUNICIPAL WATER DISTRICT – *Big Spring, Texas***

Ward County Water Supply Expansion Project Pump Stations (CMAR) \$28.6 M

Construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station with a 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, placing a concrete slab, tying into existing piping, and electrical work.

**CITY OF SIOUX CITY – *Sioux City, Iowa***

Secondary Treatment Facilities Improvements (Phase 2) \$27.0 M

Construction included a 115' final clarifier, two 126x 126' aeration basins, a lime system, and two final clarifier splitter structures, removal and replacement of four existing blowers with four new 900 HP blowers, three rebuilt 400 HP blowers, upgrade of the majority of air piping feeding the existing and new aeration basins, replacement of three RAS/WAS pumps, replacement of four direct drive motors and shafts with four new VFD driven motors and shafts on the influent wastewater pumps, and new motors on the drain lift pumps.

**CITY OF WICHITA – *Wichita, Kansas***

Mid-Continent Water Quality Reclamation Facility \$23.3 M

Installation of owner-procured Zenon submerged membrane filtration equipment, fine screening, activated sludge basins with aeration and mixing, chemical feed systems, UV disinfection, and pumping systems.

Cowskin Creek Pump Station & Force Main Modifications \$4.1 M

New ductile iron piping headers, flow meter vaults, moving existing pumps, and new electrical controls and HVAC at the existing Cowskin Creek Pump Station. Installation of 10,000 LF of 18" and 24" C-905 PVC, eight air relief assemblies, 980 LF directional drill under an airport runway, two auger bores under Cowskin Creek, 5,600 LF of electrical duct bank, and associated manholes.

**CITY OF MIDLOTHIAN – *Midlothian, Texas***

Water Treatment Plant No. 2 Phase II (CMAR) \$18.0 M

Construction of a sedimentation basin, chemical building, recycle pump station, three sludge lagoons, raw water control building, administration building with Biwater reverse osmosis system and Touray membrane process equipment, laboratory, meeting space and shop, electrical, instrumentation and controls, mechanical and site work, and raw water pipeline that taps a 72" and 90" raw water line.

**NAME:** Gene Dawson, Jr., P.E.

**EDUCATION:** Bachelor of Science in Civil Engineering, Texas A&M Kingsville, 1982

**PROFESSIONAL REGISTRATION:** Professional Engineer, Texas No. 64280

**PROFESSIONAL ACHIEVEMENTS:**

Mr. Dawson is President of Pape-Dawson Engineers, Inc., which was established in 1965. His current responsibilities include the firm's management, allocation of resources, strategic planning, and operations of the firm. As President, he is responsible for the firm's overall performance and provides oversight for major projects.



**PROFESSIONAL EXPERIENCE:**

Mr. Dawson's experience includes over 30 years of progressive civil and environmental engineering in the execution of land development, transportation, public works and infrastructure projects.

**HONORS AND AWARDS:**

- Greater San Antonio Builders Association Associate Legend of Year, 2013
- Inducted as a Distinguished Alumni at Texas A&M University-Kingsville, 2012
- "The Dawson Family" Inducted into the San Antonio Business Hall of Fame by Junior Achievement, 2009
- Bexar Land Trust Honoree, 2005
- American Society of Landscape Architect, Environmental Stewardship Award, 2002
- National Association of Homebuilders, Member Award, 2002
- YMCA of San Antonio, Volunteer of the Year, 2000
- YMCA of San Antonio, Red Triangle Recipient, 1999
- Real Estate Council of Texas, Philip M. Barshop Founder's Award, 1999
- Selected Texas Society of Professional Engineers, Bexar Chapter, Engineer of the Year, 1999
- Selected Texas Society of Professional Engineers, Bexar Chapter, Young Engineer of the Year, 1991

**CIVIC AND OTHER ORGANIZATION MEMBERSHIPS:**

- San Antonio Water System, TMDL Committee Co-Chair, 2013-Present
- Texas A&M Kingsville, President's Leadership Council, 2011-Present
- University of Texas at San Antonio, Roadrunner Foundation Board, 2011-Present
- Greater San Antonio Builders Association, Board of Directors, 2010-Present
- Cancer Therapy and Research Center, Board of Directors, 2010-Present
- San Antonio Christian Schools, Philanthropy Committee, 2008-Present
- Bank of San Antonio, Board of Directors, 2007-Present
- Alamo Bowl, Chairman, 2009, Board of Directors, 2002-Present
- Real Estate Council of Texas, President, 2000, Executive Council, 2000-Present

**MAJOR WORKS:**

As President, Mr. Dawson's responsibilities include a vast array of technical and managerial functions for a diverse range of civil engineering projects. Types of projects include:

- Federal/State Highways
- Master development planning of residential, commercial and industrial developments

- Corporate campus expansions
- Golf course developments
- Major single and multi-family subdivisions
- Retirement villages
- Sport facilities
- Elementary, junior and high school projects
- Floodplain modeling and floodplain reclamation
- Municipal and private wastewater collection systems, water distribution systems, streets and drainage projects
- Feasibility studies
- City and school district capital improvement projects
- Water pollution abatement plans

## **Ross Cummings**

### **President and General Partner**

Ross Cummings formed BlueWater in 2004 to acquire control of the initial groundwater leases and a producing well from Layne Christensen Company (NASDAQ-LAYN). He has served the President and General Partner of BlueWater Systems and BlueWater 130 and also serves as Secretary/Treasurer and a member of the Board of Directors of the Cross County Water Supply Corporation. Prior to 2004, Mr. Cummings was the President of Austin, Texas based Cummings-Baccus Interests, Inc., a respected and highly successful commercial real estate investment firm. He earned a BA in Petroleum Land Management from the University of Texas at Austin.



## Pete K. Patel, PE President and Chief Executive Officer

### Background

Pete Patel has more than 35 years of management experience focused on organizing and implementing complex, multidiscipline projects. He has successfully managed hundreds of assignments in the service of local, state and federal governmental clients throughout the U.S. and abroad. He has directed consortiums for design/build/and operate project delivery systems on International water and wastewater projects.

As President of the firm, he controls multiple offices, personnel, and projects. In addition to his technical background, Pete is adept at the economics involved with project management, forecasting, budgets, and organizing multiple project participants and variables. He has demonstrated the ability to apply a vast network of resources to specific goals and tasks at hand to achieve maximum project success.

His technical experience extensively includes all aspects of water and wastewater related projects and he has "hands on" experience in the management, evaluation and design of Electrical, Instrumentation, and SCADA systems for municipalities, river authorities, and international clients including for many large water and wastewater treatment plants.

### Project Experience

#### Integrated Pipeline (IPL) Project, partnership of the Tarrant Regional Water District (TRWD) and the City of Dallas, North Texas

Principal in Charge. Design of Segment 15-1 for a 108-inch diameter pipeline in a rural and semi-rural area of Navarro County including design criteria confirmation, route analysis, environmental and permit coordination, sustainability development, and evaluation of staging areas, haul roads, and spoil areas. The pipeline will run from Lake Palestine which is south of Tyler to Lake Benbrook which is southwest of Fort Worth, with connections to Cedar Creek and Richland-Chambers Reservoirs. It will also integrate TRWD's existing pipelines to the Dallas system to provide water for over 1.5 million people. The IPL Project will ultimately deliver a required capacity of 350 million gallons per day (MGD) of raw water to North Central Texas through the use of approximately 150 miles of pipeline, three lake pump stations and two booster pump stations.

#### Water Transmission 130 Project, Cross County Water Supply Corporation, Austin, Texas

Principal in Charge. Design of an approximate 53-mile, 30-inch water transmission main project. The pipeline is routed through a semi-rural to rural alignment. The project includes railroad, highway, county road and creek trenchless crossings, system hydraulics, disinfection and treatment analysis, agency permitting, and construction services. The pump stations facilities included supply well pump, cooling tower, 1.5-MG ground storage tank, 4 MGD high service pumps station, disinfection feed system and an electrical building. The project was a CMAR with Garney Construction Company as the successful contractor.

#### El Yunque Water Treatment Plant, Compania de Aguas, Puerto Rico

Principal in Charge; Supervised study and design phases of this 20 MGD plant utilizing ACTIFLO treatment process. \$29 million. This project on the North Coast of Puerto Rico gets its raw water supply from the only tropical forest in the USA.

#### North Coast Superaqueduct Project, San Juan, Puerto Rico

Principal in Charge; Successfully managed conceptual planning and preparation of a Design, Build, and Operate proposal for a 100 MGD water treatment plant with a 70 KM of 72-inch diameter treated water transmission system for the City of San Juan, Puerto Rico. This \$320 million project was the largest Design-Build-Operate water projects in North America at the time of contract award.

### Education

Bachelor of Science, Electrical Engineering, University of Texas at El Paso, 1973

### Registrations

Professional Engineer:  
Texas #44712, 1979

### Years of Experience

43

### Years with CP&Y

35

### TxDOT Precertifications

8.2.1 Illumination  
10.4.1 Pump Station-Hydraulics

### Affiliations

IEEE – Institute of Electrical and Electronics Engineering  
ISA – Instrument Society of America  
AWWA – American Water Works Association  
ACEC – American Council of Engineering Companies  
WEF – Water Environment Federation  
ASCE – American Society of Civil Engineers

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**Pete K. Patel, PE**  
President and Chief Executive Officer

**North Coast Water Transmission and Distribution Project, AFI AAA Initiative, San Juan, Puerto Rico**

Principal in Charge of the design of North Coast Water Transmission and Distribution Project for eight municipalities along the North Coast of Puerto Rico. This Design-Build-Operate project costing \$68 million includes water transmission lines, 15 ground storage reservoirs from 1 MG to 5 MG each and 11 pumping stations, all controlled from a central location at the water treatment plant.

**Water Distribution Project, AFI AAA Initiative, San Juan, Puerto Rico**

Principal in Charge of the design of a \$48 million water distribution project within the City of San Juan. This Design/CM project includes three pumping stations and distribution lines of various sizes throughout the western half of the metropolitan San Juan.

**Filtration Project, Beijing, China**

Successfully managed conceptual planning, preparation of proposal, and the management of a 133 MGD direct filtration project for the City of Beijing. This project included design and furnishing of all filter related U.S. made equipment.

**Cadiz Pump Station Wastewater Treatment Plant Improvements, Dallas Water Utilities (DWU), Dallas, Texas**

New and replacement pumps, motors, and eddy current drives.

**Central Regional Wastewater Treatment Plant, Trinity River Authority of Texas, Texas**

Electrical Systems Master Plan Study and Phase I design improvements to 140 MGD treatment plant; Lighting, underground power distribution, communication systems, and plant electrical system.

**Raw Water Intake and Pump Station, Upper Trinity Regional Water District, Lewisville, Texas**

Managed the planning, feasibility studies, design, and construction of a 200 MGD Raw Water Intake and Pump Station.

**Upper Trinity Regional Water District, Texas**

Design of electrical/SCADA systems for a 20 MGD water treatment plant; Project Manager for 200 MGD raw water intake structure and pump station in Lewisville Lake.

**Village Creek Wastewater Treatment Plant, Fort Worth, Texas**

Computer control complex additions; digester and aeration, electrical and instrumentation system improvements, and Phase IIC improvements; and a new central plant-wide SCADA System.

**City of Dallas, Texas**

Lake Fork Reservoir raw water pump station.

**City of Denton, Texas**

Electrical and SCADA system for Pecan Creek Water Reclamation project.

**City of Denton, Texas City of Denton, Texas**

Electrical and SCADA system for Pecan Creek Water Reclamation project.

**Multiple Water Improvements to various facilities for the City of Dallas, Texas**

- 80 MGD Sorcery Road pump station
- 180 MGD Elm Fork high service pump station No. 2
- 250 MGD Alta Mesa pump station
- 200 MGD East Side transfer pump station No. 2
- 160 MGD Iron Bridge raw water pump station additions
- Elm Fork Low Lift Pump Station No. 2 - 160 MGD
- Forney Raw Pump Station addition
- Jim Miller Pump Station expansion
- Lake Fork 214 MGD raw water pump station
- Electrical and instrumentation system evaluations for Bachman Water Treatment Plant
- Hydraulic improvements East Side Water Treatment Plant
- 330 MGD raw water intake and 168 MGD pump station at the Elm Fork Water Treatment Plant

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## James Bené, P.G.

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### Education

B.S., Geological Sciences with Honors from the University of Texas at El Paso, 1997

M.S., Geological Sciences from the University of Texas at Austin, 2000

### Registrations & Memberships

- Professional Geoscientist, Texas No.2089
- National Groundwater Association
- Texas Groundwater Association
- Austin Geologic Society
- Association of Ground Water Scientists and Engineers Geological Society of America

### Professional Experience

- **2009 – Present:** Consulting Hydrologist, Principal, R.W. Harden & Associates, Inc., Austin, Texas
- **2005 – 2009:** Consulting Hydrologist, Project Manager, R.W. Harden & Associates, Inc., Austin, Texas
- **2000 – 2005:** Hydrogeologist, R.W. Harden & Associates, Inc., Austin, Texas
- **1996 – 1997:** Research Associate, Mesilla Bolson Contaminant Infiltration Study, El Paso, Texas

### Principal, R.W. Harden & Associates, Inc. (RWH&A)

With his experience as a professional hydrogeologist and a partner in the in the firm R.W. Harden & Associates, Inc., Mr. Bené has gained the skills required for the study and development of groundwater resources. During his career, he has conducted numerous groundwater availability evaluations, subsurface testing programs, and well field development projects. Mr. Bené has been an integral part of teams responsible for the development, calibration, and implementation of numerous groundwater flow models of various aquifers throughout Texas for water supply and management purposes.

### Select Professional Experience

#### Northern Trinity-Woodbine Groundwater Availability Model (GAM)

Awarded to RWH&A by the State of Texas in 2003, the Northern Trinity-Woodbine groundwater availability model is one of the most complex groundwater availability models ever completed for a

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## James Bené, P.G.

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major aquifer system in Texas. Mr. Bené coordinated the efforts of project team members during development of the model, which simulates flow through seven distinct geologic units and covers approximately 37,000 square miles of Cretaceous sand, shale, and limestone in central and northern Texas. The Trinity-Woodbine GAM required a high degree of scientific, technical, and organizational skills in order to provide State regulatory agencies and groundwater conservation districts the best possible tool for the development of Trinity groundwater management plans. Tasks associated with the GAM included the construction, calibration, and verification of the model to measured water levels and stream flows, as well as the creation of a regional groundwater use database. Work also included compilation of data pertaining to aquifer structure and hydraulic properties, recharge fluxes, evapotranspiration fluxes, boundary conditions, and surface/groundwater interaction. The model is used by the State, municipalities, districts, and regional water planning groups to predict the effects of projected pumpage in the Northern Trinity-Woodbine over a 50-year planning period.

### **The City of the Colony Groundwater Supply Development – Denton County, TX**

Mr. Bené managed team members during the performance of various tasks associated with the development of groundwater resources from the Trinity Group aquifers in southeastern Denton County, Texas. Specific work products included:

- Performance of a general groundwater availability evaluation,
- Assessment of the feasibility of implementing an Aquifer Storage and Recovery (ASR) system to augment supplies during peak use times,
- Evaluation of existing municipal wells,
- Obtaining TCEQ approval to construct and operate two new public water supply wells, and
- Design, construction, and testing of two large-capacity wells completed in the lower Trinity (Hosston Fm.) within the City of The Colony.

### **Wilcox Groundwater Development – Bistone MWSO, Limestone County, TX**

For over ten years, RWH&A has performed a variety of well field services for Bistone Municipal Water Supply District (Bistone). Following the completion of initial evaluations, RWH&A managed each phase of the construction process for wells installed in 1998, 2005 and 2010. In the 1990s, RWH&A completed field testing and long-term well yield and interference modeling of Bistone's existing production wells in Limestone County. As part of this initial evaluation, RWH&A provided recommendations for optimizing well field performance and for augmenting overall production with construction of new wells.

In the 2000's, supplemental assessments evaluated the potential impacts and benefits associated with further construction in Bistone's well field. During that time, Mr. Bené led a team that

- Performed aquifer drawdown and recovery tests in several existing Wilcox Group wells to determine the hydraulic characteristics of the wells and aquifer production zones at the site,

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- Conducted a test drilling and aquifer testing program as a precursor to development of additional supplies,
- Developed both analytical well field models and regional-scale finite-difference groundwater flow models of the southern Limestone County region as an aid in determining the long-term availability from the Wilcox aquifer,
- Generated the submittals necessary to obtain TCEQ approval to construct and use new public supply wells,
- Produced detailed specifications and bidding documents for two new Bistone wells,
- Provided on-site oversight of the well construction and acceptance testing of new Wilcox aquifer public supply wells.

**Groundwater Supply Development – Canyon Regional Water Authority (CRWA),  
Guadalupe, Gonzales Counties, TX**

Mr. Bené managed this project, which consists of the development of a 10,000 acre-feet per year Carrizo aquifer groundwater supply in Gonzales and Guadalupe Counties for Canyon Regional Water Authority (CRWA). Tasks associated with this work include field testing of existing CRWA wells on the Wells Ranch, compilation of regional hydrogeologic data, numerical flow model construction, evaluation of the data to produce estimates of long-term groundwater availability, preliminary well and well field design, and compliance with the rules and regulations promulgated by the Guadalupe County Groundwater Conservation District (GCGCD) and the Gonzales County Underground Water Conservation District (GCUWCD). Following the initial project phase, technical specifications and drawings were assembled for several high-capacity production wells. RWH&A assisted CRWA personnel with construction contract administration, providing on-site observation of well construction methods and materials, and field-testing of three production wells. Throughout this work, Mr. Bené managed a team responsible for performing groundwater modeling, preparing permit applications, and provided expert witness services for CRWA during contested case hearings and negotiations with local groundwater district personnel and legal counsel. In addition, Mr. Bené led the team responsible for the development of tasks and computation of costs associated with mitigation of impacts resulting from development of this groundwater supply.

**Groundwater Management – Three Oaks Mine, Bastrop and Lee Counties, TX**

This ongoing project consists of extensive groundwater investigations of the Wilcox Group to support mining, industrial, and municipal water supply operations. For the past several years, Mr. Bené managed project team members responsible for performing extensive test drilling, water quality sampling, geophysical logging, aquifer testing, producing conceptual and final well and well field designs, groundwater modeling, production well design, specification preparation for test drilling and production wells, construction inspection, and contract management. To date, this project has included the drilling of hundreds of test holes, design and construction of over 55 production wells with yields up to 2,500 gallons per minute and a total production capacity of about 35,000 acre-feet per year. Work also included assessment of impacts from production, monitoring regional drawdown and impacts to private

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wells, mitigating impacts from the development of the supply, and Railroad Commission of Texas regulatory support.

As part of this complex operation, RWH&A developed a regional groundwater flow model which aids in the design of a groundwater management system at the mines as well as with the evaluation of the drawdown associated with mining operations. Encompassing over 8,300 square miles, this model segregates the Carrizo/Wilcox into ten distinct units, which allows for precise simulation of the aquifer response to dewatering and depressurization requirements through time. In addition, the model was designed for use as a tool to predict the likely declines in the various Carrizo/Wilcox formations resulting from long-term groundwater use in the region. Although originally developed to evaluate the regional effects of mining activities, the model was later modified and utilized to appraise the groundwater availability and impacts related to pumpage associated with a proposed Alcoa/SAWS water supply contract.

**Sanderson Farms Groundwater Supply Development – McLennan County, TX**

This project consisted of the installation of two production wells in the Lower Trinity aquifer to serve as a potable supply for a large poultry processing facility in McLennan County, Texas. The target aquifer zone was the Hosston Formation, a clastic (sand-rich) stratum that lies approximately 2,500 feet below ground level in the area. RWH&A provided services during the drilling contractor selection process and during contract negotiations. During construction of the wells, Mr. Bené led a team of geologists and engineers who performed a variety of services including: collection and analysis of drill cuttings samples, hole alignment surveys, setting and pressure cementing of the surface casing, caliper surveys to verify sufficient under-reaming of aquifer zones, setting of screen and liner, installation of the gravel (filter) pack, development of the well, and final well acceptance testing. During well construction, Mr. Bené managed on-site personnel responsible for verifying that all methods and materials used during the construction of the wells conformed to design specifications. Using the water level data collected during the acceptance tests for the wells, Mr. Bené worked closely with the Client's engineers to select pumping equipment appropriate for the high-head, high-temperature conditions found at the site.

**Central Texas Carrizo- Wilcox Groundwater Availability Model (GAM)**

RWH&A participated as a subcontractor to the University of Texas' Bureau of Economic Geology to develop the Central Texas Carrizo-Wilcox Groundwater Availability Model (GAM) for the Texas Water Development Board. Mr. Bené was a member of the RWH&A project team that developed the model grid, layer structure inputs, boundary conditions, model calibration datasets, and portions of future demand allocations. In developing the model's boundary conditions, Mr. Bené researched and mapped groundwater conditions in the Wilcox, Carrizo, Queen City, and similar adjoining units over a large portion of Texas.

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### **Groundwater Supply Development – Blue Water Systems, L.P.**

This project began as an evaluation of the development of a municipal water supply from a previously untapped portion of the Carrizo-Wilcox aquifer. Mr. Bené participated in the project as senior hydrogeologist and was part of a team responsible for conducting a detailed evaluation of existing data including oil and gas geophysical log analysis, hydrologic mapping, groundwater modeling, and estimates of quantity and quality of groundwater available. Based on the findings of these evaluations, a test drilling and pilot production well program was designed. Test drilling was conducted to approximately 2,800 feet to the base of the Simsboro Formation. The initial evaluation of the test hole results indicated favorable conditions for the construction of a pilot production well. RWH&A provided design, specification preparation and construction inspection, and acceptance testing of the pilot production well.

### **Groundwater Availability Analysis of the Ogallala Aquifer in the Texas High Plains**

Mr. Bené was closely involved in this project, which entailed the evaluation of groundwater availability in relation to the permitting of several, large, competitive development scenarios in northern Texas. Initial work consisted of geologic log interpretation, data analysis, and model development and calibration for the Ogallala Aquifer in Roberts County, Texas. Following the completion of the initial study, the evaluation was expanded to encompass nine Texas counties: Carson, Gray, Hansford, Hemphill, Hutchinson, Lipscomb, Ochiltrie, Roberts, and Wheeler. More than 6,000 test hole logs, well completion reports, and driller's logs were individually evaluated for lithologic and stratigraphic data. The findings were then incorporated into a geodatabase and subsequently used to construct a MODFLOW-based groundwater flow model of the region. Using processes identical to those specified for GAM projects, the model was calibrated to multiple time periods representing the predevelopment and post development states of the aquifer. Once calibrated and verified, the likely long-term aquifer response to multiple large-scale groundwater pumpage scenarios was evaluated using this model.

### **City of Amarillo – Potter County Well Field Development**

The City of Amarillo desired to explore the development of a municipal water supply from the Ogallala Aquifer in Robertson County. Mr. Bené participated in the design of the test drilling program, specification preparation, bidding assistance, as well as management of all drilling and testing activities, pump testing, water quality sampling and plugging of test holes. Other work included evaluations of interference drawdown by others and its impact on groundwater availability, pollution source surveys, long-term production and drought resistance and reliability of the supply.

### **Southmost Regional Water Authority Brackish Groundwater Supply**

Facing surface water shortages and increasing raw surface water and treatment costs, the Southmost Regional Water Authority began a regional project to assess the feasibility of supplementing existing surface water supplies with treated brackish groundwater. As an integral part of an extensive conjunctive use study, a detailed groundwater availability analysis was performed to determine the

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long-term sustainability and economics of the supply and evaluate water quality. Mr. Bené's participation in this project included data collection and review, well field planning, groundwater modeling, well field layout, well design, and specification preparation. The drawdown predictions produced from these analyses were used to determine groundwater availability, reliability, drought resistance, potential for contamination and optimal well field configuration for a 9.5 million gallon per day brackish groundwater supply system. Work also included required submittals to the Texas Commission of Environmental Quality for municipal well construction approvals, which included design plans, as-builts and pollution source surveys. The final well field consists of 20 production water wells.

### **Publications**

Bené, James, Harden, Bob, Nicot, Jean Phillippe, Griffin, Stephanie, 2006, Northern Trinity-Woodbine GAM, Assessment of Groundwater Use in the Northern Trinity Aquifer Due to Urban Growth and Barnett Shale Development: Groundwater Resources Division, Texas Water Development Board.

Bené, James, Harden, Bob, O'Rourke, David, Donnelly, Andrew, 2004, Northern Trinity/Woodbine Aquifer Groundwater Availability Model: Groundwater Resources Division, Texas Water Development Board.

**APPENDIX 15**  
**PUBLIC COMMUNICATIONS**

## APPENDIX 15

### PUBLIC COMMUNICATIONS

#### 15.1. PURPOSE

The purpose of this Appendix is to set forth the procedures and methods to be implemented by the Project Company to proactively communicate the details of the Project during all phases of work (the “Public Communications Program”). The primary function of the Public Communications Program is to inform elected officials, stakeholders, businesses and residents near the Project Sites of the construction activities, the anticipated impacts to the community, and the measures taken to minimize those impacts. Elements of the Public Communications Program will be implemented systematically over the course of the Project design and construction, based on analysis of the current needs and in response to overall Project goals.

#### 15.2. PROJECT COMPANY RESPONSIBILITY

The Project Company shall design, staff and implement the Public Communications Program during design and construction and into commercial operations. The Project Company will regularly keep SAWS informed of Public Communications Program activities and of community inquiries, concerns and complaints. The Project Company will consult with SAWS on specific outreach instruments.

#### 15.3. OBJECTIVES

The Project Company shall use a variety of methods for the Public Communications Program. These may include neighborhood open houses, letters, postcards and doorhangers, Project website, a toll-free hotline number, Project tours, video/slide presentations for the public, and other community involvement activities, including social media. The Project Company shall maintain updated project status fact sheets and frequently asked questions and provide updates to SAWS on a regular basis and as requested by SAWS.

#### 15.4. LIMITATIONS

As set forth in Section 26.12 (Project Company’s Confidentiality Obligations) of this Water Transmission and Purchase Agreement, without prior written authorization from SAWS, the Project Company will not disclose Confidential SAWS Information, whether for public announcement, publication in the press, radio, television or any other medium. The Project Company will obtain advance approval from SAWS of any quotes attributed to any representative of SAWS or the City of San Antonio and any facts about and descriptions of SAWS, its mission and activities used by or on behalf of the Project Company in the Project Company’s press releases, advertisements, promotional materials, informational written or electronic presentations (e.g., PowerPoint), websites, social media, or other written communications to or with the public generally. The Project Company will promptly correct or remove SAWS information that has not received advance approval or has become obsolete or inaccurate.

#### 15.5. PUBLIC COMMUNICATIONS PROGRAM GOALS

The Public Communications Program shall address four key elements:

- a) **Identify in advance the foreseeable construction disruptions to the communities along the alignment and develop plans to minimize these whenever possible.** Disruptions may include construction noise; loss of street parking; restricted access to sidewalks, homes or driveways, businesses and facilities; traffic delays and detours; and traffic lane closures.



- b) Maintain ongoing communications with the impacted communities to provide information about upcoming construction activities and impacts.** These can include traffic control measures; lane closures; restricted access to homes or driveways, businesses and facilities; traffic delays; and detours.
  
- c) Facilitate two-way communication between members of the community and Project officials with regard to Project issues.** The Project Company will supply residents and businesses with convenient methods of making inquiries and forwarding concerns or complaints regarding the Project during construction.
  
- d) Maintain public knowledge of the Project's progress.** Citizens of affected communities proximate to the Project Sites, and other stakeholders identified during the Development and Financing Period and Construction Period, will receive at least quarterly Project updates, or more frequently as conditions and project schedules warrant, through multiple channels as appropriate for the condition and timelines (e.g., direct mail, doorhangers, news media, e-mail, website, speakers' bureau and face-to-face interaction). All community communications will provide the public convenient methods of making inquiries and requesting more information, including a telephone hotline and email address.

**APPENDIX 16**  
**PLAN OF DEVELOPMENT AND FINANCING**

## APPENDIX 16

### PLAN OF DEVELOPMENT AND FINANCING

#### Part A: Plan of Development and Financing

##### 1. Parent Company

Garney Construction was founded in 1961 and has thrived to become one of the nation's leading environmental contractors. Garney is owned by its approximately 1,100 employee owners. Garney's breadth of experience and financial strength is unmatched amongst contractors in the water and wastewater sector in the United States. Garney is the #1 ranked contractor in the Water Transmission sector and #3 ranked contractor in the Water Supply category according to 2015 ENR rankings. In 2015, Garney recorded over \$600 million in revenues with aggregate bonding capacity in excess of \$1.5 billion.

Garney has more than three decades of experience serving as a water and wastewater contractor for SAWS, successfully delivering critical projects for its consumers, including the Water Resources Integration Program Pipelines and Twin Oaks Pump Station, SAWS Carrizo Aquifer Storage and Recovery (ASR) Project, and SAWS Water Recycling Program. Last year, as part of the Water Resources Integration Program, Garney installed 140,000 linear feet of 60-inch pipe, similar to the pipe that will be used for the Vista Ridge pipeline.

Garney Construction was originally intended to be Abengoa's construction partner for the Vista Ridge Project.

##### 2. Plan of Development

Garney purchased a controlling interest in the Project Company, through a new subsidiary, Garney P3 LLC upon the effective date of the Membership Interest and Purchase Agreement (MIPA). Garney Companies, Inc. will serve as the Design Build Contractor.

The Central Texas Regional Water Supply Corporation (the "Water Supply Corporation"), a not-for-profit water supply corporation authorized to exercise the power of eminent domain, will continue to acquire easements, rights of way and other interests necessary for the Project. The Water Supply Corporation will sign the contract with the Design Build Contractor and provide for the management of the construction of the Project Improvements and transportation of treated water to the Project Company Water Storage Tank through the Transmission Pipeline. The Water Supply Corporation and the Project Company will be co-borrowers under a loan provided by a group of international banks to finance the design and construction of the Project.

The Project Company, through this Water Transmission and Purchase Agreement (WTPA), intends to develop a water treatment and transmission system to extract underground water from the Carrizo-Wilcox Aquifer and Simsboro Aquifer, located in Burleson County and convey it to San Antonio Water System through a 142-mile pipeline.

Prior to hard construction, the Project Company will perform the early construction needed to obtain limited-recourse project financing. During the Development and Financing Period, this work shall include:

- (a) Preliminary Studies: These studies address topography, geotechnical issues, aquifer field surveys and studies that will be needed for development and construction of the Project, including permitting applications and detailed final engineering plans for the period prior to construction. The aquifer surveys include test holes and pilot production wells.

- (b) Permitting: Before construction, appropriate federal and state permits need to be applied for and/or obtained. These early phase permits include among others, the USFWS endangered species permit, the USACE 404 section permit, the Texas Historical Commission permit, and environmental assessment permits necessary to avoid the modification of the Transmission Pipeline Alignment. In addition, a permit log of all of the needed permits and the timeline to obtain them need to be developed. Other permits include authorizations from the Texas Department of Transportation related to road and railroad crossings and local county construction permits.
  - (c) Rights of way acquisition: This task will be a negotiated process by which the Project Company's right of way agent will negotiate the easements and rights of way needed with each land owner along the Transmission Pipeline Alignment (142 miles) and for the Well Field Facilities. This task includes project management, appraisals, land payments and condemnation of eminent domain procedures. Prior to reaching Financial Close, the Project will secure the required rights of way and fee simple sites as outlined in the WTPA.
  - (d) Water rights maintenance fee: In order to maintain the leases and permits needed for the Project, the Project Company will pay a water rights maintenance fee.
  - (e) Due diligence: Banks and financial entities will require their independent experts, including independent engineers and lawyers to review Project details and verify the Project's capacity to maintain its financial obligations.
3. Plan of Financing

#### Overview

The Project Company has the capacity to finance the Project from design and construction through the full operating period to the end of the Term. Since the execution of the MIPA, the Project Company has developed a Plan of Finance that is based upon extensive dialogue with a group of international project finance banking institutions. The Project Costs, which are estimated to be approximately \$923 million, will be met by a combination of taxable bank debt and Sponsors' equity.

The Plan of Finance has been developed to respond to the circumstances that the Project has experienced and also to provide the ability for the Project Company to execute the financing on an expedited timeline that will allow construction to commence once customary conditions precedent have been met (described below).

#### Equity Availability

The shareholders in the Project Company at financial close will be as follows:

- Garney P3 LLC – 80%
- Abengoa Vista Ridge LLC – 20%

Approximately \$21 million of Project costs were contributed by Abengoa prior to the execution of the MIPA. In consideration for its stake in the Project Company, the MIPA provides that Garney will contribute approximately \$52 million with a substantial amount being contributed to the Project either before or at Financial Close and the remainder contributed at the end of the Construction Period. In the period between the Conforming Contract Amendment Date and the Financial Closing Date, 100% of Project costs will be met with shareholder equity.

During the Construction Period, Garney P3 LLC will provide a letter of credit from an “A” rated financial institution to support the scheduled injection of shareholder capital into the Project Company.

#### Senior Debt Facility

The balance of the Project capital structure not funded via shareholder equity will be provided by a taxable debt financing facility totaling approximately \$850 million (the “Senior Secured Credit Facility”).

#### Due Diligence Process

Upon effectiveness of the MIPA, the Project Company will work toward closing the Senior Secured Credit Facility on an expedited basis. This process will include three main phases:

1. **Preliminary steps to achieve the bank mini-perm financing:** The Project Company has engaged with a group of global project finance bank lenders led by SMBC as “Structuring Bank”, who are familiar with the Project to form a “Bank Club” with the intention to finance the Project costs not covered by Project Company equity upon the completion and satisfaction of due diligence and necessary conditions precedent to funding. The Bank Club engaged lenders counsel who undertook a review of all existing documentation and has prepared certain Project financing documents including the Credit Agreement, the Equity Contribution Agreement as well as a Closing Checklist outlining the full package of documentation for the Senior Secured Credit Facility.
2. **Permitting and due diligence process:** The Project Company will continue the permitting and Bank Club due diligence process following the execution of the MIPA. The due diligence process will include the review of all permits, leases, engineering plans, hydrology studies, the proposed construction schedule and contract documents by a Lender’s Technical Advisor (LTA). The permitting process is well underway. In an effort to expedite the due diligence process, in consultation with the Bank Club and the Project Company’s Financial Advisor, Societe Generale, Garney undertook a Request for Proposal process and has selected and recently engaged E3 Consulting as LTA. E3 Consulting has begun their due diligence efforts and is expected to deliver a preliminary report and meet with the Bank Club to discuss its findings. The preliminary LTA report, along with the final report of the hydrology engineer (RW Harden), will be important components of the Bank Club’s credit analysis.
3. **Closing Process:** The loan closing process includes completion of final due diligence and credit analysis by each member of the Bank Club. Other due diligence undertaken by the Bank Club will include:
  - a) Review of Garney Construction (including financial performance, meetings with senior management, company history, back-log)
  - b) Review of Design Build Contractual Approach (including construction security package, in conjunction with the LTA)
  - c) Review of SAWS (financials, project essentiality, Ratepayer and Water Price Methodology, Capital Investment to Integrate Pipeline)
  - d) Review of Financial Model

- e) Review of Water Supply Chain
- f) Bank Club's Counsel (review of project company documents, due diligence on property conveyance, rights of way, permitting etc.)
- g) Other third party due diligence including an Independent Insurance Consultant Report and an independent financial Model Auditor report. The final drafting and negotiation of bank loan and security documents, a final LTA report, and the obtaining of internal bank credit committee approvals will proceed on a parallel basis in order to close on the Senior Secured Credit Facility in an expedited manner.

#### Financial Close

It is believed that underwritten commitments from the Bank Club, whose members are already familiar with the Project is cost effective, reduces any uncertainty surrounding an offering to new investors and provides the most certain and expedited path to achieving Financial Close. Financial Close is planned for fourth quarter 2016 with the Bank Club having sufficient commitments to reach Financial Close.

#### Interest Rate Hedging Strategy

Loans under the Senior Secured Credit Facility will be structured as traditional variable rate bank loans. In order to hedge long-term fixed rates, the Bank Club will also extend long-term variable to fixed rate interest rate swaps. It is anticipated that 100% of the Senior Secured Credit Facility will be swapped from variable rate to fixed rate at Financial Close through a date approximately 29 years following the Commercial Operations Date.

The interest rate swaps will be structured so that the Project Company can break the swaps at the point that the Senior Secured Credit Facility is refinanced. The long-term hedge will be structured so that changes in generic interest rates (either way) would not materially affect the Project's cash flows. Should general interest rates at refinancing or maturity be higher than those in place at origination, the Project Company can collect swap breakage amounts which can serve to reduce the amount of (higher rate) debt that needs to be issued. Should rates be lower at refinancing or maturity, the Project Company will owe a breakage amount to the swap counterparty which can be financed with a larger amount of (lower rate) debt upon refinancing. The interest rate swaps will effectively hedge generic interest rates but are not intended to hedge credit spreads which might be expected to tighten once the risk profile of the Project is reduced at completion and commissioning. The risk of higher credit spreads or benefit of lower spreads will lie with the Project Company.

#### Long Term Financing Strategy

The Senior Secured Credit Facility is expected to be refinanced with either bonds or another credit facility prior to its maturity. Loans under the Senior Secured Credit Facility also feature no loan prepayment penalties which provides a great deal of flexibility to take advantage of tighter credit markets or a more favorable Project risk profile as the Project nears or achieves the Commercial Operations Date. Once the Project Company has fully achieved the necessary rights of way, permits and other entitlements, and has largely completed construction of the Project it expects to explore more permanent financing including long term fixed rate bonds from the tax exempt municipal market or the taxable private placement market. The Project financing terms and risk allocation have been structured to achieve an investment grade bond rating when refinanced. A potential fixed rate bond takeout could occur anytime, but would generally be expected to occur at or beyond Substantial Completion of the Project. The anticipated 21-month period between Substantial Completion and the maturity of the Senior Secured Credit Facility is intended to provide ample flexibility to access the bond market at advantageous terms. Should a bond takeout prove infeasible

for any reason, the lenders would also consider an extension or rollover of the Senior Secured Credit Facility and the related interest rate hedge.

**APPENDIX 17**

**SAMPLE MONTHLY WATER PURCHASE PAYMENT CALCULATIONS**



**APPENDIX 17**

**SAMPLE MONTHLY WATER PURCHASE PAYMENT CALCULATIONS**

**Section 1**

**Water Unit Price**

The Tables in this section present a hypothetical example of the Unit Price. The Unit Price will be adjusted annually based on the budgeted level of Operating and Maintenance Costs. Section 1 is for illustrative purposes only.

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**Table 1.1  
Capital and Raw Groundwater Unit Price**

**In accordance with Section 17.2 (Capital and Raw Groundwater Unit Price) of this Water Transmission and Purchase Agreement the Capital and Raw Groundwater Unit Price for each Contract Year shall be \$1,606 per Acre Foot, and shall remain fixed for the Term.**

**Table 1.2  
Fixed and Variable Compensable Costs**

*Illustrative Numbers Only*

Fixed Compensable Costs (\$/AF)	135.25
Variable Compensable Costs (\$/AF)	36.39

Note: This Table 1.2 provides an example of the Fixed Compensable Costs and the Variable Compensable Costs in accordance with Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement. The figures presented in this table are purely illustrative and will be revised annually based on the determinations of the O&M Budget Panel as more fully discussed in Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement and Appendix 19 (Compensable Costs and O&M Budget Panel). In accordance with Section 19.2(12) (Fixed Compensable Costs) of Appendix 19, a component of the Fixed Compensable Costs is a management fee equal to 11.1% of total Compensable Costs for each Billing Period.

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**Table 1.3**  
**Unit Price for Product Water**

*Preliminary and/or Illustrative Numbers*

Capital and Raw Groundwater Unit Price	Variable Compensable Costs Unit Price	Unit Price for Product Water
\$1,606.00	\$36.39	\$1,642.39

Note: This Table 1.3 sets forth the calculation of the Unit Price for Product Water delivered in volumes up to the Baseline Annual Volume in accordance with Section 17.4 (Unit Price) of this Water Transmission and Purchase Agreement. As noted in Table 1.2, the amounts detailed are purely illustrative and will be revised annually in the future.

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## **Section 2**

### **Water Units, Monthly Payments, and Annual Payment Summary**

The Tables in this section present a hypothetical example of water deliveries for a sample Contract Year. The Tables present an example of a Contract Year in which Excused Supply Shortfall Units, Unexcused Supply Shortfall Units, Demand Shortfall Units, and Make-Up Units are produced during a Billing Period. The Tables also present an example calculation of the Monthly Water Purchase Payments and Annual Payment Summary. There is no expectation that the water production illustrated in Section 2 will be experienced. Section 2 is for illustrative purposes only.

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**Table 2.1**  
**Illustrative Scheduling of Baseline Annual Volume and Daily Maximum Volume**  
**During First Two Years of Commercial Operations**

Example A - First Full Year of Commercial Operations

(Units are Acre Feet of Raw Groundwater)

Baseline Annual Volume	50,000
 Maximum Annual Volume	 52,250

Month	Baseline Daily Volume	Daily Maximum Volume	Baseline Monthly Volume	Maximum Monthly Volume
January	137.0	137.0	4,247.0	4,247.0
February	137.0	137.0	3,836.0	3,836.0
March	137.0	137.0	4,247.0	4,247.0
April	137.0	137.0	4,110.0	4,110.0
May	137.0	149.2	4,247.0	4,625.2
June	137.0	149.2	4,110.0	4,476.0
July	137.0	149.2	4,247.0	4,625.2
August	137.0	149.2	4,247.0	4,625.2
September	137.0	149.2	4,110.0	4,476.0
October	137.0	149.2	4,247.0	4,625.2
November	137.0	137.0	4,110.0	4,110.0
December	137.0	137.0	4,242.0	4,247.0
Total			50,000.0	52,249.8

Note: The illustrative Baseline Monthly Volume shown in this Table 2.1 is scheduled in accordance with Section 10.3(A)(3) (Baseline Daily Volume) of this Water Transmission and Purchase Agreement. The illustrative Maximum Monthly Volume shown in this Table 2.1 is scheduled in accordance with Sections 10.3(A)(5) (Daily Maximum Volume) and 10.3(A)(6) (Demand Shortfall Units) of this Water Transmission and Purchase Agreement. As this example is deemed to take place during the first full year of Commercial Operations, the Daily Maximum Volumes for March and April have been adjusted in accordance with Section 10.4(B)(1) (Supply Following Commercial Operation Date) of this Water Transmission and Purchase Agreement. In years beginning with the third year of Commercial Operations, the Daily Maximum Volume shall increase for these months to 149.2 with corresponding adjustments to the Maximum Monthly and Maximum Annual Volume.

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**Table 2.2**  
**Illustrative Example of Daily Tracking**  
**Daily Delivered Water Units, Excused Supply Shortfall Units, Unexcused Supply Shortfall Units, Demand Shortfall Units & Make-Up Units**

Example A Continued - August 2021

Day of the Month	Baseline Daily Volume	Daily Maximum Volume	Daily Delivered Water Units	Amount Over/(Under) Baseline Daily Volume	Excused Supply Shortfall Units	Unexcused Supply Shortfall Units	Demand Shortfall Units	Make-Up Units
1	137.0	149.2	125.0	(12.0)	-	(12.0)		
2	137.0	149.2	110.2	(26.8)	(26.8)			
3	137.0	149.2	115.9	(21.1)	(21.1)			
4	137.0	149.2	117.8	(19.2)	(19.2)			
5	137.0	149.2	116.3	(20.7)	(20.7)			
6	137.0	149.2	119.4	(17.6)	(17.6)			
7	137.0	149.2	120.4	(16.6)	(16.6)			
8	137.0	149.2	133.3	(3.7)	(3.7)			
9	137.0	149.2	137.6	0.6				0.6
10	137.0	149.2	145.4	8.4				8.4
11	137.0	149.2	144.0	7.0				7.0
12	137.0	149.2	144.6	7.6				7.6
13	137.0	149.2	146.2	9.2				9.2
14	137.0	149.2	145.5	8.5				8.5
15	137.0	149.2	146.0	9.0				9.0
16	137.0	149.2	146.3	9.3				9.3
17	137.0	149.2	147.2	10.2				10.2
18	137.0	149.2	147.5	10.5				10.5
19	137.0	149.2	148.1	11.1				11.1
20	137.0	149.2	146.4	9.4				9.4
21	137.0	149.2	147.4	10.4				10.4
22	137.0	149.2	140.0	3.0			(9.2)	3.0
23	137.0	149.2	138.9	1.9			(10.3)	1.9
24	137.0	149.2	142.5	5.5			(6.7)	5.5
25	137.0	149.2	143.0	6.0			(6.2)	6.0
26	137.0	149.2	147.2	10.2				10.2
27	137.0	149.2	148.1	11.1				11.1
28	137.0	149.2	148.2	11.2				11.2
29	137.0	149.2	148.9	11.9				11.9
30	137.0	149.2	148.7	11.7				11.7
31	137.0	149.2	147.6	10.6				10.6
	4,247.0	4,625.2	4,303.6	56.6	(125.7)	(12.0)	(32.4)	194.3

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Note: This Table 2.2 presents illustrative example daily tracking accounts for each day within a particular month in accordance with Section 10.3 (B) (Records and Tracking Accounts) of this Water Transmission and Purchase Agreement.

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**Table 2.3**  
**Illustrative Example of Application of Make-Up Units**

Example A Continued - August 2021

(Units are Acre Feet of Raw Groundwater)

<b>Day of the Month</b>	<b>Total Make-Up Units</b>	<b>Applied Project Company Make-Up Units</b>	<b>Applied SAWS Make-Up Units</b>	<b>Advance Project Company Make-Up Units</b>
1	-			
2	-			
3	-			
4	-			
5	-			
6	-			
7	-			
8	-			
9	0.6	0.6	-	
10	8.4	8.4	-	
11	7.0	7.0	-	
12	7.6	7.6	-	
13	9.2	9.2	-	
14	8.5	8.5	-	
15	9.0	9.0	-	
16	9.3	9.3	-	
17	10.2	10.2	-	
18	10.5	10.5	-	
19	11.1	11.1	-	
20	9.4	9.4	-	
21	10.4	10.4	-	
22	3.0	3.0	-	
23	1.9	1.9	-	
24	5.5	5.5	-	
25	6.0	4.1	1.9	
26	10.2	-	10.2	
27	11.1	-	11.1	
28	11.2	-	9.2	2.0
29	11.9	-	-	11.9
30	11.7	-	-	11.7
31	10.6	-	-	10.6
<b>Total</b>	<b>194.3</b>	<b>125.7</b>	<b>32.4</b>	<b>36.2</b>

Note: This Table 2.3 provides an illustrative example of the application of Make-Up Units in accordance with Section 10.6 (Make-Up Units) of this Water Transmission and Purchase Agreement. For purposes of this example, it has been assumed that all previously accrued Excused Supply Shortfall Units and Demand Shortfall Units have been eliminated with previously generated Make-Up Units. It has further been assumed that the Project Company has not reached the 3,000 AF maximum allowable level of Advance Project Company Make-Up Units as outlined in Section 10.4(B)(3) (Supply Following Commercial Operation Date) of this Water Transmission and Purchase Agreement.



**Table 2.4**  
**Illustrative Example of Monthly Water Purchase Payments**

Example A Continued - August 2021

Daily Delivered Water Units – AF	4,303.6
Less SAWS Make-Up Units Previously Paid as Demand Shortfall Units – AF	-
Subtotal	<u>4,303.6</u>
Unit Price for Product Water	<u>\$1,642.39</u>
Subtotal	<u>\$7,068,189.60</u>
Demand Shortfall Units that have not been made up by SAWS Make-Up Units – AF	-
Unit Price for Product Water	<u>\$1,642.39</u>
Subtotal	<u>\$</u>
One-Twelfth of Budgeted Fixed Compensable Costs	\$563,541.67
Direct Payments	<u>\$23,672.48</u>
TOTAL	<u><u>\$7,655,403.75</u></u>

Note: This Table 2.4 sets forth the calculation of the Monthly Water Purchase Payment in accordance with Section 17.5 (Monthly Water Purchase Payments) of this Water Transmission and Purchase Agreement. For purposes of this example, it has been assumed that SAWS needs to make a Direct Payment to the Project Company as outlined in Section 17.8(C) (Direct Payments by the Parties) of this Water Transmission and Purchase Agreement.

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**Table 2.5  
Annual Summary of Product Water Deliveries**

Example A Continued – 2021

Month	Baseline Monthly Volume	Maximum Monthly Volume	Delivered Water Units	Amount Over/(Under) Baseline Monthly Volume	Excused Supply Shortfall Units	Unexcused Supply Shortfall Units	Demand Shortfall Units	Make-Up Units
January	4,247.0	4,247.0	4,100.0	(147.0)		(53.0)	(94.0)	
February	3,836.0	3,836.0	3,708.4	(127.6)		(72.0)	(55.6)	
March	4,247.0	4,247.0	4,156.8	(90.2)		(90.2)		
April	4,110.0	4,110.0	4,268.3	158.3				-
May	4,247.0	4,625.2	4,509.1	262.1				158.3
June	4,110.0	4,476.0	4,325.9	215.9				262.1
July	4,247.0	4,625.2	4,503.4	256.4				215.9
August	4,247.0	4,625.2	4,303.6	56.6	(125.7)	(12.0)	(32.4)	256.4
September	4,110.0	4,476.0	4,200.7	90.7				194.3
October	4,247.0	4,625.2	4,284.5	37.5				90.7
November	4,110.0	4,110.0	3,800.0	(310.0)	(310.0)	-		37.5
December	4,242.0	4,247.0	3,790.2	(451.8)	(451.8)	-		
Total	50,000.0	52,249.8	49,950.9	(49.1)	(887.5)	(227.2)	(182.0)	1,215.2

Note: This Table 2.5 provides an example summary of monthly Product Water deliveries for calendar year 2021, the anticipated first full calendar year subsequent to the Commercial Operation Date.

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**Table 2.6**  
**Illustrative Example of Roll-Forward of Supply Shortfall Units, Demand Shortfall Units and Advance Project Company Make-Up Units**

Example A Continued – 2021

(Units are Acre Feet of Raw Groundwater)

	Unexcused Supply Shortfall Units				Excused Supply Shortfall Units			
	Beginning Balance	Units Created	Make-Up Units Applied	Ending Balance	Beginning Balance	Units Created	Make-Up Units Applied	Ending Balance
January	-	(53.0)	-	(53.0)	-	-	-	-
February	(53.0)	(72.0)	-	(125.0)	-	-	-	-
March	(125.0)	(90.2)	-	(215.2)	-	-	-	-
April	(215.2)	-	-	(215.2)	-	-	-	-
May	(56.9)	-	-	(215.2)	-	-	-	-
June	0.0	-	-	(215.2)	-	-	-	-
July	0.0	-	-	(215.2)	-	-	-	-
August	0.0	(12.0)	-	(227.2)	-	(125.7)	125.7	-
September	0.0	-	-	(227.2)	-	-	-	-
October	0.0	-	-	(227.2)	-	-	-	-
November	0.0	-	-	(227.2)	-	(310.0)	310.0	-
December	0.0	-	-	(227.2)	-	(451.8)	451.8	-

	Demand Shortfall Units				Advance Project Company Make-Up Units			
	Beginning Balance	Units Created	Make-Up Units Applied	Ending Balance	Beginning Balance	Units Created	Make-Up Units Applied	Ending Balance
January	-	(94.0)	-	(94.0)	-	-	-	-
February	(94.0)	(55.6)	-	(149.6)	-	-	-	-
March	(149.6)	-	-	(149.6)	-	-	-	-
April	(149.6)	-	149.6	-	-	-	(149.6)	8.7
May	-	-	-	-	-	158.3	-	270.8
June	-	-	-	-	55.6	215.9	-	486.7
July	-	-	-	-	271.5	256.4	-	743.1
August	-	(32.4)	32.4	-	527.9	194.3	(158.1)	779.3
September	-	-	-	-	552.1	90.7	-	870.0
October	-	-	-	-	642.8	37.5	-	907.5
November	-	-	-	-	680.3	-	(310.0)	597.5
December	-	-	-	-	370.3	-	(451.8)	145.7

Note: This Table 2.6 provides example roll-forwards of the Supply and Demand Shortfall Units as well as the Advance Project Company Make-Up Units. For purposes of these examples, all Tracking Accounts were assumed to begin the year with a "0" balance. Based on the information

contained in Table 2.5 (Annual Summary of Water Deliveries) of this Appendix, the Project Company would end 2021 with 227.2 AF of Unexcused Supply Shortfall Units. In accordance with Section 10.6(A) (Project Company Make-Up Units) of this Water Transmission and Purchase Agreement, the Project Company will not have any opportunity to make up these Unexcused Supply Shortfall Units and therefore the balance in this tracking account would not carry forward to the next subsequent year. The balances in each of the other tracking accounts would carry forward to the next subsequent year. In accordance with Section 10.4(B)(3) (Supply Following Commercial Operation Date) of this Water Transmission and Purchase Agreement, the maximum balance of Advance Project Company Make-Up Units at any time outstanding shall not exceed 3,000.

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**Table 2.7  
Annual Payment Summary**

	<b>Delivered Water Units</b>	<b>Demand Shortfall Units</b>	<b>SAWS Make-Up Units Included in Delivered Water Units</b>	<b>Adjusted Delivered Water Units</b>	<b>Unit Price of Product Water</b>	<b>Unit Price Paid for Product Water</b>	<b>One-Twelfth of Budgeted Fixed Compensable Costs</b>	<b>Direct Payments</b>	<b>Total Payment</b>
January	4,100.0	94.0	-	4,194.0	\$1,642.39	\$6,888,183.66	\$563,541.67	\$(2,201.22)	\$7,449,524.11
February	3,708.4	55.6	-	3,764.0	1,642.39	6,181,955.96	563,541.67	13,596.00	6,759,093.63
March	4,156.8	-	-	4,156.8	1,642.39	6,827,086.75	563,541.67	-	7,390,628.42
April	4,268.3	-	(149.6)	4,118.7	1,642.39	6,764,511.69	563,541.67	-	7,328,053.36
May	4,509.1	-	-	4,509.1	1,642.39	7,404,700.75	563,541.67	-	7,969,242.42
June	4,325.9	-	-	4,325.9	1,642.39	7,104,814.90	563,541.67	-	7,668,356.57
July	4,503.4	-	-	4,503.4	1,642.39	7,396,339.13	563,541.67	-	7,959,880.79
August	4,303.6	32.4	(32.4)	4,303.6	1,642.39	7,068,189.60	563,541.67	23,672.48	7,655,403.75
September	4,200.7	-	-	4,200.7	1,642.39	6,899,187.67	563,541.67	-	7,462,729.34
October	4,284.5	-	-	4,284.5	1,642.39	7,036,819.96	563,541.67	-	7,600,361.62
November	3,800.0	-	-	3,800.0	1,642.39	6,241,082.00	563,541.67	(14,381.79)	6,790,241.88
December	3,790.2	-	-	3,790.2	1,642.39	6,224,986.58	563,541.67	-	6,788,528.24
<b>Total</b>	<b>49,950.9</b>	<b>182.0</b>	<b>(182.0)</b>	<b>49,950.9</b>		<b>\$82,038,858.65</b>	<b>\$6,762,500.00</b>	<b>\$20,685.47</b>	<b>\$88,882,044.12</b>

Note: This Table 2.7 provides a summary of the Delivered Water Units and the payments made with respect to these Delivered Water Units. Such schedule could be utilized as the basis for the Annual Settlement Statement contemplated in Section 17.11(A) (Annual Settlement Statement) of this Water Transmission and Purchase Agreement. Consistent with Section 17.3(G) (Actual Compensable Costs) of this Water Transmission and Purchase Agreement, as part of the Annual Settlement process, the O&M Budget Panel will compare Actual Compensable Costs with Budgeted Compensable Costs with any differences to be made via a Direct Payment in the ensuing Contract Year. In addition, there is to be an Annual Settlement of Electricity Costs in accordance with Section 17.11(B) (Annual Settlement of Electricity Costs) of this Water Transmission and Purchase Agreement.

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**APPENDIX 18**

**REIMBURSABLE COSTS PAYABLE ON CONVENIENCE TERMINATION DURING THE  
DEVELOPMENT AND FINANCING PERIOD**

## APPENDIX 18

### REIMBURSABLE COSTS PAYABLE ON CONVENIENCE TERMINATION DURING THE DEVELOPMENT AND FINANCING PERIOD

#### 18.1. PROJECT COMPANY REIMBURSABLE COSTS

SAWS shall reimburse the Project Company in accordance with Section 4.6 (Project Company Reimbursable Costs) of this Water Transmission and Purchase Agreement and this Appendix for the reasonable and necessary costs and expenses incurred by the Project Company directly and solely in connection with the proper performance of the Development and Financing Work from the Contract Date through the Termination Date or the Financial Closing Longstop Date (whichever is earlier), without double counting, in the categories specified in Section 18.1.1 of this Appendix. Such reimbursements shall not include any costs or expenses specifically excluded pursuant to Section 18.1.2 of this Appendix.

##### 18.1.1 Allowable Project Company Reimbursable Costs

Project Company Reimbursable Costs include the following:

- (a) *Labor Costs:*
  - (i) Wages or salaries of employees of Garney Holding Company's Affiliates, including the Project Company, performing the Development and Financing Work; but only for that portion of their time required for the Development and Financing Work.
  - (ii) The cost of travel, accommodations and meals for employees of Garney Holding Company's Affiliates, including the Project Company, directly incurred for travel in connection with the performance of the Development and Financing Work.
  - (iii) Expenses incurred by the Project Company for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, paid by the Project Company, excluding bonuses, to the extent such expenses are based on wages and salaries paid to employees of the Project Company included in the Project Company Reimbursable Costs under Section 18.1.1(a)(i) above.
- (b) *Aquifer Study:* Costs and expenses directly related to the design, procurement, and oversight of the test well drilling program necessary to evaluate the Carrizo-Wilcox Aquifer and Simsboro Aquifer.
- (c) *Professional Fees:* Fees and expenses related to professional services (including legal, accounting and tax advisory services) incurred in connection with the performance of the Development and Financing Work.
- (d) *Basic Engineering:* Costs and expenses directly related to the basic engineering plan and design of the Project Improvements.

- 
- (e) *Eminent Domain*: Legal fees and expenses incurred in connection with condemnation or other eminent domain actions as required for the Project.
  - (f) *Financial Costs*: The amount of interest accrued and paid or owed under the financing arrangements in place during the Development and Financing Period, if any.
  - (g) *Financing-Related Costs*: Expenses directly related to preparing and securing the Senior Debt, including those associated with organizing the trustee, working with the rating agencies, and their associated costs.
  - (h) *Geotechnical Survey*: Costs and expenses directly related to developing detailed data and information of the below-ground conditions in the vicinity of the Project Improvements.
  - (i) *Lenders Technical Advisors*: Expenses directly related to any technical studies and assessments required by the Senior Debt Creditors.
  - (j) *Lease Maintenance Costs*: Groundwater Drilling and Operating Permit fees, Groundwater Transportation Permit fees and Groundwater Lease expenses directly related to maintaining the Groundwater Leases to the extent arising from and attributable to periods from and after the Contract Date.
  - (k) *Permitting*: Expenses directly related to the preparation and submission of various permit and other Governmental Approvals and applications therefor.
  - (l) *Rating Service Fee*: Fees charged by the Rating Service for the Project.
  - (m) *Right of Way Acquisition*: Payments made to the Transmission Pipeline Easement Grantors for the Transmission Pipeline Easements.
  - (n) *Rights of Way Reservation and Acquisition*: Expenses directly related to the negotiation and acquisition of the Transmission Pipeline Easements, Well Field Facilities Site Real Property Interests or other right of entry and right of way options.
  - (o) *Project Company Overhead*: Costs and expenses directly related to the Project Company operation, administration and overhead, including office lease space and supplies, communications equipment and services, vehicle leases, and insurance premiums.
  - (p) *Topography Survey*: Costs and expenses directly related to developing detailed topographical data and information for the Project Improvements.
  - (q) *Other Costs*: Any other costs and expenses meeting the requirements of Section 18.1 (Project Company Reimbursable Costs) of this Appendix.

#### 18.1.2 Unallowable Project Company Costs

SAWS shall have no obligation to pay the Project Company for any Unallowable Project Company Costs. "Unallowable Project Company Costs" include the following:

- (a) Costs and expenses related to the construction of the Project Improvements.



- (b) Fees or expenses incurred in handling disputes or litigation with SAWS or the City or the Project Contractors, the Subcontractors or any other third party, or in connection with the Project Company's obligations in Article 25 (Indemnification) of this Water Transmission and Purchase Agreement.
- (c) Overhead and general expenses, except as provided for in Section 18.1.1(o) (Project Company Overhead) of this Appendix.
- (d) Costs and expenses incurred as a result of the negligence or willful misconduct of the Project Company, any Affiliate or any other party performing any aspect of the Development and Financing Work, including any fines, penalties or other charges resulting therefrom.
- (e) Costs and expenses not specifically and expressly identified as a Project Company Reimbursable Cost.
- (f) Any mark-up by the Project Company for risk, profit or otherwise, except as provided in Section 18.1.1(o) (Project Company Overhead) of this Appendix.
- (g) Sales, use or other Taxes, which are required to be paid by the Project Company pursuant to Section 17.12 (Taxes) of this Water Transmission and Purchase Agreement.

## 18.2. SAWS REIMBURSABLE COSTS

The Project Company shall reimburse SAWS in accordance with Section 4.7 (SAWS Reimbursable Costs) of this Water Transmission and Purchase Agreement and this Appendix for the reasonable and necessary costs and expenses incurred by SAWS directly and solely in connection with the Project from the Contract Date through the Termination Date or the Financial Closing Longstop Date (whichever is earlier), without double counting, in the categories specified in Section 18.2.1 of this Appendix. Such reimbursements shall not include any costs or expenses specifically excluded pursuant to Section 18.2.2 of this Appendix.

### 18.2.1 Allowable SAWS Reimbursable Costs

SAWS Reimbursable Costs include the following:

- (a) *Labor Costs:*
  - (i) Wages or salaries of employees of SAWS performing work related to the Project; but only for that portion of their time required for the Project.
  - (ii) The cost of travel, accommodations and meals for employees of SAWS directly incurred for travel in connection with the performance of work related to the Project.
  - (iii) Expenses incurred by SAWS for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, paid by SAWS, excluding bonuses, to the extent such expenses are based on wages and salaries

paid to employees of SAWS included in the SAWS Reimbursable Costs under Section 18.2.1(a)(i) above.

- (b) *Professional Fees:* Fees and expenses related to professional services (including legal, accounting, tax, insurance and technical advisory services) incurred in connection with the Project.
- (c) *Basic Engineering:* Costs and expenses directly related to the basic engineering plan and design of the SAWS Interconnection Improvements.
- (d) *Financial Advisory:* Fees and expenses related to financial advisors and revenue consultants incurred in connection with the Project, and any related technical studies and assessments.
- (e) *Planning:* Fees and expenses related to complete integration planning for the Project.
- (f) *Geotechnical Survey:* Costs and expenses directly related to developing detailed data and information of the below-ground conditions in the vicinity of the SAWS Interconnection Improvements.
- (g) *SAWS Overhead:* Costs and expenses directly related to SAWS operation, administration and overhead, including office lease space and supplies, communications equipment and services, vehicle leases, and insurance premiums as directly related to the Project.
- (h) *Topography Survey:* Costs and expenses directly related to developing detailed topographical data and information for the SAWS Interconnection Improvements.
- (i) *Financial Costs:* The amount of interest accrued and paid or owed under the financing arrangements in place during the Development and Financing Period, if any, as related to the SAWS Interconnection Improvements.
- (j) *Financing-Related Costs:* Expenses directly related to preparing and securing financing, including those associated with organizing the trustee, working with the rating agencies, and their associated costs, as related to the SAWS Interconnection Improvements.
- (k) *Other Costs:* Any other costs and expenses meeting the requirements of Section 18.2 (SAWS Reimbursable Costs) of this Appendix.

#### 18.2.2 Unallowable SAWS Costs

The Project Company shall have no obligation to pay SAWS for any Unallowable SAWS Costs. “Unallowable SAWS Costs” include the following:

- (a) Costs and expenses related to the construction of the SAWS Interconnection Improvements.
- (b) Fees or expenses incurred in handling disputes or litigation with the Project Company or any third party.

- (c) Overhead and general expenses, except as provided for in Section 18.2.1(g) (SAWS Overhead) of this Appendix.
- (d) Costs and expenses incurred as a result of the negligence or willful misconduct of SAWS or a SAWS Indemnatee performing any aspect of work related to the Project.
- (e) Costs and expenses not specifically and expressly identified as a SAWS Reimbursable Cost.
- (f) Any mark-up by SAWS for risk, profit or otherwise, except as provided in Section 18.2.1(g) (SAWS Overhead) of this Appendix.

**APPENDIX 19**  
**COMPENSABLE COSTS AND O&M BUDGET PANEL**

## APPENDIX 19

### COMPENSABLE COSTS AND O&M BUDGET PANEL

#### 19.1. COMPENSABLE COSTS

19.1.1 General Principle. Compensable Costs consist of the reasonable and necessary costs that would be incurred by a qualified and experienced private sector operator to operate, maintain, repair and replace the Project Improvements in accordance with the Contract Standards. Compensable Costs do not include Non-Compensable Costs.

19.1.2 Process. As provided in Sections 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement, the O&M Budget Panel shall determine for each Contract Year: (1) Fixed Compensable Costs; (2) Variable Compensable Costs; (3) Major Repair and Replacement Compensable Costs; (4) Budgeted Compensable Costs; and (5) Actual Compensable Costs.

#### 19.2. FIXED COMPENSABLE COSTS

Fixed Costs include the following, as paid by the Project Company and the Operating Service Provider:

(1) Wages and salaries of supervisory, administrative, security operating and maintenance employees (except that, Project Company employees are to be limited to no more than five (5) employees, and those employees are to be located and working on the Project full time in San Antonio, Texas);

(2) Costs for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, excluding bonuses;

(3) Costs associated with telecommunication services, including telephone, internet and other information technology services;

(4) The cost of leased office and workshop space in San Antonio, Texas;

(5) Amounts paid to third parties for water analyses and laboratory tests;

(6) Amounts paid to third parties for (a) subcontracted labor; and (b) fees and expenses related to professional services (including legal, accounting, tax, insurance and technical advisory services), except as specified in Sections 19.5(5) and 19.5(6);

(7) The purchase price (including transportation and handling costs) paid to third parties for materials, supplies and similar consumables, which may include fuel oil, diesel fuel, natural gas, lubricants, shop rags, water treatment chemicals, laboratory supplies and office supplies;

(8) The purchase price (including transportation and handling costs) paid to third parties for replacement parts and equipment;

(9) The purchase price or rental charges (including transportation and handling costs) paid to third parties for machinery and equipment, which may include

field equipment and tools, safety devices, copy machines, fax machines, printers, scanners, paper shredders, computers and their associated software, networking infrastructure, telephones;

(10) The purchase price or rental charges, as well as associated maintenance costs, paid to third parties in connection with vehicles that are purchased or leased;

(11) Premiums for the Required Operating Period Insurance; and

(12) A management fee equal to 11.1% of total Compensable Costs. The management fee shall not be applied for costs relating to maintaining insurance or for performance bonds, for each Billing Period.

### 19.3. VARIABLE COMPENSABLE COSTS

Variable Costs include:

(1) Chemicals including, but not limited to Hypochlorite, Sodium Hydroxide and Sodium Hexametaphosphate;

(2) Unscheduled maintenance; and

(3) Unscheduled pipeline repairs and Project leak repairs.

### 19.4. MAJOR REPAIR AND REPLACEMENT COMPENSABLE COSTS

Major Repair and Replacement Compensable Costs include the costs paid or incurred by the Operating Service Provider to make major repairs to and replacements of the Project Improvements. Major Repair and Replacement Compensable Costs do not include the costs of operations or the costs of ordinary maintenance and predictive and preventive maintenance, which shall be included in Fixed Compensable Costs and Variable Compensable Costs.

### 19.5. NON-COMPENSABLE COSTS

Non-Compensable Costs include the following:

(1) Costs that do not qualify as Compensable Costs under the standard set forth in Section 19.1.1 (General Principle) of this Appendix 19;

(2) Any costs paid or incurred by the Water Supply Corporation (except that, costs paid or incurred by the Water Supply Corporation that would otherwise be Compensable Costs if incurred by the Project Company or the Operating Service Provider under and subject to the limitations set forth in items 19.2(1) and 19.2(2)) shall be, without duplication of any Compensable Costs otherwise incurred by the Project Company or the Operating Service Provider, Compensable Costs);

(3) Any costs paid or incurred by Garney Holding Company or any Affiliate other than the Project Company and the Operating Service Provider;

(4) Any costs paid by or incurred by any party other than the Project Company and the Operating Service Provider;

(5) Any legal fees related to the acquisition of, or any contest or dispute relating to, the Project Real Property;

- (6) Any legal fees related to litigation of any kind;
- (7) Costs for travel;
- (8) Costs covered by warranties or by Insurance Proceeds;
- (9) Any Variable Compensable Costs reasonably attributable to the production and delivery of Excess Product Water, subject to Section 10.4(B)(2) (Supply Following Commercial Operation Date);
- (10) Any Taxes, except as provided in Section 19.6 (Taxes) of this Appendix 19; and
- (11) Any costs that are paid or incurred by any party due to:
  - (a) Any failure to design or construct the Project Improvements in accordance with Good Engineering and Construction Practice, the Technical Specifications, or this Water Transmission and Purchase Agreement generally;
  - (b) Any failure to operate, maintain, repair or replace the Project Improvements in accordance with Good Management Practice, the Operating and Maintenance Standards, or this Water Transmission and Purchase Agreement generally;
  - (c) Any other failure by the Project Company to perform the Contract Obligations in accordance with the Contract Standards; and
  - (d) Any breach of this Water Transmission and Purchase Agreement by the Project Company, or the occurrence of a Project Company Event of Default.

#### 19.6. TAXES

Non-Compensable Costs shall include Taxes, as provided in Section 17.12 (Taxes) of this Water Transmission and Purchase Agreement, except that sales taxes on materials, supplies and chemicals used or consumed in the performance of the Operating Work shall constitute Compensable Costs if the Operating Service Provider is unable to secure an exemption thereon based on Applicable Law. No Taxes imposed by any taxing jurisdiction outside the United States are Compensable Costs.

#### 19.7. MITIGATION

In order to mitigate Compensable Costs incurred in the operation of the Project, at the direction of SAWS and when applicable, the Project Company shall use materials, chemicals or services provided by or through SAWS. Examples of this type of arrangement include use of SAWS professional services contracts for surveying or analyzing water quality samples in the SAWS analytical laboratory, or utilizing SAWS purchasing arrangements for chemicals, parts or materials.

#### 19.8. COSTS OF NEW FACILITIES

19.8.1 Capital Costs of New Facilities. The capital costs of making any Capital Modifications, or building any new facilities or new capital improvements of any kind for any reason (including changes in Applicable Law) are Non-Compensable Costs (except to the extent

any such Capital Modifications are SAWS-Requested Capital Modifications, which shall be paid for as provided in Section 12.3 (Capital Modifications at SAWS Request) of this Water Transmission and Purchase Agreement). The costs of operating, maintaining, repairing and replacing any Capital Modifications, new facilities or new capital improvements, however, are Compensable Costs.

19.8.2 Leasing Costs. If any additional treatment to meet the Performance Guarantee Requirements requires construction of new treatment processes, the Project Company will be responsible for the equipment and construction costs without reimbursement by SAWS. If the Project Company leases equipment to meet Performance Guarantee requirements on a temporary or permanent basis, the lease costs will also be the responsibility of the Project Company without reimbursement by SAWS.

#### 19.9. O&M BUDGET PANEL ADMINISTRATION

19.9.1 Composition. The O&M Budget Panel shall consist of five panelists (the "O&M Budget Panelists") selected as follows: (1) two panelists, one appointed by SAWS and one appointed by the Project Company; (2) third and fourth panelists, one selected by the panelist appointed by SAWS and one selected by the panelist appointed by the Project Company; and (3) a fifth panelist chosen by the two panelists selected pursuant to item (2) of this paragraph. The panelist selected pursuant to item (3) of this paragraph shall be the chair of the O&M Budget Panel, responsible for scheduling and directing its business.

19.9.2 Qualifications. Each panelist shall be a senior industry expert qualified and experienced in the field of municipal water system operations, maintenance, repair and replacement and in budgeting and cost matters relating thereto. The selected panelists shall not be a past or present employee of SAWS or Garney Holding Company or its Affiliates. No individual who has, within the three years preceding his or her appointment, been an agent of, or a consultant or counsel to, SAWS, the Project Company, a Project Contractor, any Subcontractor or any Affiliate thereof shall be eligible to serve on the Panel unless such restriction is waived by the other party.

19.9.3 Duration. The O&M Budget Panel shall be formed and the panelists selected by the responsible parties not later than 180 days prior to the estimated Commercial Operation Date, and shall continue in existence for the balance of the Term. The panel members shall serve for annual terms at the pleasure of both SAWS and the Project Company. Any resigning panelist shall be promptly replaced by the responsible party so as to permit the continuous performance of the O&M Budget Panel's duties.

19.9.4 Expenses. The cost of conducting the O&M Budget Panel's business shall be paid by SAWS.



**APPENDIX 20**  
**RESERVED**

**APPENDIX 20**  
**RESERVED**

**APPENDIX 21**  
**CERTAIN LITIGATION MATTERS**

## **APPENDIX 21**

### **CERTAIN LITIGATION MATTERS**

#### **Part A: Blue Water Litigation**

See Attachments 21A, 21B, 21C AND 21D for a description of the Blue Water litigation and its resolution.

#### **Part B: Abengoa Insolvency Proceedings**

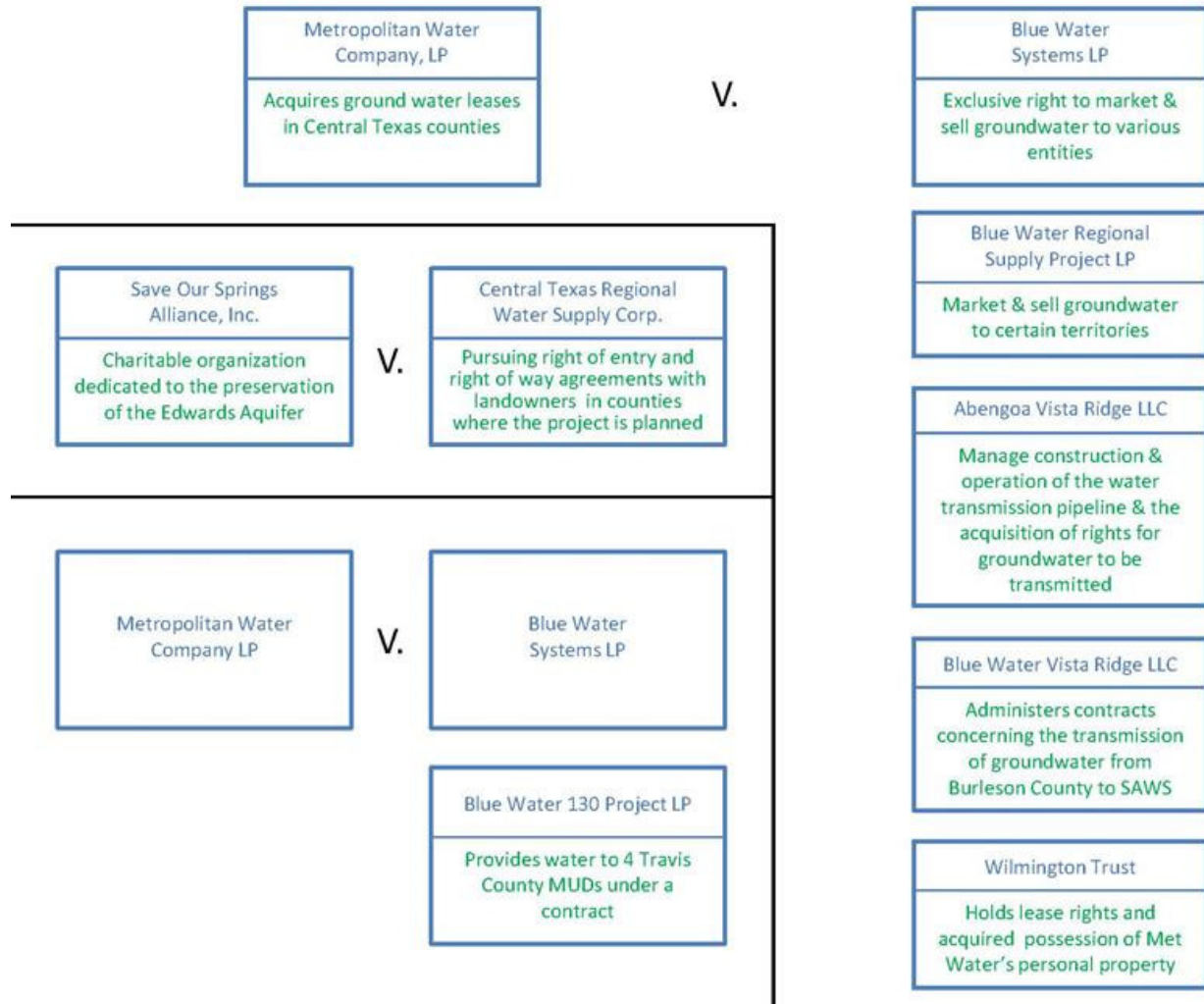
Proceedings now or hereafter occurring as a result of an insolvency, bankruptcy, receivership, assignment for the benefit of creditors or similar proceedings, whether foreign or domestic (an "Insolvency Proceeding"), of Abengoa S.A. or an affiliate of Abengoa S.A., whether directly or indirectly, including, but limited to, Abengoa Greenbridge, S.A.U. ("Greenbridge"), Abiensa Abiema Teyma GP ("Abeinsa"), and Abengoa Water USA LLC. Without limiting the general nature of the foregoing, the following are expressly excepted from the representation contained in Section 2.2(E) of the WTPA:

(1) Any proceeding or litigation to recover the \$62,500,000 (and any accrued interest) loaned to Abengoa Vista Ridge, LLC ("AVR") under that certain Contrato de Crédito Recíproco (Reciprocal Credit Agreement) dated December 17, 2014, between AVR and Greenbridge, arising out of or related to the assignment by AVR of that certain Letter of Intent dated December 12, 2014, between AVR and Abiensa, to Greenbridge, and a release by Abiensa of AVR from any further obligations owed by AVR to Abiensa thereunder.

(2) Any proceeding or litigation to recover the \$120,000,000 (and any accrued interest) loaned to AVR under that certain Bridge Loan Agreement ("Bridge Loan") entered into as of July 20, 2015, between AVR, as "Borrower", and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Société Générale, as "Lenders", arising out of or related to the release by Central Texas Regional Water Supply Corporation ("CTRWSC") of Abiensa from its obligations under that certain Early Works Services Agreement, dated as of July 23, 2015, between CTRWSC and Abeinsa

**ATTACHMENT 21A  
 ENTITIES INVOLVED IN THE BLUE WATER LITIGATION**

**Litigation**



**ATTACHMENT 21B  
INFORMATION RELATING TO MET WATER'S PETITION  
IN THE 201<sup>ST</sup> JUDICIAL DISTRICT**

11:48:56 AM, 12-23-2015 1 713 902 2300  
12/23/2015 12:44 Houston Chronicle

(FAX) 713 382 3980 P.001/054

12/18/2015 4:04:02 PM  
Veiva L. Price  
District Clerk  
Travis County  
D-1-GN-15-005774  
Patricia Winkler

CAUSE NO. D-1-GN-15-005774

METROPOLITAN WATER COMPANY,  
L.P.,

*Plaintiff,*

vs.

BLUE WATER SYSTEMS, LP; BLUE  
WATER REGIONAL SUPPLY PROJECT,  
LP; BLUE WATER VISTA RIDGE LLC;  
ABENGOA VISTA RIDGE LLC; and  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee of the  
Burleson/Milam Master Lease Trust,

*Defendants.*

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

201st TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE**

Plaintiff Metropolitan Water Company, L.P., (Met Water) complains of Defendants Blue Water Systems, LP (Blue Water), Blue Water Regional Supply Project, LP (BW RSP), Blue Water Vista Ridge, LLC (BW Vista Ridge), Abengoa Vista Ridge LLC (Abengoa Vista Ridge), and Wilmington Trust, National Association, as Trustee of the Burleson/Milam Master Lease Trust (Trust), and for cause of action would respectfully show as follows:

**I. INTRODUCTION**

1. This case is about deceitful and impermissible efforts to cut Met Water out of a deal worth up to \$700 million over the next 30 years.

2. Blue Water, BW RSP, and BW Vista Ridge (together, the Blue Water Defendants) are attempting to exclude Met Water from a water supply deal with San Antonio Water System (SAWS), the City of San Antonio's public water utility company. The deal will deliver up to 16.3

**ATTACHMENT 21C  
INFORMATION RELATING TO MET WATER’S PETITION  
IN THE 53<sup>RD</sup> JUDICIAL DISTRICT**

5/5/2015 10:33:26 AM

**Velva L. Price  
District Clerk  
Travis County  
D-1-GN-15-001738**

CAUSE NO. D-1-GN-15-001738

METROPOLITAN WATER COMPANY, L.P.,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	TRAVIS COUNTY, TEXAS
	§	
BLUE WATER SYSTEMS, LP and BLUE WATER 130 PROJECT, LP,	§	
	§	
<i>Defendants.</i>	§	<u>53RD</u> TH JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE**

Plaintiff Metropolitan Water Company, L.P., (Met Water) complains of Defendants Blue Water Systems, LP (Blue Water), and Blue Water 130 Project, LP (BW 130), and for cause of action would respectfully show as follows:

**I. INTRODUCTION**

“What’s in a name? That which we call a rose by any other name would smell as sweet.” — WILLIAM SHAKESPEARE, ROMEO & JULIET, act 2, scene 2.

1. This case is about the manipulation of contract language. Met Water had worked harmoniously with Blue Water and BW 130 (together, the Blue Water Defendants) for years in the business of gathering, marketing, and selling groundwater across Central Texas: Met Water was paid for finding and leasing the groundwater, Blue Water was paid for developing, marketing, and selling the groundwater, and the two sides split any water reservation fees<sup>1</sup> the Blue Water Defendants promised to negotiate with its buyers.

<sup>1</sup> As explained in more detail below, a “reservation fee” is compensation a buyer (like a municipality or a private water reseller) pays a water supply company to make a certain amount of water available for purchase, regardless of the amount the buyer actually purchases. This procedure “reserves” water for a buyer’s potential use.



**ATTACHMENT 21D**  
**EXCERPT FROM THE ESTOPPEL CERTIFICATE AND VERIFICATION OF FACTS**

**TO:** THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, an agency of the City of San Antonio (“SAWS”); GARNEY HOLDING COMPANY, a corporation organized and existing under the laws of the State of Missouri (“GHC”); GARNEY COMPANIES, INC., a corporation organized and existing under the laws of the State of Missouri (“GCI”); GARNEY P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri (“GP3”) (GHC, GCI, and GP3, together hereafter being the “Garney Parties”); and ABENGOA VISTA RIDGE, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Project Company”) (together with SAWS and the Garney Parties, being the “Recipients”).

RE: Cause No. D-1-GN-15-001738 in the 53<sup>rd</sup> Judicial District Court of Travis County, Texas, styled *Metropolitan Water Company, L.P. v. Blue Water Systems, LP and Blue Water 130 Project, LP* (the “130 Primary Action”); Cause No. D-1-GN-15-002697 in the 53<sup>rd</sup> Judicial District Court of Travis County, Texas, styled *Metropolitan Water Company v. SWWC Utilities, Inc. and Metro-H2O Ltd. v. Blue Water Systems LP and Blue Water 130 Project, LP* (the “130 Garnishment Action”) (together with the 130 Primary Action, being the “130 Actions”); and Cause No. D-1-GN-15-005774 in the 201<sup>st</sup> Judicial District Court of Travis County, Texas, styled *Metropolitan Water Company, L.P. v. Blue Water Systems, LP, Blue Water Regional Supply Project, LP, Blue Water Vista Ridge LLC, Abengoa Vista Ridge LLC and Wilmington Trust, National Association, as Trustee of the Burluson/Milam Master Lease Trust* (the “Vista Ridge Action”) (together with the 130 Actions, being the “Met Water Actions”).

We, the undersigned, do hereby state, declare, represent, warrant and certify to Recipients as of May 13, 2016 as follows:

In July 2015, Metropolitan Water Company, L.P., a Texas limited partnership (“Met Water”), initiated the 130 Actions, in which Met Water claimed, among other things, that the certain Groundwater Resources Marketing Agreement dated September 11, 2006, as subsequently amended, (the “GRMA”) was breached by Blue Water Systems LP, a Texas limited partnership (“BWS”), and Blue Water 130 Project, LP, a Texas limited partnership (“BW130P”), and should be terminated.

In December 2015, Met Water initiated the Vista Ridge Action, in which Met Water claimed, among other things, that the GRMA, that certain Groundwater Lease Assignment Agreement effective October 14, 2014 (“GLAA”), and that certain Assignment of Met Water Lease Rights effective October 14, 2014 (“AMWLR”) (together with the GRMA, the GLAA, and the AMWLR, being the “Existing Agreements”), should be terminated or rescinded.

Met Water’s claims in the Met Water Actions, especially those for termination and/or rescission of the Existing Agreements, threatened to terminate or rescind certain rights under such agreements which were subsequently assigned to Blue Water Vista Ridge, LLC, a Texas limited



liability company (“BWVR”) and thereafter assigned to the Burleson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act (the “Master Lease Trust”) and subleased to the Project Company under that certain Groundwater Lease Conveyance Agreement, dated January 31, 2015, and thus threatened an unfavorable decision, ruling or finding could which reasonably be expected to have a material and adverse effect the execution and delivery of the Water Transmission and Purchase Agreement (“WTPA”) by the Project Company or the validity, legality or enforceability of the WTPA against the Project Company, or the other agreements or instrument entered into by the Project Company in connection with the transactions contemplated in the WTPA, or on the ability of the Project Company to perform its obligations under the WTPA or under any such other agreement or instrument.

On May 11, 2016, Met Water, Met Water Vista Ridge, L.P. a Texas limited partnership (“MWVR”) (together with Met Water, being the “Met Water Parties”), BWVR, BWS, BW13, and Blue Water Regional Supply Project, LP, a Texas limited partnership (“BWRSP”) (together with BWVR, BWS, and BW130 being the “Blue Water Parties”) agreed-to and executed that certain Post-Closing Agreement (“PCA”) dated May 12, 2016 (all parties thereof being the “Parties”).

Effective May 11, 2016, by the PCA, the Parties agreed, among other things, that:

1. The Met Water Parties released and waived any right to assert against anyone, including Blue Water Parties, the Garney Parties, and the Project Company, any asserted or unasserted claims for rescission, termination, or the like of the Existing Agreements and to dismiss those claims with prejudice;
2. The Met Water Parties released and waived any asserted or unasserted claims for conversion against the Project Company or the Trust and to dismiss those claims with prejudice;
3. If “Financial Close” (as defined by the WTPA) does not occur on or before the “Financial Closing Longstop Date” (as defined by the WTPA), then, as a condition subsequent to the release and dismissal provided for the Vista Ridge Action, such release and dismissal shall, as to Blue Water Parties only, be void and of no further effect, and such claims shall be as though they had never been released and shall exist to the extent permitted as though all applicable statutes of limitations and doctrines of delay or laches were tolled and of no effect during the period of time between May 12, 2016 and the Financial Closing Longstop Date;
4. Met Water’s only remaining claims not dismissed with prejudice or released are monetary and will not result in avoidance, cancellation, invalidation, nullification, rescission, revocation, termination or the like of any Existing Agreements and would be decided, if at all, only by mandatory binding arbitration to conclude, with an award issued, not later than November 12, 2016;
5. The Met Water Parties acknowledge, consent, ratify and confirm (i) their release of any and all rights as to any “Groundwater Leases” for the “Term” as defined by

the WTPA, (ii) their waiver of any right to claim rescission or other equitable reform to the Existing Agreements with respect to the “Groundwater Leases” and/or any other transaction documents relating to the “Project,” each as defined by the WTPA, (iii) their affirmation and support of (and agreement not to disturb) the Existing Agreements with respect to the Groundwater Leases and/or any other transaction documents relating to the Project; and

6. The Met Water Parties and the Blue Water Parties will enter into Non-Disturbance Agreements (the “Non-Disturbance Agreements”) with the Garney Parties and the Project Company, which shall provide, among other terms and conditions, that Met Water Parties and Blue Water Parties each agree that they (i) waive any rights or remedies they have or might obtain or to which they might otherwise be entitled which could materially or adversely affect, (ii) that they shall undertake all acts necessary or expedient for, and (iii) shall refrain from any act or omission which could reasonably be expected to materially or adversely affect: (a) the execution and delivery of the Water Transmission and Purchase Agreement (“WTPA”) by the Project Company; (b) preservation of the validity, legality or enforceability of the WTPA against the Project Company or the other agreements or instrument entered into by the Project Company in connection with the transactions contemplated in the WTPA; or (c) the ability of the Project Company to perform its obligations under the WTPA or under any such other agreement or instrument. And Met Water Parties and Blue Water Parties each agree, if ever in dispute, to bear the burden of proving by clear and convincing evidence that any such action, omission, right or remedy they commit or permit is not capable of so threatening.

**APPENDIX 22**  
**PROJECT COMPANY-RELATED LOANS**

## APPENDIX 22

### PROJECT COMPANY-RELATED LOANS

The loans listed in this Appendix 22 are those Project Company-Related Loans in excess of \$5,000,000.

<b>Trade Payables – BAML PPB Line</b>	<b>8,090,677.11</b>
Total Central Texas Regional WSC – PPB	7,692,509.06
Total AVR – PPB	398,168.05
<b>Loans - Credit Entities</b>	<b>120,000,000.00</b>
Sumitomo Mitsui Banking Corp	50,000,000.00
Banco Santander SA	25,000,000.00
Royal Bank of Canada	25,000,000.00
Societe Generale	20,000,000.00
The \$120,000,000 set forth herein (the “Bridge Loan”) was borrowed under the Bridge Loan Agreement, dated July 20, 2015, between the Project Company and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Soci�t� G�n�rale.	
<b>Interests - Credit Entities</b>	<b>2,128,647.84</b>
Sumitomo Mitsui Banking Corp	886,936.60
Banco Santander SA	443,468.30
Royal Bank of Canada	443,468.30
Societe Generale	354,774.64
<b>Loans - Intercompany</b>	<b>84,219,311.24</b>
Abengoa Greenbridge*	67,178,684.95
Abengoa Water USA	17,040,626.29
*The 67,178,684.95 set forth herein (the “Greenbridge Transaction”) was borrowed under the Reciprocal Credit Agreement, dated December 17, 2014, between the Project Company and Abengoa Greenbridge S.A. Unipersonal.	
<b>Interests - Intercompany</b>	<b>1,467,527.56</b>
Abengoa Greenbridge	1,188,689.51
Abengoa Water USA	278,838.05

**REFERENCE DOCUMENT 1**  
**BLUE WATER SYSTEMS RAW GROUNDWATER PERMITS**

## **REFERENCE DOCUMENT 1**

### **BLUE WATER SYSTEMS RAW GROUNDWATER PERMITS**

#### 1.1 DRILLING AND OPERATING PERMIT

Attached hereto are the (a) Amended and Restated Drilling & Operating Permit Issued by Direction of the Board of Directors of the Post Oak Savannah Groundwater Conservation District, dated January 13, 2009, and granted to Blue Water Systems, LP; and (b) Resolution Amending the Blue Water Systems, LP Drilling and Operating Permit No. POS-D&O/A&M-001 to divide the number of permitted wells and production between two projects and assign a portion of the 41 permitted wells and 20,000 acre-feet of permitted production and transport to the Blue Water 130 D&O Permit, and the remainder of permitted wells and 50,993 acre-feet of permitted production to the Blue Water Vista Ridge LLC D&O Permit, dated September 9, 2014.

**Amended and Restated Drilling & Operating Permit  
Issued By Direction of the Board of Directors of the  
Post Oak Savannah Groundwater Conservation District**

This Amended and Restated Drilling and Operating Permit ("Permit") is granted to Blue Water Systems, L.P., ("Permittee"), successor to Layne Water Development of Texas, LLC ("Layne"), to authorize Permittee to drill and operate forty-one (41) water wells within the Post Oak Savannah Groundwater Conservation District ("District"), for the purpose of producing water for Municipal Use. The name, location, maximum annual production and maximum gallons of production permitted per minute for each of the forty-one wells is listed in Exhibit "A". The individual wells listed in Exhibit "A" are referred to herein as the "Well" or "Wells" and the forty-one Wells are collectively referred to as the "Well System". This Permit is conditioned upon and subject to Permittee complying with the Rules of the District ("Rules"), the orders of the Board, the Management Plan of the District, as amended, and the laws, rules and regulations of the State of Texas, as amended, applicable to drilling, operating and maintaining water wells within the District. This Permit confers only the right to drill and operate the Wells and Well System in compliance with and subject to the Rules and requirements of this Permit. The terms, conditions and authorizations of this Permit may be modified or amended under the Rules.

The Wells are registered with the District and the State of Texas. The Wells are approved for production in the aggregate as a Well System. The Permittee is authorized to drill and operate the Wells at the locations and maximum GPM production set forth in Exhibit "A", and the maximum annual production of the Well System shall not exceed 70,993 acre feet per year.

The Rules are incorporated herein in their entirety by reference, as if set forth herein verbatim, including but not limited to the Rules providing for reducing permitted production,. The Permittee shall comply with the Rules and each requirement thereof in operating, maintaining, repairing and altering each of the Wells and the Well System. All application(s) pursuant to which the related original permits and prior amended permits, and this Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Permit. This Permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s), agreements and acknowledgments on file with the District. A finding that false information was supplied to the District in the permitting process for the Wells is grounds for revocation of this Permit.

The issuance of this Permit does not grant Permittee the right to use any public or private property, interfere with any personal or property rights, or violate any federal, state, or local law, rule or regulation. The District makes no representations and has no responsibility with respect to the availability or quality of the water authorized to be produced under this permit.

The term of the Permit, both the Drilling and the Operating Permit, is for a period of forty years from the original issuance date of September 11, 2004, subject to review every fifth year and modification during any such review to conform this Permit with intervening changes in the Management Plan or state law. Unless waived by the Board of the District for a specific review period, applications for review shall be submitted to the District 90 days prior to the fifth anniversary of the issuance date and each subsequent scheduled review date following the fifth anniversary date, until the date of expiration of this Permit. The Board may waive any review if no material change has been made to the Management Plan, or if the changes made do not require modification of this Permit.

The Permit is issued and effective as of January 13, 2009.

**Post Oak Savannah Groundwater Conservation District**



By: \_\_\_\_\_

Name: Gary Westbrook

Title: General Manager

A handwritten signature in blue ink, appearing to read "Gary Westbrook", is written over a horizontal line.

Permit No. POS-D&O/A & M-0001

Exhibit "A"  
Blue Water, L.P. Permitted Water Wells  
List for Permit issued January 13, 2009

<u>Well Designation</u>	<u>Location</u>	<u>Max. GPM</u>
CW-1	30.44108N 96.81247W	1200gpm
CW-2	30.43564N 96.80366W	1200gpm
CW-3	30.42803N 96.80739W	1200gpm
CW-4	30.43169N 96.81623W	1200gpm
CW-5	30.43037N 96.82592W	1200gpm
CW-6	30.42724N 96.83412W	1200gpm
CW-7	30.41233N 96.81705W	1200gpm
CW-8	30.42325N 96.81969W	1200gpm
CW-9	30.42052N 96.81123W	975gpm
CW-10	30.41916N 96.80507W	750gpm
CW-11	30.41392N 96.7928W	750gpm
CW-12	30.41116N 96.79682W	750gpm
CW-13	30.44583N 96.76865W	1200gpm
CW-14	30.40421N 96.7786W	750gpm
CW-15	30.41001N 96.78026W	750gpm
CW-16	30.40794N 96.77606W	750gpm
CW-17	30.41709N 96.77139W	750gpm
CW-18	30.42121N 96.77545W	975gpm
CW-19	30.41838N 96.7668W	750gpm
CW-20	30.43605N 96.76393W	1200gpm
CW-21	30.43899N 96.77173W	1200gpm
PW-1	30.5069N 96.82059W	2800gpm
PW-2	30.5032N 96.8128W	2800gpm
PW-3	30.51464N 96.81067W	2800gpm
PW-4	30.49953N 96.80459W	2800gpm
PW-5	30.508N 96.8054W	2800gpm
PW-6	30.49522N 96.79645W	2900gpm
PW-7	30.51578 N 96.79897W	3000gpm
PW-8	30.50739N 96.79584W	3000gpm
PW-9	30.44138N 96.801233 W	3000gpm
PW-10	30.43638N 96.80358W	3000gpm
PW-11	30.42851N 96.80668W	3000gpm
PW-12	30.42113N 96.811 W	3000gpm
PW-13	30.42394N 96.82004W	3000gpm
PW-14	30.41266N 96.81705W	2500gpm
PW-15	30.42723N 96.83449W	3000gpm
PW-16	30.43059N 96.82576W	3000gpm
PW-17	30.43181n 96.981632w	3000gpm
PW-18	30.41998N 96.7752W	3000gpm
PW-19	30.41001N 96.77979W	3000gpm
PW-20	30.41145N 96.79644W	1800gpm



**A RESOLUTION AMENDING THE BLUE WATER SYSTEMS LP DRILLING AND OPERATING PERMIT NO POS-D&O/A&M-001 TO DIVIDE THE NUMBER OF PERMITTED WELLS AND PRODUCTION BETWEEN TWO PROJECTS AND ASSIGN A PORTION OF THE 41 PERMITTED WELLS AND 20,000 ACRE-FEET OF PERMITTED PRODUCTION AND TRANSPORT TO THE BLUE WATER 130 D&O PERMIT, AND THE REMAINDER OF PERMITTED WELLS AND 50,993 ACRE-FEET OF PERMITTED PRODUCTION TO THE BLUE WATER VISTA RIDGE L.L.C. D&O PERMIT.**

**Whereas**, Blue Water Systems LP (“Blue Water”) requested Permit No. POS-D&O/A&M-001 (the “Permit”) be amended to apportion some of the permitted 41 wells and 70,993 acre-feet of production to Blue Water 130 LP and the remainder of the wells and 50,993 acre-feet of production to Blue Water Vista Ridge L.L.C.; and

**Whereas**, Blue Water’s request is not inconsistent with the policies and prior actions of the Post Oak Savannah Groundwater Conservation District (“District”);

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT, THAT:**

**Section 1. Amendment of the Permit.** The Blue Water Systems LP Drilling and Operating Permit No. POS-D&O/A&M-001 is hereby amended as follows:


- (1) 20,000 acre-feet of the 70,993 acre-feet of authorized groundwater production and 8 of the 41 permitted wells, as such wells are more specifically identified on the attached Exhibit A, shall be permitted to and the permit held by Blue Water 130 LP; and
- (2) 50,993 acre-feet of the 70,993 acre-feet of authorized groundwater production and 33 of the 41 permitted wells, as such wells are more specifically identified on the attached Exhibit B, shall be permitted to and the permit held by Blue Water Vista Ridge L.L.C..


**Section 2. Permit Terms and Conditions.** Save and except for the foregoing specific amendments dividing and assigning certain of the 41 permitted wells and a portion of the 70,993 acre-feet of groundwater production to Blue Water 130 LP and Blue Water Vista Ridge L.L.C., respectively, the terms and conditions of Permit No. POS-D&O/A&M-001 shall remain in full force and effect.

PASSED AND APPROVED this the 9<sup>th</sup> day of September, 2014.

**Post Oak Savannah Groundwater Conservation District**

**Attest:**

  
Gary Westbrook, Ass't. Secretary

  
Name: Nathan Ausley  
Title: President

**Exhibit A**  
**Blue Water 130 LP Permitted Water Wells**  
**List for Permit issued September 9, 2014**

Well Designation	Location	Max. GPM
PW-1	30.5069N 96.82059W	2800gpm
PW-2	30.5032N 96.8128W	2800gpm
PW-3	30.51464N 96.81067W	2800gpm
PW-4	30.49953N 96.80459W	2800gpm
PW-5	30.508N 96.8054W	2800gpm
PW-6	30.49522N 96.79645W	2900gpm
PW-7	30.51578 N 96.79897W	3000gpm
PW-8	30.50739N 96.79584W	3000gpm

**Exhibit B**  
**Vista Ridge, LP Permitted Water Wells**  
**List for Permit issued September 9, 2014**

Well Designation	Location	Max. GPM
CW-1	30.44108N 96.81247W	1200gpm
CW-2	30.43564N 96.80366W	1200gpm
CW-3	30.42803N 96.80739W	1200gpm
CW-4	30.43169N 96.81623W	1200gpm
CW-5	30.43037N 96.82592W	1200gpm
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CW-8	30.42325N 96.81969W	1200gpm
CW-9	30.42052N 96.81123W	975gpm
CW-10	30.41916N 96.80507W	750gpm
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PW-16	30.43059N 96.82576W	3000gpm
PW-17	30.43181n 96.981632w	3000gpm
PW-18	30.41998N 96.7752W	3000gpm
PW-19	30.41001N 96.77979W	3000gpm
PW-20	30.41145N 96.79644W	1800gpm

## 1.2 PERMIT TO TRANSPORT GROUNDWATER

Attached hereto are the (a) Amended Permit to Transport Groundwater from within the Post Oak Savannah Groundwater Conservation District of the State of Texas by Direction of the Board of Directors of the Post Oak Savannah Groundwater Conservation District, dated September 14, 2004, amended effective September 14, 2010, and granted to Blue Water Systems, LP; and (b) Resolution Amending the Blue Water Systems, LP Permit for the Transport of Groundwater Produced Pursuant to Blue Water Permit No. POS-D&O/A&M-001, as amended, to authorize Blue Water 130 LP to transport up to 20,000 acre-feet annually and Blue Water Vista Ridge, LLC to transport up to 50,993 acre-feet annually, and to amend the wording of the transport permit to limit the volume of groundwater that may be transported during any 24-hour period of time, dated September 9, 2014.



Amended Permit to Transport Groundwater From within the  
*Post Oak Savannah Groundwater Conservation District*  
*Of the State of Texas*  
*By Direction of the Board of Directors of the*  
*Post Oak Savannah Groundwater Conservation District*

This amended permit is granted to; Blue Water Systems, LP (Permittee), : c/o Ross Cummings, Stonebridge Plaza 1, 9606 N. Mapac, Suite 125, Austin, Travis County, Texas 78759, successor to Layne Water Development of Texas, LLC ("Layne"), for the purpose of transporting groundwater from a system of water wells (wells) within the Post Oak Savannah Groundwater Conservation District (District), to locations outside the District for the non-wasteful purposes of Municipal Use in the counties of Bastrop, Bell, Burnet, Caldwell, Hays, Lee, Travis, Williamson, Comal, Guadalupe, and Bexar, in the State of Texas ("Amended Permit"). The groundwater permitted herein must be put to beneficial use at all times.

The location of each well from which water is authorized to be transported under this Amended Permit is listed in Exhibit "A". The Permittee has leased the water rights that will be produced. In addition, the names and mailing addresses of the owners of the land from which the wells are authorized to produce water are set forth in the application filed by Permittee for this Amended Permit, and otherwise in the records of the District.

Upon issuance of this Amended Permit, the Permittee agrees to abide by the Rules, orders of the Board and Management Plan of the District, as amended, and the Laws and Rules of the State of Texas, as amended, in transporting groundwater from the water wells to locations outside the District. This permit confers only the right to use the permit under the provisions of the District rules and according to its terms. The permit terms may be modified or amended as provided in the District rules.

*These wells are registered with the District and the State of Texas. The amount of groundwater to be transported from the District shall not exceed 63.374148 million gallons during any 24 hour period. The total amount of groundwater to be transported from the District on an annual basis shall not exceed 70,993 acre feet.*

This Amended Permit confers only the right to transport groundwater and its terms may be modified or amended. The operation of the wells for the authorized withdrawal must be conducted in a non-wasteful manner.

All transport and storage facilities must be accessible to District representatives for inspection, and the Permittee agrees to cooperate fully in any reasonable inspection of these facilities by the District representatives.

All application(s) pursuant to which the related original permits and the prior amended permits, and this Amended Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Amended Permit, which is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s). A finding that false information has been supplied is grounds for revocation of the Amended Permit.

Violation of the terms, conditions, requirements, or special provisions of this Amended Permit is punishable by civil penalties as provided by the District Rules and by law.

On or before February 15 of each year, the owner of this Amended Permit must submit an annual report to the District describing the amount of groundwater transported under this Amended Permit. This report shall be filed on a form provided by the District, stating the following: (1) the name of the Permittee; (2) the well numbers of each well for which the Permittee holds a transport permit; (3) the total amount of groundwater transported from each well and well system during the immediately preceding calendar year; (4) the total amount of groundwater transported from each well and well system during each month of the immediately preceding calendar year; (5) the purpose for which the water was transported; (6) any other information related to the operation and production of the wells or transport of water requested by the District.

The issuance of this Amended Permit does not grant to the Permittee the right to use private property, or public property, for the production or conveyance of water. Neither does this Amended Permit authorize the invasion of any personal rights nor the violation of federal, state, or local laws, or any regulations.

The District makes no representations and shall have no responsibility with respect to the availability or quality of water authorized to be transported under this Amended Permit.

**Special Terms:**

*This Amended Permit expires on September 15, 2034.* This Amended Permit is subject to review every fifth year, and during any such review may be modified to conform with intervening changes in the Management Plan of the District or state law. Permittee shall submit to the District 90 days prior to the fifth anniversary of the issuance and each subsequent review, and the date of expiration of the operating permit a full and complete report describing its groundwater transportation system, volumes of water delivered by customer, and the delivery points of groundwater transported, together with such other information that will assist the District's review. The Board may waive any five year review if no material change has been made to the Management Plan, or if the changes made do not require modification of such permits. Despite the term of duration listed in this Amended Permit, the Permittee is authorized to transport groundwater under this Amended Permit only as long as the Permittee holds a valid operating permit issued by the District for the wells listed in this Amended Permit.

*This amended permit issued September 14, 2004 is hereby amended effective September 14, 2010.*  
*This permit expires September 15, 2034.*



  
Gary Westbrook - General Manager

**A RESOLUTION AMENDING THE BLUE WATER SYSTEMS LP PERMIT FOR THE TRANSPORT OF GROUNDWATER PRODUCED PURSUANT TO BLUE WATER PERMIT NO. POS-D&O/A&M-001, AS AMENDED, TO AUTHORIZE BLUE WATER 130 L.P. TO TRANSPORT UP TO 20,000 ACRE-FEET ANNUALLY AND BLUE WATER VISTA RIDGE L.P. TO TRANSPORT UP TO 50,993 ACRE FEET ANNUALLY, AND TO AMEND THE WORDING OF THE TRANSPORT PERMIT TO LIMIT THE VOLUME OF GROUNDWATER THAT MAY BE TRANSPORTED DURING ANY 24 HOUR PERIOD OF TIME.**

**Whereas**, Blue Water Systems LP (“Blue Water”) requested Permit No. POS-D&O/A&M-001 (the “Permit”) be amended to apportion some of the permitted 41 wells and 70,993 acre-feet of production to Blue Water 130 L.P. and the remainder of the wells and 50, 993 acre-feet of production to Blue Water Vista Ridge L.L.C.; and

**Whereas**, the Board of Directors of the Post Oak Savannah Groundwater Conservation District (“District”) amended the Permit by Resolution dated September 9, 2014; and

**Whereas**, Blue Water requests an amendment to the permit authorizing the transport of the groundwater (the “Transport Permit”) authorized to be produced pursuant to the Permit;

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT, THAT:**

**Section 1. Amendment of the Transport Permit.** The Transport Permit authorizing Blue Water to transport outside the District the groundwater produced pursuant to the Permit is hereby amended as follows:

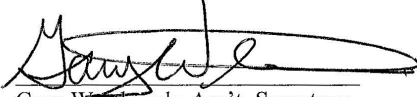
- (1) (a) Blue Water 130 LP is authorized to transport up to 20,000 acre-feet of groundwater annually that is produced from the 8 wells, permitted to Blue Water 130 LP, specifically identified on the attached Exhibit A; and  
  
(b) During any 24 hour period, the amount of groundwater to be transported from the District shall not exceed the aggregate maximum gallons per minute for the wells identified in Exhibit A.
- (2) (a) Blue Water Vista Ridge L.L.C. is authorized to transport up to 50,993 acre-feet of groundwater annually that is produced from the 33 wells, permitted to Blue Water Vista Ridge, L.L.C., specifically identified on the attached Exhibit B; and  
  
(b) During any 24 hour period, the amount of groundwater to be transported from the District shall not exceed the aggregate maximum gallons per minute for the wells identified in Exhibit B.

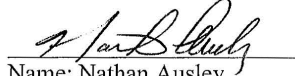
**Section 2. Permit Terms and Conditions.** Save and except for the foregoing specific amendments the terms and conditions of the Transport Permit authorizing the transport of water produced pursuant to Blue Water Permit No. POS-D&O/A&M-001 shall remain in full force and effect.

PASSED AND APPROVED this the 9<sup>th</sup> day of September, 2014.

**Post Oak Savannah Groundwater Conservation District**

**Attest:**

  
\_\_\_\_\_  
Gary Westbrook, Ass't. Secretary

  
\_\_\_\_\_  
Name: Nathan Ausley  
Title: President

**Exhibit A**  
**Blue Water 130 LP Permitted Water Wells**  
**List for Permit issued September 9, 2014**

Well Designation	Location	Max. GPM
PW-1	30.5069N 96.82059W	2800gpm
PW-2	30.5032N 96.8128W	2800gpm
PW-3	30.51464N 96.81067W	2800gpm
PW-4	30.49953N 96.80459W	2800gpm
PW-5	30.508N 96.8054W	2800gpm
PW-6	30.49522N 96.79645W	2900gpm
PW-7	30.51578 N 96.79897W	3000gpm
PW-8	30.50739N 96.79584W	3000gpm



**Exhibit B**  
**Vista Ridge, LP Permitted Water Wells**  
**List for Permit issued September 9, 2014**

Well Designation	Location	Max. GPM
CW-1	30.44108N 96.81247W	1200gpm
CW-2	30.43564N 96.80366W	1200gpm
CW-3	30.42803N 96.80739W	1200gpm
CW-4	30.43169N 96.81623W	1200gpm
CW-5	30.43037N 96.82592W	1200gpm
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PW-10	30.43638N 96.80358W	3000gpm
PW-11	30.42851N 96.80668W	3000gpm
PW-12	30.42113N 96.811 W	3000gpm
PW-13	30.42394N 96.82004W	3000gpm
PW-14	30.41266N 96.81705W	2500gpm
PW-15	30.42723N 96.83449W	3000gpm
PW-16	30.43059N 96.82576W	3000gpm
PW-17	30.43181n 96.981632w	3000gpm
PW-18	30.41998N 96.7752W	3000gpm
PW-19	30.41001N 96.77979W	3000gpm
PW-20	30.41145N 96.79644W	1800gpm

**REFERENCE DOCUMENT 2**  
**GROUNDWATER LEASE CONVEYANCE AGREEMENT**

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## **Groundwater Lease Conveyance Agreement**

This Groundwater Lease Conveyance Agreement (the "**Agreement**") is entered into effective as of the date set out below as the "Effective Date", between Abengoa Vista Ridge LLC ("**Vista Ridge**"), Blue Water Vista Ridge, LLC ("**Blue Water VR**"), Blue Water Regional Supply Project LP ("**Blue Water RSP**") and the Burleson/Milam Master Lease Trust (the "**Trust**") (each also referred to individually herein as "**Party**", or in the plural, the "**Parties**"). For the purpose of this Agreement Blue Water VR and Blue Water RSP may sometimes be collectively be referred to as "**Blue Water**" or the "**Blue Water Entities**".

### **RECITALS**

**WHEREAS**, Blue Water VR has acquired (i) certain lease rights which provide the lessee with groundwater resources, and the right to install, operate and maintain water system infrastructure over approximately 50,000 acres of land from landowners as described on Exhibit "A" (the "**Leases**", and each singularly referred to as a "**Lease**"), (ii) the rights of Blue Water Systems LP ("**BWS**"), to obtain a Drilling and Operating Permit (with the assistance of BWS) to withdraw up to 50,993 acre feet of groundwater per year, from the Land (as defined below) ("**Operating Permit**") from the Post Oak Savannah Groundwater Conservation District of the State of Texas ("**POSGCD**"), which is to be in partial replacement of an Existing Permit (as hereafter defined) issued to BWS, and (iii) the right, with the assistance of BWS, to obtain from POSGCD a "Permit to Transport Groundwater from within the Post Oak Savannah Groundwater Conservation District of the State of Texas," to transport up to 50,993 acre feet per year from the POSGCD to the Counties of Bastrop, Bell, Bexar, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis and Williamson Counties, Texas (the "**Transportation Permit**") which is to be in partial replacement of an Existing Permit (as hereafter defined) currently issued to BWS;

**WHEREAS**, the Leases provide for, among other things, the following rights: (i) the lease to the lessee of certain land (the "**Land**") as described in the Leases, for purposes of construction, operation and maintenance of facilities such as those that will comprise the Project Improvements (the "**Land Infrastructure Lease Rights**"), (ii) the assignment to the lessee of an exclusive right to designate sanitary control easements on the Land (the "**Sanitary Control Easements**"), (iii) the assignment to the lessee of the exclusive right to obtain a conveyance of title to 10,000 square foot wellhead sites surrounding each groundwater well to be drilled upon the Land, in fee simple determinable (the "**Well Head Sites**"), (iv) the lease to the lessee of a right to lease 2.0 acre well sites ("**2 Acre Well Tracts**") and (v); a conveyance to the lessee of all rights to the groundwater relating to the Land (the "**Water Rights**").

**WHEREAS**, Vista Ridge and San Antonio Water System Board of Trustees, an agency of the City of San Antonio established pursuant to the provisions of City of San Antonio Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq., and Chapter

1502, as amended, Texas Government Code (“*SAWS*”) are negotiating or have entered into the Vista Ridge Regional Supply Project Water Transmission And Purchase Agreement (the “*WPA*”);

**WHEREAS**, Vista Ridge desires to acquire from Blue Water (i) a Sublease (as defined below) of the Land Infrastructure Lease Rights, the Sanitary Control Easements, the Well Head Sites and the 2 Acre Well Tracts (being collectively referred to as the “*Real Property Rights*”) and the Water Rights, (ii) the right to obtain the Operating Permit, and (iii) the right to obtain the Transportation Permit, for the purpose of delivering groundwater from the Land situated in the POSGCD to a site in Bexar County, Texas owned by SAWS, through a system of groundwater wells, pumping stations, pumps, meters, storage tanks and transmission lines and other facilities, which make up the “*Project Improvements*” as defined in the WPA, for the term of the WPA (the “*WPA Term*”);

**WHEREAS**, Blue Water has agreed to (i) enter into a sublease and partial assignment of the Water Rights and Real Property Rights to Vista Ridge (the “*Sublease*”), (ii) cause an application for the issuance to Vista Ridge of the Operating Permit and Transportation Permit (collectively the “*Permits*”) to be filed with the POSGCD, (iii) assist and cause the Permits to be issued to Vista Ridge from POSGCD, (iv) consent to and cooperate with the assignment by Vista Ridge to SAWS of the Project Improvements at the end of the WPA Term, and (v) perform, and cooperate with Vista Ridge, with respect to the obligations required of Blue Water under the terms of the WPA;

**WHEREAS**, Vista Ridge intends to pursue third party financing to provide funds for the development of the “*Project*” (as defined in the WPA) which may be secured, in whole or in part by a collateral pledge of the Water Rights, Real Property Rights and Permits;

**WHEREAS**, it is intended that any payment to be made by Vista Ridge to Blue Water or the Trust, shall only be paid by Vista Ridge to the extent, and at the times, permitted pursuant to the Senior Debt Financing Agreements (as defined in the WPA), and such payments shall be subordinate to the Senior Debt (as defined in the WPA);

**WHEREAS**, to preserve the Leases in a manner which is beneficial to the interests of Vista Ridge and Blue Water during the Term of this Agreement, and to assist with the financing of the development of the Project Improvements by Vista Ridge, Blue Water VR also has agreed to assign, immediately following the execution of the Sublease, all of its interest in the Leases (subject to the terms of the Sublease), to the Trust, which Trust shall act as a custodial trust, created for the benefit of Blue Water VR and Vista Ridge for their respective rights and administered by Vista Ridge;

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the covenants and obligations of the parties set forth

herein, the legal sufficiency and receipt of which is acknowledged and stipulated by each of the undersigned hereby agree as follows:

### AGREEMENT

1. Assignment of Permits to Vista Ridge.

a. Blue Water does hereby agree that, within five (5) days following the “**Contract Date**” (as defined in the WPA), or at such later date as Vista Ridge may designate by notice to Blue Water, Blue Water VR (i) will cause an application for the reissuance of the Permits to be filed with the POSGCD, and cause the Permits to be reissued to Vista Ridge, and (ii) will convey and assign (and cause BWS to so convey and assign) unto Vista Ridge, its successors and assigns, all of their respective right, title and interest in the Existing Permits and Permits (the “**Permit Assignment**”), for that time period (the “**Permit Assignment Term**”) which ends upon the later of the “**Termination Date**” (as defined in the WPA) or the date of final payment in full of all Senior Debt, at which time Vista Ridge’s rights to such Permits shall revert to Blue Water VR. The assignment of BWS and Blue Water’s interest in the Permits shall be conveyed by the execution and delivery by Blue Water VR and BWS to Vista Ridge of the assignment documents in a form substantially similar to the form attached hereto as Exhibit “B”. Blue Water does hereby agree to take all steps necessary, each at their sole cost and expense, to cause the Permits to be reissued from POSGCD to Vista Ridge on the date designated in the notice that Vista Ridge delivers to Blue Water of its desire to have the Permits reissued by POSGCD to Vista Ridge, or as soon thereafter as possible. The interest of BWS in the Existing Permits and the right to obtain the reissued Permits shall be assigned by Blue Water VR and BWS to Vista Ridge free and clear of all liens and encumbrances other than the “**Blue Water Permit Security Interest**”, as defined below. At the end of the Permit Assignment Term, the rights of Vista Ridge under the Permits relating to the Permit Assignment shall automatically revert to Blue Water VR, it being the intent that the Permits shall no longer be the property of Vista Ridge after the end of the Permit Assignment Term. Vista Ridge (and its successors and assigns) agrees to execute and deliver to Blue Water VR any documents necessary or appropriate to evidence and effect such reversion.

b. The rights of Blue Water in and to the Existing Permits and the Permits will be conveyed to Vista Ridge subject to the terms of a UCC security agreement (the “**Blue Water Permit Security Agreement**”), to be executed by Vista Ridge to Blue Water VR at the time of the Permit Assignment, which Blue Water Permit Security Agreement will provide a collateral pledge of such Permits (the “**Blue Water Permit Security Interest**”) to secure the payment obligations of Vista Ridge under this Agreement and the obligations of Vista Ridge to assign its rights to the Permits to Blue Water VR at the end of the WPA Term. The Blue Water Permit Security Agreement will provide that no action may be taken by the secured party thereunder to enforce such security interest unless and until there is an uncured default by Vista Ridge as to its payment obligations relating to the Reservation Fees due to Blue

Water VR and twenty (20) days have passed from the end of the Term of the WPA; provided that the Blue Water Permit Security Interest and the uncured obligations of Vista Ridge referenced in this subsection shall survive termination of the WPA and this Agreement, it being the intent of the parties that any such uncured obligation(s) of Vista Ridge shall remain the obligation of Vista Ridge and that Blue Water VR may exercise its rights under the Blue Water Permit Security Interest to enforce such obligation(s) and recover the Permits. For purposes of this Section an uncured default by Vista Ridge as to its payment obligations to Blue Water VR shall be deemed to have occurred only after Blue Water VR has, after the termination of the WPA, provided notice of such default to Vista Ridge and Vista Ridge has failed to pay any such sums due within thirty (30) days following the date of such notice. All other provisions of this Agreement notwithstanding, the Blue Water Permit Security Agreement will provide that the Blue Water Permit Security Interest will be and at all times will remain subordinate to any and all interests of the “*Senior Debt Creditors*” (as defined in the WPA), on such terms and condition as the Senior Debt Creditors may require. At Financial Close the Blue Water Permit Security Interest in the Permits shall be amended to provide that Vista Ridge will, concurrently with such amendment, have released to it the Permits which were held as collateral and provide as substitute collateral, a pledge of a portion of the sums due from SAWS to Vista Ridge under the terms of the WPA after the payment of all sums due from Vista Ridge to third parties in connection with the Project (including but not limited to payments to the Senior Debt Creditors) but excluding sums due to Blue Water VR, which is equal to the amounts in dispute, but not a security interest in any sums greater than such amount in dispute. The form of the Blue Water Permit Security Agreement shall be in a form which conforms to the provisions of this Section and is otherwise agreed upon by Blue Water VR and Vista Ridge within fifteen (15) days following the Effective Date of this Agreement.

c. In addition to the Blue Water Permit Security Agreement, at the time of the Permit Assignment, Vista Ridge will deliver to Blue Water VR a guaranty from Abengoa SA of the payment of Reservation Fees by Vista Ridge to Blue Water VR or the Trust, which will survive the term of the WPA and this Agreement, it being the intent of the parties that such guaranty shall protect Blue Water VR and the Trust against any failure to pay the Reservation Fees.

2. Sublease of Real Property Rights and Water Rights to Vista Ridge.

a. Blue Water does hereby agree that, within five (5) days following the Contract Date, or such later date as Vista Ridge may designate by notice to Blue Water, Blue Water will grant, convey, and sublease and partially assign unto Vista Ridge, its successors and assigns (the “*Sublease*”) effective immediately upon the date and time indicated in the written notice, for that time period which ends on the later of the end of the “Termination Date of the WPA or the date of payment in full of the Senior Debt (the “*Sublease Term*”):

- (i) the Real Property Rights; and

(ii) the Water Rights under the Leases.

b. The Real Property Rights and Water Rights shall be subleased to Vista Ridge under the terms of the Sublease form substantially similar to the form attached hereto as Exhibit "D" free and clear of all liens, encumbrances or conditions other than (i) those which the owner of the fee interest in the Land may have placed against such Land prior to the Effective Date of this Agreement, (ii) the Blue Water Lease Security Interest, (iii) the Blue Water Permit Security Interest and (iv) those which may be approved by the Senior Debt Creditors (the "***Permitted Encumbrances***"). The above notwithstanding, if a Senior Debt Creditor or SAWS has required Vista Ridge to remove or otherwise cure a lien, encumbrance or condition affecting the Real Property Rights or Water Rights the "***SAWS/Lender Non-Permitted Encumbrances***"), Blue Water VR shall, nevertheless, remove such SAWS/Lender Non-Permitted Encumbrance in the manner required by SAWS or such Senior Debt Creditor. If the requirement to remove the SAWS/Lender Non-Permitted Encumbrances is industry standard for a project development transaction utilizing private activity bond financing as the method for financing the project, then the removal or cure shall be at the sole cost and expense of Blue Water VR. If the requirement to remove or cure the SAWS/Lender Non-Permitted Encumbrance is not industry standard for a project development transaction utilizing private activity bond financing as the method for financing the project, then the removal shall be shared by Blue Water VR and Vista Ridge on a 50/50 basis. If Blue Water VR believes that the SAWS/Lender Non-Permitted Encumbrance should not be classified as industry standard for a project development transaction utilizing private activity bond financing as the method for financing the project, and Vista Ridge disagrees, this disagreement shall be a Dispute to be resolved between the such Parties as set out in Section 20, below. In the event Blue Water VR is responsible for paying the cost to remove any such SAWS/Lender Non-Permitted Encumbrance, as set out above, and does not do so in the time required by SAWS or a Senior Debt Creditor, Vista Ridge shall have the right to pay such sums and Blue Water shall reimburse Vista Ridge an amount equal to two times all costs incurred by Vista Ridge in connection with removing or curing such SAWS/Lender Non-Permitted Encumbrance plus any attorney's fees incurred by Vista Ridge to determine such obligation and collect such sums from Blue Water VR.

c. At the end of the Sublease Term the Real Property Rights and Water Rights under the Leases shall automatically revert to the Trust and shall no longer be the property of Vista Ridge after the end of the Sublease Term, and shall further automatically revert and be distributed to Blue Water VR in the manner set out in the Trust Agreement (as defined below). Vista Ridge (on behalf of itself and its successors and assigns) agrees to execute and deliver to the Trust any documents necessary or appropriate to evidence or effect such termination.

3. Assignment of Leases to Trust.



a. Coincident with the execution of the Sublease, Blue Water VR hereby assigns (and will be deemed to have assigned) to the Trust all of Blue Water VR's interest in the Leases and the Sublease (the "**Lease Assignment**"), being all of the interest of the lessee in such Leases, which assignment will be further evidenced by a form of assignment which is substantially similar to the form attached hereto as Exhibit "E". The Leases and Blue Water VR's interest in the Sublease (subject to an automatic right of reversion of such interest in the manner set out in the Sublease) shall be assigned to the Trust free and clear of all liens and encumbrances other than the Permitted Encumbrances and the terms of the Sublease.

b. The Leases shall be administered by the Trustee pursuant to the terms and conditions of a trust agreement substantially similar to the form attached hereto as Exhibit "F" (the "**Trust Agreement**") as a custodial trust created for the benefit of Blue Water VR and administered by a trustee acceptable to the parties to this Agreement, in their reasonable discretion.

c. The Trust will cause the Leases to automatically revert to and be distributed to Blue Water VR as described in Section 2 hereof and in the Trust Agreement at the end of the Sublease Term.

d. The rights of Blue Water in and to the Leases will be conveyed to the Trust, and the Sublease of the Leases will be conveyed to Vista Ridge, subject to the terms of a security agreement (the "**Blue Water Lease Security Agreement**"), to be executed by Trust and Vista Ridge to Blue Water VR at the time of the Sublease and the Lease Assignment, which Blue Water Lease Security Agreement will provide a collateral pledge of the Leases and the Sublease (the "**Blue Water Lease Security Interest**") to secure the payment obligations of Vista Ridge and the Trust under this Agreement and the termination of the term of the Sublease at the end of the WPA Term. The Blue Water Lease Security Agreement will provide that no action may be taken by the secured party thereunder to enforce such security interest unless and until there is an uncured default by Vista Ridge as to its payment obligations relating to the payment obligation due by Vista Ridge to Blue Water VR under the terms of this Agreement and thirty (30) days have passed from the end of the Term of the WPA; provided that the Blue Water Lease Security Interest and the uncured obligations of Vista Ridge or the Trust under this subsection shall survive termination of the WPA and this Agreement, it being the intent of the parties that any such uncured obligation(s) of Vista Ridge or the Trust shall remain the obligation(s) of Vista Ridge or the Trust, respectively, and that Blue Water VR may exercise its rights under the Blue Water Lease Security Interest to enforce such obligation(s) and recover the Leases. For purposes of this Section an uncured default by Vista Ridge as to its payment obligations to Blue Water VR shall be deemed to have occurred only after Blue Water VR has, after the termination of the WPA, provided notice of such default to Vista Ridge and Vista Ridge has failed to pay any such sums due within thirty (30) days following the date of such notice. All other provisions of this Agreement notwithstanding, the Blue Water Lease Security Agreement will provide that the Blue Water Lease Security Interest will be and at all times will remain

subordinate to any and all interests of the Senior Debt Creditors on such terms and condition as the Senior Debt Creditors may require. At Financial Close, the Blue Water Lease Security Interest in the Leases shall terminate and be released; provided however, Vista Ridge will have released to it the Leases and Sublease interest which were held as collateral and, concurrently therewith, provide as substitute collateral, a pledge of a portion of the sums due from SAWS to Vista Ridge under the terms of the WPA after the payment of all sums due from Vista Ridge to third parties in connection with the Project (including but not limited to payments to the Senior Debt Creditors) but excluding sums due to Blue Water VR, which is equal to the amounts in dispute, but not a security interest in any sums greater than such amount in dispute. The form of the Blue Water Lease Security Agreement shall be in a form which conforms to the provisions of this Section and is otherwise agreed upon by Blue Water VR and Vista Ridge within fifteen (15) days following the Effective Date of this Agreement.

4. Requirement to Maintain Permits and Leases

a. Subject to the payment obligation for fees due to POSGCD for the purpose of maintaining the Permits as set out below, which are to be made by Vista Ridge, Blue Water VR does hereby agree, at all times during the Term of this Agreement, to cause the Permits providing the right to withdraw and transport the Required Groundwater (as defined below, as set out below in paragraph h) to Bastrop, Bell, Bexar, Burleson, Burnet, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis and Williamson Counties, Texas, to remain issued and in good standing with the POSGCD, all at Blue Water VR's sole cost and expense, in a manner sufficient to allow Vista Ridge to withdraw and transport, at the time and quantities required thereunder, the Required Groundwater from the Land and meet Vista Ridge's obligations to SAWS under the terms of the WPA. The above notwithstanding, upon reissuance of the Permits to Vista Ridge, Vista Ridge shall become responsible for payment of those fees required to be paid to POSGCD for the purpose of maintaining the Permits (the "**POSGCD Fees**") and Blue Water VR shall not be responsible for the consequence of a failure to pay such POSGCD Fees in a timely manner.

b. From and after the date of the Permit Assignment, Vista Ridge shall be obligated to pay all POSGCD Fees necessary to maintain the Permits and all other costs of the Permits such as fines, penalties, etc., that may be owed to POSGCD which accrue during the term of this Agreement from and after the Permit Assignment.

c. From and after the date of the Lease Assignment, Blue Water will cause the Trust to possess, and have the right to sublease and make available to Vista Ridge, the Required Groundwater in that quantity which is the lesser of (i) the amount sufficient to allow Vista Ridge to make available to SAWS, at all points of time until the end of the WPA Term that amount of Product Water (as defined in the WPA) which is the greater of that volume of water which Vista Ridge has the right to provide to SAWS during such time period, or is required to be delivered by Vista Ridge to SAWS during such time period, or (ii) 54,000 acre feet per year; provided, however, in no event will Vista Ridge be required to pay

for more than 50,000 acre feet of Required Groundwater in any one "**Contract Year**" (as that term is described in the WPA). Blue Water VR may, from time to time, acquire additional leases of Property Rights and Water Rights (as defined herein) and assign such leases to the Trust to assure that the Trust has Required Leased Acres (as defined hereunder) sufficient to make available the Required Groundwater to Vista Ridge in accordance with this Agreement. Any such new leases obtained by Blue Water VR which are assigned to the Trust, from time to time, shall be deemed added to the definition of "Leases" under the terms of this Agreement immediately upon their execution by the lessor and Blue Water VR, as lessee thereunder. Blue Water VR shall assign such Leases to the Trust free and clear of all liens and encumbrances other than the Permitted Encumbrances.

d. From and after the date of the Lease Assignment, Vista Ridge shall have the right to pay all of the sums due under the terms of the Leases directly to the lessors which accrue during the term of this Agreement from and after the Lease Assignment.

e. In the event the Permits provide for the ability to withdraw and transport to SAWS less than 54,000 acre feet per year in production and transportation during a Contract Year (such difference being referred to as the "**Groundwater Deficit**"), Blue Water VR will provide to Vista Ridge, at Blue Water VR's sole cost and expense, groundwater from alternate sources to provide for such Groundwater Deficit, such as nearby utility providers, water wholesalers, or nearby landowners, which alternate sources may be selected by Blue Water VR in its discretion, but which groundwater must, in all respects, meet all of the requirements of Required Groundwater and be delivered to Vista Ridge in a manner in which Vista Ridge and the "**Water Supply Corporation**" (as defined in the WPA) will incur no additional costs or expense in connection with Vista Ridge's obligations to deliver such Required Groundwater to SAWS under the terms of the WPA.

f. Provided Blue Water VR meets its requirements herein to make available the Required Groundwater to Vista Ridge at the times, quantity and quality herein required, Vista Ridge agrees it will obtain all of its Raw Groundwater for the purpose of meeting its obligations under the WPA from its rights under the Permits.

g. From and after Financial Close (as defined in the WPA), Blue Water VR will also cause the Trust to hold Leases which contain the number of acres necessary to support the ability of the holder of the Permits to withdraw and transport to SAWS, the Required Groundwater for each Contract Year, which is the lesser of (i) the amount sufficient to allow Vista Ridge to make available to SAWS, at all points of time during the WPA Term, "**Product Water**" (as defined in the WPA) that is the greater of that volume of Raw Groundwater which Vista Ridge has the right to provide to SAWS during such time period, or is required to be delivered by Vista Ridge to SAWS during such time period, or (ii) 54,000 acre feet per year (such amount of Leases being referred to as the "**Required Leased Acres**"); provided, however (i) the Required Leased Acres will never be required to exceed 50,000

acres of Land and (ii) in no event will Vista Ridge be required to pay for more than 50,000 acre feet of Required Groundwater in any one Contract Year.

h. For the purposes of this Agreement "**Required Groundwater**" is defined as raw groundwater which:

i. is legally capable of being withdrawn from the Land, in accordance with the Permits and the rules of the POSGCD in amounts sufficient to make available to SAWS, at any point in time during the term of the WPA, that amount of Product Water (as defined under the terms of the WPA") which is the greater of that volume of water which Vista Ridge has the right to provide to SAWS during such time period, or is required to be delivered by Vista Ridge to SAWS during such time period, but in any event not to exceed the limits of subsections c. and e. above; and

ii. is physically capable of being produced from the Land.

i. For the purpose of this Agreement if the Raw Groundwater fails to meet the quality standards set out on Exhibit "G", Vista Ridge shall have the right to make capital expenditures, from time to time, which are necessary to treat Raw Groundwater to the level which meets the quality standards set out on Exhibit "G" (the "**Water Quality Capital Expenditures**"). In the event Vista Ridge should incur any Water Quality Capital Expenditures, it shall be entitled to recover from Blue Water VR a sum equal to \$0.30 per acre foot for each \$100,000.00 of Water Quality Capital Expenditures incurred by Vista Ridge as a reduction to the Base Unit Groundwater Price (the "**Water Quality Capital Expenditure Recovery Costs**").

5. Term. The term of this Agreement (the "**Term**") shall commence on November 4, 2014 (the "**Commencement Date**"), and shall continue until the later of the Termination Date or the payment in full of all Senior Debt, unless earlier terminated by Vista Ridge in the manner set out herein.

6. Consideration.

a. During the Term, Vista Ridge shall pay directly to the Trust, of which Blue Water VR is the sole beneficiary, during each "**Payment Period**" (as defined below), as consideration for all of Vista Ridge's rights under the terms of the Sublease and this Agreement that sum (the "**Payment Period Consideration**") which is equal to Four Hundred Sixty and no/100 Dollars (\$460.00) per acre foot (such amount as may be adjusted pursuant to the terms of this Agreement is referred to herein as the "**Base Unit Groundwater Price**"), for each acre foot of raw groundwater produced by Vista Ridge from the land underlying the Leases, and for which Vista Ridge, upon making such Raw Groundwater available to SAWS, is actually paid by SAWS, as Product Water, which sum shall be referred to herein as the

**“Base Unit Groundwater Payment” less** (A) any **“Third Party Payments”** (as defined below) paid or accrued by Vista Ridge during such Payment Period, and (B) the **“Adjustments”**, as that term is defined below. The above notwithstanding, in the event groundwater produced by Vista Ridge from the Land underlying the Leases, and for which Vista Ridge, upon delivery to SAWS, is actually paid by SAWS, exceeds 50,000 acre feet in a Contract Year, in no event will Vista Ridge be required to pay for more than 50,000 acre feet of Required Groundwater in any one Contract Year.

b. For the purpose of this Agreement, the first Payment Period will be that annual period which begins with the **“Commercial Operation Date”** (as that term is defined in the WPA) and ends on the annual anniversary thereafter, and each subsequent annual period during the Term of this Agreement. The Payment Period Consideration shall be payable on or before the 15th day following the end of each such annual period which occurs during the Term of this Agreement. The Payment Period Consideration shall be due and payable by Vista Ridge at the address for Trust designated for notices under Section 21, as set out in this Agreement (or such other address as the Trust may from time to time designate in writing to Vista Ridge) or in such other manner as the parties may agree. No payment will be due to the Trust for water produced by Vista Ridge from the Leases prior to the Commercial Operation Date.

c. Any sums due and owing by Vista Ridge or Blue Water VR, which are not paid on the due date, shall bear interest from the date due until the date paid, at the lesser of seven and one-half percent (7.5%) per annum or the maximum rate allowed by law.

d. For the purpose of this Agreement **“Third Party Payments”** means the payments by Vista Ridge: (i) any amounts paid to a lessor under the terms of any of the Leases or to any other party to maintain the Leases in effect which are payments for royalties for the groundwater produced, shut-in royalties, delay rentals, or other similar costs owed under the Leases but not including surface damage costs, well site costs, well mitigation costs or other similar costs owed under the Leases), (ii) all costs required by any of the Leases to be paid to a third party, including but not limited to taxes, user fees, and well registration fees or payments to any Governmental Body (as defined below), (iii) the cost of acquiring new or additional Leases necessary to permit Blue Water VR to be in compliance with the obligations of Blue Water VR under this Agreement to provide the Required Leased Acres, (iv) all permit fees, taxes and all other fees or permit costs owed to the POSGCD, including but not limited to those relating to the Permits (excepting and excluding any such costs resulting from a violation of the terms of the Permits caused solely by the actions of Vista Ridge, (v) Water Quality Capital Expenditure Recovery Costs, (vi) all costs paid by Vista Ridge to the Trustee or on behalf of Trustee under the terms of the Trust, or paid by Vista Ridge under the terms of the Trust Agreement or paid by Vista Ridge under the terms of the Lease Administration Agreement or paid by Vista Ridge under the terms of the Permit Administration Agreement, which are determined to be attributable to the acts or omissions of Blue Water which are in violation of the terms of this Agreement, the Lease

Administration Agreement, the Trust Agreement or the Permit Administration Agreement. For the purpose of determining if any such costs paid by Vista Ridge have been paid due to acts or omissions of Blue Water which are in violation of the terms of this Agreement, the Lease Administration Agreement, the Trust Agreement or the Permit Administration Agreement, any such violation shall be deemed to have occurred only after the expiration of any applicable notice and right to cure period under the terms of any applicable agreement and only upon a final and un-appealable determination by an arbitrator or other applicable method for dispute resolution agreed upon between the Blue Water and Vista Ridge, as to the duty or responsibility of Blue Water for such cost, or the admission or agreement of Blue Water to such cost.

e. For purposes of this Agreement, "**Adjustments**" shall mean any "**Payment Period Consideration Reduction**" and/or "**Payment Period Consideration Deferral**" as set out below, which are applicable to each Payment Period.

f. Under the terms of the WPA, Vista Ridge is entitled to make available to SAWS a certain amount of acre feet of Product Water for each Payment Period (the "**Maximum Volume of Product Water**"). If Vista Ridge desires to make all or a portion of such Maximum Volume of Product Water available to SAWS during a Payment Period (the "**Raw Water Supply Requirement**") and the volume of Required Groundwater which is physically and legally (according to applicable regulations of any Governmental Body) available to be withdrawn from the Land at the Project Improvements wells and legally capable of being transported to the Delivery Point (as defined in the WPA) for delivery to SAWS (the "**Available Product Water**") is less than the amount of such Maximum Volume of Product Water, then the difference between the Maximum Volume of Product Water desired to make available to SAWS and the Available Product Water for delivery to SAWS, measured in acre feet, shall be deemed a "**Raw Water Supply Shortfall**". In the event of a Raw Water Supply Shortfall, Vista Ridge shall make an Adjustment to the Payment Period Consideration otherwise due to Blue Water VR for such Payment Period by reducing the Payment Period Consideration by that sum which is equal to the "**Capital and Raw Groundwater Unit Price**" (as defined in the WPA) multiplied by the number of acre feet of the Raw Water Supply Shortfall, which shall be a Payment Period Consideration Reduction and shall reduce the sums due to Blue Water VR for such Payment Period, but not below \$0. In the event the Payment Period Consideration Reduction for a Payment Period exceeds the sums that would otherwise have been payable to Blue Water VR as Payment Period Consideration for such Payment Period (that is, would reduce the sums which otherwise would have been payable to Blue Water VR as Payment Period Consideration for such Payment Period below \$0), the excess Payment Period Consideration Reduction will be carried over and applied as an Adjustment to reduce any Payment Period Consideration which would otherwise be due to Blue Water VR during each subsequent Payment Period, after all Adjustments have been first made for such subsequent Payment Period(s).

g. If Vista Ridge desires to make all or a portion of the Raw Water Supply Requirement available to SAWS during any Payment Period and the volume of Required Groundwater available to be withdrawn from the Land for delivery to SAWS through the Project Improvements (the "**Available Product Water**") is not capable of being withdrawn and delivered to SAWS due to an event which is deemed an "**Uncontrollable Circumstance**" (as that term is defined in the WPA) measured in acre feet, for all circumstances other than a Raw Water Supply Shortfall, then the difference between the Raw Water Supply Requirement Vista Ridge desired to make available to SAWS and the Available Product Water under this Section shall be known as a "**Water Production Uncontrollable Circumstance Shortfall**". In the event of a Water Production Uncontrollable Circumstance Shortfall, Vista Ridge shall make an Adjustment to the Payment Period Consideration otherwise due to Blue Water VR for such Payment Period by reducing the Payment Period Consideration by that sum which is equal to the Capital and Raw Groundwater Unit Price multiplied by the number of acre feet of the Water Production Uncontrollable Circumstance Shortfall, which shall be a Payment Period Consideration Deferral and shall reduce the sums due to Blue Water VR for such Payment Period, but not below \$0. In the event the Payment Period Consideration Deferral for a Payment Period exceeds the sums that would otherwise have been payable to Blue Water VR as Payment Period Consideration for such Payment Period (that is, would reduce the sums which otherwise would have been payable to Blue Water VR as Payment Period Consideration for such Payment Period below \$0), the excess Payment Period Consideration Deferral will be carried over and applied as an Adjustment to reduce any Payment Period Consideration which would otherwise be due to Blue Water VR during each subsequent Payment Period, after all Adjustments have been first made for such subsequent Payment Period(s). At such time as Vista Ridge receives from SAWS payment for Product Water during any period of the Term of the WPA which is an extension of Term for Uncontrollable Circumstances (as set out in Section 10.7 of the WPA), after first paying any such sums to Vista Ridge for sums Vista Ridge was not paid by SAWS due to the aggregate of all Water Production Uncontrollable Circumstance Shortfalls to occur, the payments by SAWS for the Water Production Uncontrollable Circumstance Shortfall shall be paid to Blue Water VR in the amount up to the aggregate amount of the Adjustments made under the terms of this Section.

h. If Vista Ridge desires to make all or a portion of the Raw Water Supply Requirement available to SAWS during any Payment Period, and the Required Groundwater is withdrawn from the Land for delivery through the Project Improvements but thereafter is not capable of being delivered to SAWS due to a Vista Ridge failure in connection with the operations of the Project Improvements which is other than a Uncontrollable Circumstance or Raw Water Supply Shortfall, the amount of such Required Groundwater which is not delivered to SAWS (measured in acre feet) shall be deemed a "**Water Delivery Shortfall**". In the event of a Water Delivery Shortfall, if the aggregate Water Delivery Shortfall, when multiplied by the sum of the Capital and Raw Groundwater Unit Price, exceeds the sums Vista Ridge would otherwise have received from the sale of the Product Water to SAWS for such Payment Period (the "**Payment Period Delivery Loss**") Vista Ridge will make an

Adjustment to the Payment Period Consideration otherwise due to Blue Water VR for such Payment Period by reducing the Payment Period Consideration due to Blue Water VR by the Payment Period Delivery Loss, which shall be a Payment Period Consideration Deferral. In the case of any such Payment Period Consideration Deferral, Blue Water VR will be entitled to recover such Adjustment by a payment from Vista Ridge of sums received by Vista Ridge in any subsequent Payment Period out of sums paid by SAWS to Vista Ridge for the sale of Product Water during each subsequent Payment Period.

i. For the purpose of this Section, Blue Water VR and Vista Ridge do hereby agree that if Blue Water VR provides all of the Required Groundwater to Vista Ridge at the well head, and there is a loss of Required Groundwater between the well head to the delivery point with SAWS which is greater than 4,000 acre feet per Contract Year (the "**Excess Water Loss from Operations**"), any loss of Required Groundwater to be delivered to SAWS which is directly caused by an Excess Water Loss from Operations, shall be deemed a Water Delivery Shortfall.

j. A Raw Water Supply Shortfall, Water Production Uncontrollable Circumstance Shortfall, or a Water Delivery Shortfall, shall not be deemed a breach under the terms of this Agreement unless such shortfall is caused by a breach by such Party of its other obligations under the terms of this Agreement, the exclusive remedy for such shortfalls being the adjustments provided in this Section 6.

7. Reservation Fees. On that date which is fifteen (15) days following the last to occur of the Lease Assignment or Permit Assignment (the "**Initial Reserve Payment Date**"), and monthly thereafter until the earlier of (i) 61 months from the "**Contract Date**" (as defined in the WPA) or (ii) the Commercial Operation Date (as defined in the WPA), Vista Ridge will pay to Blue Water VR that sum (the "**Reservation Fee**") which is equal to (i) 1/12<sup>th</sup> of the product of \$100 multiplied by the number of acre feet of the permitted groundwater as set out in the Operating Permit less (ii) any Third Party Payments as defined in Section 6. d.. In the event the Lease Assignment and Permit Assignment has not occurred by November 1, 2014, Vista Ridge and Blue Water VR will (A) on that date this Agreement is fully executed by the parties hereto, calculate that sum which is equal to what Blue Water VR would have received under the terms of this Section from the time period from November 1, 2014 through the date of the full execution of this Agreement, as if such assignments had actually occurred as of November 1, 2014 (the "**Initial Deferred Reservation Fee**") and Vista Ridge will pay to Blue Water VR within ten (10) days of such full execution of this Agreement an additional sum equal to 50% of the Initial Deferred Reservation Fee as of the date of the full execution of this Agreement; and (B) at such time as the last of the Lease Assignment and Permit Assignment do occur, Vista Ridge will pay to Blue Water VR, within three (3) business days of the completion of such assignments, the remaining Initial Deferred Reservation Fee; plus that sum which is equal to what Blue Water VR would have received under the terms of this Section from the time period from the date following the full execution of this Agreement through the date of the last of the Lease



Assignment or Permit Assignment, as if such assignments had actually occurred as of the date of the full execution of this Agreement (the “**Additional Deferred Reservation Fee**”); however, in each case, for purposes of clarity, since Blue Water VR and not Vista Ridge may have already paid the follow sums attributable to the time period from November 1, 2014 through the date of the last of the Lease Assignment or Permit Assignment, which sums, if paid by Vista Ridge, would have been Third Party Payments, the payment of the **Initial Deferred Reservation Fee and Additional Deferred Reservation Fee** will not be reduced by any amounts paid by Blue Water VR for such period (A) to a lessor under the terms of any of the Leases or to any other party to maintain the Leases in effect, (B) costs required by any of the Leases to be paid to a third party, including but not limited to taxes, user fees, and well registration fees or payments to any Governmental Body (as defined below), or (C) permit fees, taxes and all other fees or permit costs owed to the POSGCD, including but not limited to those relating to the Permits.

8. Administrative Duties Regarding Maintenance Leases and Conveyance and Maintenance of Permits. Blue Water VR covenants and agrees that, during the Term of this Agreement, it will provide to Vista Ridge and the Trust all of those administrative services set out in that certain “Lease Administration Agreement” as set out on Exhibit “H” attached hereto (the “*Lease Administration Agreement*”), as well as all of those administrative services set out in that certain “Permit Conveyance and Administration Agreement” (the “*Permit Administration Agreement*”) to be entered into between the Blue Water VR and Vista Ridge, including but not limited to the following duties:

- a. maintain the Permits to allow the Required Groundwater to be produced from the Land and transported to SAWS in accordance with the terms of the WPA;
- b. use reasonable commercial efforts to use those key persons set out on Schedule 1 in the roles indicated thereon.
- c. maintain the Leases such that the Land is one contiguous area of land for the purpose of the Operating Permit to allow the Required Groundwater to be produced from the Land and transported to SAWS in accordance with the terms of the WPA; and
- d. cause the Permits and Leases to be amended in the manner set out in this Agreement;
- e. maintain the Leases in good standing and in a fully enforceable condition.

The Parties hereby confirm that (i) after the sublease of the Real Property Rights and Water Rights to Vista Ridge by Sublease, as set out above, unless otherwise expressly agreed between Vista Ridge and Blue Water VR, the Lease Administration Agreement will not include the responsibility to carry out the administrative task of making the payment of royalties or other rent due under the terms of the Leases, all of which duties will be addressed

by Vista Ridge, and (ii) after the issuance of the Permits to Vista Ridge from POSGCD, as set out above, unless otherwise expressly agreed between Vista Ridge and Blue Water VR, the Permit Administration Agreement will not include the responsibility to carry out the administrative task of making the payment of fees owed to the POSGCD for maintenance of the Permits, all of which duties will be addressed by Vista Ridge, and Vista Ridge covenants to abide in all respects by the terms and conditions of the Permits and the rules and regulations of the POSGCD.

9. Due Diligence.

- a. Beginning on the Effective Date and continuing through the term of this Agreement Vista Ridge and its employees, agents, contractors, consultants and advisors will have the right to enter onto the Land at any time and conduct, at its expense, a physical, environmental and feasibility inspection of the Land and water rights relating thereto, including but not limited to the drilling of water wells, conducting soil borings, soil testing, subsurface condition evaluations, environmental surveys, and such other site condition and suitability investigations, testing, and evaluations as Vista Ridge may deem necessary ("**Feasibility Work**"); provided such rights are subject to any limitation on such rights as set out in the Leases. If for any reason Vista Ridge, in its sole and absolute discretion, is not satisfied with the Leases, Permits, Real Property Rights and/or the Water Rights, it may terminate this Agreement at any time on or before Financial Close, by delivering to Blue Water VR, a written notice stating that Vista Ridge desires to terminate this Agreement (the "**Termination Notice**"), and Vista Ridge shall have no further right, obligation or liability hereunder other than to effect the reassignment and assist with (i) the reversion to Blue Water VR of the Permits, and (ii) the reversion to Blue Water VR of the Leases, respectively, and to make any payments owed to Blue Water VR pursuant to this Agreement through the day of termination, and collect from Blue Water VR any sums owed to Vista Ridge under this Agreement through the day of termination, which rights and obligations shall survive termination of this Agreement. In furtherance of Vista Ridge's Feasibility Work, Blue Water VR agrees to make available to Vista Ridge, within thirty (30) days after the Effective Date full access to the following items, to the extent the same exist and are in Blue Water's possession or control, which relate to the Leases and Permits or the groundwater situated under the Land: (a) copies of all existing surveys, site plans, and plats, (b) existing title policies, (c) engineering reports, (d) water, hydrology, geology soil and geophysical studies, (e) title work relating to the Land, (f) environmental site assessments, (g) leases or encumbrances affecting the Land, including but not limited to full access to all of the Leases and lease files relating to the Leases, (h) any proposed covenants, conditions and restrictions, (i) copies of all agreements, contracts, permits and licenses relating to the Leases, the Existing Permits or the groundwater relating thereto, and (j) intangible property information relating to the Leases. To the extent Vista Ridge is required to provide such information to SAWS, Blue Water does hereby agree and confirm that all of such information may be delivered to SAWS. In addition, upon written request from Blue Water VR, Vista Ridge will provide to Blue Water VR, to the extent not previously provided by Blue Water VR to Vista

Ridge and to the extent the same exist and are in Vista Ridge's possession or control, (a) copies of all existing surveys, site plans, and plats, (b) existing title policies, (c) engineering reports, (d) water, hydrology, geology soil and geophysical studies, (e) title work relating to the Land, (f) environmental site assessments, (g) leases or encumbrances affecting the Land, including but not limited to full access to all of the Leases and lease files relating to the Leases, (h) any proposed covenants, conditions and restrictions, (i) copies of all agreements, contracts, permits and licenses relating to the Leases, the Existing Permits or the groundwater relating thereto, and (j) intangible property information relating to the Leases; provided such information is not subject to a confidentiality agreement between Vista Ridge and an unrelated third party, and provided further all such information will be provided on an without representation or warranty as to any conclusions or information set out therein. Any such information provided by Vista Ridge to Blue Water will be provided at Blue Water's cost and expense and will be delivered within ten (10) business days after such written request and payment of all costs associated copying and delivery of such information, if any. In the event this Agreement is terminated on or prior to Financial Close, upon written request from Blue Water VR Vista Ridge agrees to provide Blue Water VR with copies of any assignable third party reports it may have in its possession or control relating to the Land or the Leases or the Wells developed by or used by Vista Ridge as a part of the Project Improvements; provided such information is not subject to a confidentiality agreement between Vista Ridge and an unrelated third party, and provided further all such information will be provided on an without representation or warranty as to any conclusions or information set out therein.

b. At the request of Vista Ridge, Blue Water will cooperate with Vista Ridge ordering from a title insurance company selected by Vista Ridge, a title commitment for an owner's/lessee's title insurance policy on a Standard Texas form Title Policy, along with legible copies of the documents referenced therein (the "***Title Commitment***") committing to issue to Vista Ridge, at Financial Close, an Owner's/Lessee's Policy of Title Insurance (and a Mortgagee's Policy of Title Insurance, if required by the Senior Debt Creditors), insuring title to the Lease and/or Sublease, subject only to the Permitted Encumbrances and any other exceptions approved by Vista Ridge, in an amount equal to the payments to be paid by Vista Ridge to Blue Water VR under the terms of this Agreement (the "***Title Policy***"). If Vista Ridge elects to purchase such Title Policy it shall be at the sole cost and expense of Vista Ridge.

10. **Condemnation.** In the event either party receives notice of an act of condemnation or threat of a condemnation action which is brought against the Land, the Leases, the Permits or the Project Improvements of the lands on which the Project Improvements are located (the "***Condemnation Claim***"), each party will notify the other as quickly as reasonably possible relating to such condemnation (or threatened condemnation), and will promptly supply the other party with all of the information in the possession of the party with notice of such condemnation (or threatened condemnation) relating to such

condemnation (or threatened condemnation). Each of the parties will have the right to pursue their independent Condemnation Claim for any such loss or potential loss. Each party also agrees to take those steps to reasonably cooperate with the other parties hereto as to their respective claim, provided, such cooperation will not require a party to compromise or adversely affect their respective Condemnation Claims.

All condemnation proceeds or proceeds from the settlement of a Condemnation Claim or from Condemnation Claims cumulatively which are received by the Trust, Vista Ridge or Blue Water, shall first be paid to Vista Ridge until such time as Vista Ridge, its successors or assigns, has received (i) those sums necessary for the repayment of all debt owed by Vista Ridge, including the Senior Debt, (ii) a sum equal to all of the equity investment of Vista Ridge in the Project Improvements, and (iii) a sum equal to twelve percent (12%) per annum (post federal income tax) computed on the equity investment of Abengoa Water (USA) LLC in Vista Ridge, computed from the Contract Date until the date of the receipt of the proceeds from such Condemnation Claim (the "*Vista Ridge Recoupment Amount*"). Following the receipt by Vista Ridge of all of the Vista Ridge Recoupment Amount, the balance of the condemnation proceeds or proceeds from a sale of property when under threat of condemnation which are received by the Trust, Vista Ridge or Blue Water shall be paid to Blue Water VR. Notwithstanding the foregoing, this section shall not apply to a condemnation of all or any part of the Land, Leases or the Permits by Vista Ridge Water Supply Corporation.

11. **Confirmation of Status of Leases.** Blue Water hereby certifies, as of the date hereof, as true and correct, the following information relating to the Leases, which Blue Water does hereby authorize Vista Ridge to rely upon in connection with its execution of this Agreement.

- a. Blue Water VR is the lessee under the terms of the Leases;
- b. A complete list of the Leases is set out on Exhibit "A";
- c. Each Lease remains in full force and effect, and to the best of Blue Water's knowledge, there are no defaults under the Leases, subject to the claims as disclosed on Schedule 2.
- d. The Leases are not subject to any sublease, transfer or assignment other than as set out in this Agreement or in the Permitted Encumbrances.
- e. All duties of an inducement nature owed by the lessee to lessor (or any other party) under the Leases have been fulfilled.
- f. Other than as set out in this Agreement, in the Permitted Encumbrances or as may be extended to SAWS for the period following the end of the WPA Term, no other

party has any option rights, rights of first refusal, rights of first offer or other rights relating to the Leases.

g. No lessor is currently asserting a claim, defense or right to terminate any of the Leases, except as disclosed in Schedule 2.

h. No lessee has provided a security deposit in connection with any of the Leases.

i. Blue Water has not filed, and to Blue Water's knowledge BWS is not currently the subject of, any filing, voluntary or involuntary, as a debtor, for bankruptcy or reorganization under any applicable bankruptcy or creditors' rights laws.

j. There are no persons who are guarantors of Blue Water VR's obligations under the terms of the Leases.

k. The Leases are free and clear of all liens and encumbrances, except for the Permitted Encumbrances;

l. Blue Water has received no notice that any of the Leases are in violation of any laws, or subject to any existing investigation or inquiry by, any governmental authority, which violation has not been cured or investigation has not been satisfactorily completed confirming that no violation has occurred.

12. Confirmation of Status of Permits. Blue Water does hereby certify, as of the date hereof, as true and correct, the following information relating to the Permits, which the Blue Water Entities do hereby authorize Vista Ridge to rely upon in connection with its execution of this Agreement.

a. Blue Water VR has the unrestricted right to become the permittee under the Permits and the further unrestricted right to assign or cause to be assigned such Permits to the Trust or Vista Ridge as a permittee;

b. True and correct copies of the current operating permit and transportation permit, as issued to BWS (the "*Existing Permits*"), as amended and restated have been delivered to Vista Ridge, and are attached hereto as Exhibit "I" and incorporated herein;

c. True and correct copies of the resolutions adopted by POSGCD confirming their resolution authorizing the Existing Permits to be (i) bifurcated into a separate Production Permit and a separate Transportation Permit for Vista Ridge, covering only the Leases, and (ii) issued to Vista Ridge have been previously provided by Blue Water VR to Vista Ridge;

d. As of the date hereof, none of the Existing Permits have been amended, modified, supplemented or superseded from those attached hereto, except as disclosed to Vista Ridge in writing prior to the date hereof;

e. Each of the Existing Permits remains in full force and effect and there are no defaults under the Existing Permits;

f. No person or entity, including POSGCD, is currently asserting a claim, defense or right to terminate any of the Existing Permits;

g. No person other than BWS, Blue Water, and Vista Ridge has any rights to the Existing Permits, and the Existing Permits are free and clear of all liens, claims and encumbrances

h. Blue Water has received no notice that any of the Existing Permits are in violation of any laws, or subject to any existing investigation or inquiry by, any governmental authority, which violation has not been cured or investigation has not been satisfactorily completed confirming that no violation has occurred.

13. Facility Tracts. Blue Water will use commercially reasonable efforts to assist Vista Ridge in obtaining from Cross County Water Supply Corporation ("**Cross County**"), at a reasonable cost to Vista Ridge, an undivided interest in, or other similar non-exclusive right of use in and to, portions of the pipeline easements or rights-of-way owned by Cross County for use by Vista Ridge in connection with the development of the Project Improvements (the "**Cross County Common Use Rights**"), including a provision that in the event this Agreement should be terminated after Financial Close, and SAWS acquires any of the Project Improvements, the Cross County Common Use Rights may be assigned by Vista Ridge to SAWS with no consideration or other payments due from Vista Ridge or SAWS in connection therewith.

14. Modifications to Permits. Blue Water will obtain from the POSGCD, at their sole cost and expense, certain amendments or clarifications to the Permits, unless otherwise expressly set out below, as soon as possible following the Effective Date of this Agreement:

a. The reissuance by POSGCD to Vista Ridge of a separate Operating Permit and a separate Transportation Permit associated with the Leases and the transportation of groundwater withdrawn therefrom, to the areas set out in the Existing Transportation Permit;

b. Extending the term of the Transportation Permit to coincide with the current term of the Operating Permit.

c. Modifying the Transportation Permit to allow daily volume flexibility to match the Operating Permit.

d. Increasing the groundwater that can be withdrawn under the Operating Permit and transported to SAWS under the terms of the Transportation Permit, to 54,000 acre feet per year.

e. Within five (5) years following Commercial Operations Date (as defined in the WPA), extending the term of the Operating Permit to a date that is 30 years from the date of such modification and extending the term of the Transportation Permit to run coterminous with the end of the term of the Operating Permit. In the event the Permits are not modified in the manner set out in this subparagraph e., the Base Unit Groundwater Price will be adjusted to a sum which, when produced and transported at the volumes allowable under the Permits, for the time periods for which the Permits provide, will cause there to be no default under the Senior Debt Financing Agreements or any economic reduction to Vista Ridge's return of and on its investor's equity investment.

15. Modifications to Leases; Additional Rights to Use of Surface of Land. Blue Water will use best efforts to obtain from the lessors under the terms of the Leases, at their sole cost and expense, an amendment to each of the Leases (where this does not yet exist in the Leases) to provide for:

a. A form of notice and right to cure on a lessee default, in a form acceptable to Vista Ridge;

b. A duty by the lessor to execute a form of Senior Debt Financing Agreements in a form acceptable to the Vista Ridge;

c. Waiver of statutory landlord's lien;

d. Agreement that the lessor will not use the real property that is the subject of the Lease, in a manner that will adversely affect lessee's groundwater rights under the terms of the Lease;

e. A subordination and non-disturbance agreement from any holder of a mortgage of any portion of the Land or the Leases; and

f. Any other requirement which may be required by the holders of the Senior Debt.

In addition, Blue Water and Vista Ridge agree to cooperate with each other during Blue Water's efforts made pursuant to this Section to enable Vista Ridge to obtain perpetual easements or fee simple absolute rights to areas within the Land where the Project Improvements are located as required by SAWS in the WPA.

16. Vista Ridge's Representations and Warranties: Vista Ridge represents and warrants, as of the Effective Date and again as of the Commencement Date:

a. Vista Ridge is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly authorized, executed and delivered by all necessary action of Vista Ridge and constitutes the legal, valid and binding obligation of Vista Ridge, enforceable against Vista Ridge in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

c. During the Permits Assignment Term, Vista Ridge will abide by the terms and conditions of the Permits and the rules and regulations of the POSGCD or any successor Governmental Body with regulatory jurisdiction over the withdrawal, transportation and use of the groundwater contemplated herein.

d. Vista Ridge is, and shall remain during the term of this Agreement, a bankruptcy remote, single-purpose entity for purposes of construction, acquisition, operation and maintenance of the Project Improvements and the supply of water to SAWS, and will amend any and all of its organizational documents as requested by the Senior Debt Creditors.

e. To the best of its knowledge, neither the execution nor delivery by Vista Ridge of this Agreement nor the performance by Vista Ridge of its obligations in connection with the transactions contemplated hereby or the fulfillment by Vista Ridge of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to Vista Ridge; or

(2) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which Vista Ridge or any of its Affiliates is a party or by which Vista Ridge or any of its affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

17. Trust's Representations and Warranties: Trust represents and warrants, as of the Effective Date and again as of the Commencement Date:



a. Trust is a Texas Trust, formed under the Texas Trust Act duly organized, validly existing and in good standing under the laws of the State of Texas, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly authorized, executed and delivered by all necessary action of Trust and constitutes the legal, valid and binding obligation of the Trust, enforceable against the Trust in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

c. To the best of its knowledge, neither the execution nor delivery by Trust nor the performance by Trust of its obligations in connection with the transactions contemplated hereby or the fulfillment by Trust of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, or trust agreement applicable the Trust; or

(2) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Trust or any of its Affiliates is a party or by which Trust or any of its affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

18. Blue Water Representations and Warranties: Blue Water hereby represents and warrants, as of the Effective Date and again effective as of the Commencement Date:

a. Blue Water VR is, and shall remain during the term of this Agreement, a bankruptcy remote, single-purpose entity for purposes of making available to Vista Ridge the Leases and Permits for use by Vista Ridge in connection with the supply of water to SAWS pursuant to the terms of the WPA and as provided herein, and will amend any and all of its organizational documents as requested by the Senior Debt Creditors; provided, however, no such designation shall prohibit Blue Water VR from distributing money to its owners in the normal course of business as long as such distribution (i) does not cause Blue Water VR to become insolvent following such distribution, or (ii) is otherwise made (or is deemed made) in order to defraud its creditors;

b. Each of the persons executing this Agreement on behalf of Blue Water is duly authorized to do so. Blue Water has full right and authority to enter into this Agreement and to consummate the transactions described in this Agreement. This Agreement constitutes the valid and legally binding obligations of Blue Water and is enforceable against Blue Water in accordance with its terms; and neither the execution or delivery of this Agreement, nor the

performance of Blue Water's obligations under this Agreement violates, or will violate, any contract or agreement to which either of the Blue Water Entities is a party or by which they are otherwise bound;

c. The Leases are valid and in full force and effect and are binding on the parties thereto;

d. Blue Water will use their best efforts to ensure that such Leases remain, valid and binding on the Parties thereto, in full force and effect, subject to the obligations of Vista Ridge under this Agreement regarding compliance with the terms and conditions of, and making the payments required under, the Leases;

e. Blue Water confirms that BWS has obtained the Existing Permits from the District, true and correct copies of the Existing Permits attached hereto as Exhibit "I", and the matters set forth in Section 12 hereof pertaining to the Existing Permits is true and correct such that as of the Commencement Date Blue Water VR shall cause this this representation to be updated based on changes occurring to the matters described in Section 12;

f. Blue Water is financially capable of performing its obligations under this Agreement;

g. If Blue Water discovers that any of its warranties and representations shall be, or becomes untrue, then Blue Water shall (a) notify Vista Ridge in writing as soon as possible but no later than ten (10) days after Blue Water becomes aware of such condition, and Blue Water shall specify the nature of the untrue warranty or representation, (b) shall immediately remedy such untrue warranty or representation, and (c) Blue Water shall be responsible for any additional costs incurred by Blue Water and/or Vista Ridge to remedy such untrue warranty or representation. If Blue Water fails to remedy such untrue warranty or representation as soon as reasonably possible, Vista Ridge may, after providing written notice to Blue Water of within ten (10) days, take actions reasonably required to remedy such untrue warranty or representation, if material.

h. No approval, authorization, order or consent of, or declaration, registration or filing with, any federal, state or local governmental body (a "**Governmental Body**") is required for the valid execution and delivery of this Agreement by Blue Water except such as have been duly obtained or made;

i. To the best of Blue Water's knowledge, there is no legal proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of Blue Water's knowledge, overtly threatened or publicly announced against either of the Blue Water Entities or any of their Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by Blue Water or the validity, legality or enforceability of this

Agreement against Blue Water, or any other agreement or instrument entered into by Blue Water in connection with the transactions contemplated hereby, or on the ability of Blue Water to perform its obligations hereunder or under any such other agreement or instrument;

j. The Permits shall, when issued to Vista Ridge, constitute legal authority sufficient for the pumping and withdrawal of "**Raw Groundwater**" (as defined in the WPA) in accordance with the terms of the Permits from the Carrizo Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes sufficient to comply with Vista Ridge's duties under the terms of the WPA, and to continue such pumping and withdrawal for the Term of this Agreement, subject only to the terms and conditions of such Permits, and no other legal authority is required for such pumping and withdrawal from the POSGCD or any other Governmental Body except for the matters discussed in Section 4 and 14 hereof.;

k. None of the Blue Water Entities, nor any of their Affiliates nor any "**Project Company Person**" (as defined in the WPA) has directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, campaign contributions, or otherwise) to SAWS or any SAWS Indemnitee (as defined in the WPA) with a view toward securing this Agreement of the WPA or securing favorable treatment with respect to any determinations concerning the performance of this Agreement or the WPA;

l. The Blue Water Entities are in compliance in all material respects with applicable law pertaining to their business and services;

m. The Blue Water Entities are not, and will not by reason of this Agreement or otherwise, be a "retail public utility" within the meaning of Chapter 13 of the Texas Water Code, and are not, and will not be, subject to jurisdiction of the TCEQ or Public Utility Commission of Texas in with respect to utility rates;

n. Neither BWS nor Blue Water have granted any person or entity (other than Vista Ridge) any right, or right of first refusal or first offer, to purchase the Leases or Permits or the groundwater relating to the Land, or any portion thereof;

o. To each of the Blue Water Entities knowledge, they have not received notice that the Permits or the Leases are in violation of, or subject to any existing investigation or inquiry by, any Governmental Body;

p. The Leases are in full force and effect, and except as disclosed in Schedule 2, the Blue Water Entities have not received written notice that there is an uncured breach of any of the Leases;

q. There are no commissions due and owing with respect to any of the Leases or the Permits;

r. There is no action, suit, litigation, or proceeding pending or threatened against the Blue Water Entities and no service of process has been made upon any of the Blue Water Entities, at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, agency, or instrumentality, other than as disclosed in Schedule 2;

s. There are no existing, pending or threatened condemnation and/or eminent domain proceedings or deeds in lieu of condemnation affecting the Leases or the Permits or, to the best of Blue Water's knowledge, the groundwater relating to the Leases or the Land;

t. The list of Leases attached hereto is all of the leases currently affecting the Land;

u. None of the Blue Water Entities has received written notice of any outstanding unpaid special assessments or tax liens against the Leases or the Permits;

v. To the best of each of the Blue Water Entities' knowledge, no Hazardous Materials (as defined below) which are in violation of applicable laws are present in, on or under the Land or any nearby real property which could reasonably be expected to migrate to the Land, and there is no present Release (as hereinafter defined) or threatened Release which is in violation of applicable laws. As used herein, "**Hazardous Materials**" means materials, wastes or substances that are (A) included within the definition of any one or more of the terms "hazardous substances," "hazardous materials," "toxic substances," "toxic pollutants" and "hazardous waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.) and the regulations promulgated pursuant to such laws, (B) regulated or classified as hazardous or toxic, under federal, state or local environmental laws or regulations, (C) petroleum, (D) asbestos or asbestos-containing materials, (E) polychlorinated biphenyls, (F) flammable explosives or (G) radioactive materials. As used herein, "Release" means the emission, discharge or release of Hazardous Materials in, on or under the Land; and

w. the Blue Water Entities and BWS are in compliance with all laws, statutes, rules and regulations of the United States of America concerning anti-terrorism and applicable to such persons or entities, including without limitation, the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and the other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations,

legislation or orders are collectively called the “*Orders*”). Neither of the Blue Water is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorist or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “*Lists*”); (ii) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (iii) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

19. Operations of the Leases and Permits.

a. Blue Water shall, from the Effective Date, to the time of delivery of (i) the Permit Assignment, as to the Permits, and (ii) from the time of delivery of the Lease Assignment as to the Leases, operate and maintain, in each case in substantially the same manner as it is now operated and maintained, the Permits and the Leases, and not take any action that would knowingly result in a failure to comply with all laws, rules or regulations of any Governmental Body applicable to such Leases or Permits. Without the prior written consent of Vista Ridge, from and after the Effective Date Blue Water shall not: (A) modify or amend any terms of the Leases or enter into any new occupancy lease with respect to the Leases, (B) permit any modifications or additions to the Leases, (C) sell, transfer or remove any Leases or the Permits except to the Trust or Vista Ridge in accordance with the terms of this Agreement, (D) grant any easements or other encumbrances with respect to the Leases, or (E) modify or amend any of the terms of any Permits except as otherwise provided for in Section 14 hereof. All of the above notwithstanding, Blue Water VR agrees to cure any and all liens or encumbrances against the Land or the Leases, other than the Permitted Encumbrances, at the sole expense of Blue Water VR, within thirty (30) days of receipt of a written request by Vista Ridge to do so. If Blue Water VR fails to remove such liens or encumbrances within such thirty (30) day period to the satisfaction of the Senior Debt Creditors, Vista Ridge shall have the right to take those actions it deems reasonable and necessary to remove such liens or encumbrances to the satisfaction of the Senior Debt Creditors and any such sums shall be deemed a Third Party Payment for the purpose of this Agreement.

20. Defaults

a. Except as otherwise expressly set out in this Agreement, if (i) Vista Ridge fails to comply with any of the material provisions of this Agreement and such default continues for a period of thirty (30) days after receiving Notice of such default from either of Blue Water Entities, then, subject to the limitations set out in this Agreement, either of the Blue Water Entities may exercise all rights which may be available to it at law or in equity, and (ii) if either of the Blue Water Entities fails to comply with any of the material provisions of this Agreement and such default continues for a period of thirty (30) days after receiving

Notice of such default from Vista Ridge, then, subject to the limitations set out in this Agreement, Vista Ridge may exercise all rights which may be available to it at law or in equity. The above notwithstanding, in the case of a default that cannot reasonably be cured within such thirty (30) day period, no such default shall be deemed to exist if the Party responsible to address such default is using due diligence to cure such default, continues to do so until the matter is cured and the matter is cured within ninety (90) days from the receipt of the Notice by such allegedly defaulting Party. Notwithstanding the above, no such notice and right to cure period shall apply in the case of a default that is incapable of being cured, including but not limited to a default of a representation or warranty made hereunder.

b. Except as otherwise expressly set out in, and subject to the other provisions of, this Agreement, the parties do not intend to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be exercised by any party hereto, which remedies shall be cumulative. Recognizing, however, that in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default (after any applicable cure period) on its part, the other Party shall have available to it the equitable remedy of specific performance, in addition to any other legal or equitable remedies which also may be available to such Party.

c. All other provisions of this Agreement notwithstanding, in the event of a default by Vista Ridge in no event will Blue Water have the right to seek or have the remedy of termination of this Agreement or the Subleases for such default by Vista Ridge, and Blue Water does hereby waive any right that they may have to seek such remedy for a default by Vista Ridge.

d. In the event of any claim, dispute or controversy arising out of or relating to this Agreement or the breach hereof (a "**Dispute**") which the parties have been unable to settle or agree upon, any party may request by written notice, and if so requested each party shall, nominate a senior officer of its management to meet within five (5) Business Days of the notice at the offices of Vista Ridge or such other location as the senior officers shall agree.

e. Should a resolution of such Dispute by such senior officers not be obtained within 15 Business Days after such party's notice for whatever reason (including as a result of any party to nominate its senior officer or any of a senior officer to schedule or attend), then, upon the written request of any party, the Dispute shall be finally settled by submitting a request for arbitration pursuant to the Rules of Arbitration of the American Arbitration Association (the "**AAA**") or such equivalent arbitration rules of the AAA then in effect (the "**AAA Rules**"), provided that nothing in this Agreement shall prevent or delay either party from applying for interim or conservatory measures pursuant to the AAA Rules. Notwithstanding anything to the contrary contained in this Section, if, due to a material breach or default or threatened material breach or default, a party is suffering irreparable harm for which monetary damages are inadequate, such party may petition a court of

competent jurisdiction for injunctive relief, specific performance or other equitable relief. The arbitration shall be conducted in the English language and held in Travis County, Texas before a panel of three arbitrators, as follows:

f. Each party shall appoint one arbitrator. The three arbitrators so appointed shall appoint one of the arbitrators who shall serve as the chairman of the arbitral panel.

g. If a party fails to appoint its arbitrator within a period of 10 days after the submittal of the request for arbitration, or if the two) arbitrators appointed cannot agree on the third arbitrator within a period of 10 days after appointment of the second arbitrator, then such arbitrator shall be appointed by the AAA in accordance with the AAA Rules.

h. No arbitrator shall be a past or present employee or agent of, or consultant or counsel to, a party or any Affiliate of a party, unless such restriction has been waived in writing by the other party to the proceeding.

i. The substantive law governing the Dispute shall be the laws of the State of Texas.

j. The arbitrators shall decide the dispute by majority of the arbitration panel and shall state in writing the reasons for its decision.

k. If Vista Ridge determines that the Dispute between the parties involves issues substantially identical under the Project Contracts, the Blue Water Entities will not object to the joinder of the counterparties under such Project Contracts for consolidated resolution of such issues.

l. The parties shall bear their own expenses and shall share equally the costs of arbitration during the course of arbitration; *provided, however*, that any arbitration award may provide that the losing party must reimburse the winning party for all or a portion of its expenses incurred in connection with such arbitration (including the costs of arbitration and reasonable attorneys' fees), as the arbitration panel determines appropriate.

m. The award of the arbitration panel may be enforced in any court of competent jurisdiction.

n. The arbitration panel shall have the sole power and authority to determine the arbitrability of any Dispute or the subject matter hereof. Subject to any other relevant limitations set forth elsewhere herein, the arbitration panel will have the power to award any type of relief that is just and appropriate in the panel's discretion, including compensatory damages, injunctive orders, orders for specific performance and declarations of rights. IF EITHER PARTY FAILS TO TIMELY PAY ITS SHARE OF THE COSTS OF THE ARBITRATION FOR ANY REASON, THE OTHER PARTY SHALL BE ENTITLED TO PAY ALL OF SUCH COSTS ON BEHALF OF SUCH PARTY, AND IN SUCH CASE

THE ARBITRAL AWARD MAY PROVIDE FOR REIMBURSEMENT TO SUCH OTHER PARTY OF SUCH COSTS WITH INTEREST AT THE OVERDUE RATE.

o. Each of the parties hereby consents, for itself and its property, to the non-exclusive jurisdiction of the Texas State courts located in Harris County, and the federal courts in the Eastern District of Texas, for purposes of aid in support of arbitration and the enforcement of any arbitral award made under the provisions of this Section, and hereby irrevocably and unconditionally agrees that any claims in respect of any such action or proceeding may be heard and determined in said courts. Each party hereby irrevocably consents to the service of any and all process in any action or proceeding by delivery of copies of such process by commercial courier to it at its address as specified in this Agreement.

p. THE PARTIES HEREBY WAIVE ALL RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS CONTRACT. FOR THE AVOIDANCE OF DOUBT, NEITHER PARTY SHALL HAVE THE RIGHT TO FILE ANY LEGAL ACTION REQUESTING THE RESOLUTION OF A DISPUTE BY ANY MEANS OTHER THAN BY ARBITRATION UNLESS EXPRESSLY AGREED TO BY THE OTHER PARTY IN ITS SOLE DISCRETION AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION.

q. Pending a final resolution of any Dispute, the parties shall continue to fulfill their respective obligations hereunder.

21. Notices, Consents And Approvals. All notices, consents, approvals or written communications given pursuant to the terms of this Agreement shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

a. if delivered in person during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

b. if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the



next Business Day;

c. if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

d. if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

**TO THE TRUST**

Wilmington Trust, National Association  
19590 North Dallas Parkway  
Floor 05  
Dallas, TX 75248

With a copy to:

Wilmington Trust Company  
1100 North Market Street  
Wilmington, DE 19890

**TO BLUR WATER VISTA RIDGE**

Blue Water Vista Ridge, LLC  
Attn.. Ross M. Cummings  
9606 N. Mopac  
Suite 125  
Austin, TX 78759  
United States of America

With Copy to:

Paul M. Terrill  
The Terrill Firm P.C.  
810 W. 10<sup>th</sup> St.  
Austin, Texas 78701  
(512) 474-9100

**TO BLUR WATER RSP**

Blue Water Regional Supply Project LP  
Attn.. Ross M. Cummings  
9606 N. Mopac  
Suite 125  
Austin, TX 78759  
United States of America

With Copy to:

Paul M. Terrill  
The Terrill Firm P.C.  
810 W. 10<sup>th</sup> St.  
Austin, Texas 78701  
(512) 474-9100

**TO VISTA RIDGE**

Abengoa Vista Ridge  
Pedro Almagro Gavilan  
2600 Via Fortuna, Suite 220  
Austin TX 78746

With Copy To:

Frank Z. Ruttenberg  
Haynes and Boone  
112 E Pecan suite 1200  
San Antonio, Texas 78205

Legal Counsel  
Abengoa Water  
2600 Via Fortuna, Suite 220  
Austin TX 78746

22. Compliance with WPA. Blue Water VR agrees to take the following actions and enter into the following agreements with SAWS within the time frames set out below, or if no time frame is set out below, on or before that date which is 30 days prior to the date they are required to be entered into between Blue Water and SAWS as set forth in the WPA, unless otherwise agreed to between SAWS and Blue Water as a part of their continuing negotiation on these items:

- a. On or before the Contract Date, Blue Water VR shall (i) have presented to

SAWS a Groundwater Supply Agreement to be negotiated and entered into between SAWS and Blue Water VR, and (ii) complete the negotiation and have fully executed such Groundwater Supply Agreement within 14 days following the Contract Date;

b. Caused each of those items set out as Financial Closing Date Conditions, which is required for Financial Close and is the responsibility or obligation of Blue Water VR under the terms of this Agreement (whether or not an absolute obligation).

c. In connection with the Leases, Sublease and the Permits and rights granted thereunder, take all of those actions, as may be requested by Vista Ridge, from time to time, to allow Vista Ridge to meet all of its requirements under the WPA.

23. Secured Lenders.

a. Vista Ridge may from time to time, assign for security purposes, hypothecate, mortgage, pledge or grant a security interest in the rights and interests granted herein to Vista Ridge in favor of one or more lenders as security for payment of any indebtedness and/or funds advanced by such lenders for the performance of any obligation for which Vista Ridge has liability in connection with the Project, including but not limited to the Project Improvements or any refinancing thereof ("**Project Financing**"); provided, however, a Project Financing may not include an indebtedness incurred by Vista Ridge to reimburse to Vista Ridge or distribute to its members/owner any portion of the equity contributions in the Project as set forth in the "Equity Contribution Agreement" as defined in the WPA. The holder of any such lien securing Project Financing upon the rights and interests granted herein to Vista Ridge shall be referred to as a "**Secured Lender.**" Provided, however, a Secured Lender may not be Vista Ridge or any affiliate of Vista Ridge or any of its members. Without the further consent of Blue Water or the Trust, in the event of an uncured default by Vista Ridge, a Secured Lender may enforce such lien and acquire title to the rights granted herein to Vista Ridge in any lawful way and, pending foreclosure of such lien, the Secured Lender may take exclusive possession of the interests in this Agreement pledged to such Secured Lender. Further, upon foreclosure of such lien by power of sale, judicial foreclosure, or upon acquisition of the interests granted herein by assignment in lieu of foreclosure, the Secured Lender may, without the further consent, sell and assign interests granted herein by Vista Ridge. Blue Water agrees to execute written consents to any such collateral assignments or Project Financing in form required by any such Secured Lender.

b. Vista Ridge shall use reasonable efforts to include in the loan documents for any loan described in Section 23(a) a provision requiring the Secured Lender to provide Blue Water with a copy of any notice of default to Vista Ridge with respect to any default by Vista Ridge on any loans to such Secured Lender.

c. Blue Water VR agrees to give written notice to Vista Ridge in the manner required by Section 21 of this Agreement with respect to any default

hereunder by Vista Ridge. Blue Water VR shall also give a copy of each such notice to each Secured Lender for which Vista Ridge or the Secured Lender has disclosed the existence of such loan and notice information to Blue Water VR. In the event Vista Ridge shall default in the performance of any of the terms, covenants, agreements and conditions of this Agreement that are required on Vista Ridge's part to be performed not involving the payment of money, any Secured Lender shall have the right, but not the obligation, to remedy such default of this Agreement within the period of time that Vista Ridge has to remedy such default (as such period or periods of time may be extended as set forth below). In the case of a default by Vista Ridge in the payment of money, Blue Water VR will not exercise any remedy by reason thereof unless such default has continued beyond 90 days after the expiration of Vista Ridge's notice and cure period applicable to such default under this Agreement.

d. Blue Water does hereby agree to execute (or cause to be executed) written documents to assign for security purposes, hypothecate, mortgage, pledge or grant a security interest in the rights of Blue Water RSP, Blue Water VR, or Trust in and to the Leases and the Permits in favor of any Secured Lender to secure the payment of Project Financing and operation of the Project which shall be a first lien in favor of such Secured Lender. A Secured Lender may enforce such interest and acquire title to such collateral in any lawful way. Furthermore, upon foreclosure of such interest by power of sale, judicial foreclosure, or upon acquisition of the collaterally assigned interests, a Secured Lender may, without further consent, take possession of, sell and/or assign the interests granted herein in accordance with the terms of this Section. Vista Ridge does hereby agree that it will use reasonable commercial efforts to obtain from the Secured Lender, in connection with the hypothecation, mortgage, pledge or alienation of the rights and interests in Blue Water VR, an agreement, to provide Blue Water VR with notice and a period to cure any defaults under the terms of the Senior Debt before pursuing any actions or remedy for such default against the interests granted in accordance with this Section.

e. Blue Water RSP hereby agrees to execute written documents to assign for security purposes, hypothecate, mortgage, pledge or grant a security interest of all of its ownership interests in Blue Water VR, or its rights as a beneficiary of the Trust, in favor of any Secured Lender to secure the payment of Project Financing and operation of the Project, which shall be a first lien in favor of such Secured Lender. A Secured Lender may enforce such interest and acquire title to such collateral in any lawful way. Furthermore, upon foreclosure of such interest, the Secured Lender may, without further consent, take possession of, sell and/or assign the interests granted herein in accordance with the terms of this Section. Vista Ridge does hereby agree to use reasonable commercial efforts to obtain from the Secured Lender, in connection with the hypothecation, mortgage, pledge or alienation of the rights and interests in Blue Water VR, an agreement, to provide Blue Water VR with notice and a period to cure any defaults under the terms of the Senior Debt before pursuing any actions or remedy for such default against the interests granted in accordance with this Section. Blue Water RSP will maintain ownership of 100% of the

ownership interests of Blue Water VR, and Blue Water VR will take all of those steps required by a Secured Lender to modify its organizational documents to be a single purpose entity which is considered bankruptcy remote.

f. Blue Water, Trust and Vista Ridge (and their respective successors and assigns) agree to execute and deliver to any Secured Creditor or to any Senior Debt Creditor, in form acceptable to such Secured Creditor or Senior Debt Creditor, any documents necessary or appropriate to evidence or effect the security interests described above, including but not limited to any "**Senior Debt Financing Agreements**" (as that term is defined in the WPA) required by a Senior Debt Creditor to be executed by Blue Water, Trust or Vista Ridge, any Collateral Security Agreement required by a Senior Debt Creditor and any documentation required to subordinate the payments due to Blue Water or Vista Ridge to the payments due to the Senior Debt Creditors, the lessors under the terms of the Leases or any other persons providing goods or services to the Project, as may be required by the Senior Debt Creditor, and to assure the Senior Debt Creditor will have a good first lien upon the Leases, Sublease and ownership interests, subject only to encumbrances allowed under Section 2.b.

24. Miscellaneous:

a. Assignment. This Agreement may be assigned or rights hereunder subleased by Vista Ridge, without the prior consent of Blue Water VR, to (i) any person, firm, corporation or other entity at any time to any person who is owned by or under the control of Vista Ridge or any party who is an affiliate of Vista Ridge, (ii) the "**Water Supply Corporation**" (as defined in the WPA), (iii) SAWS, (iv) in accordance with Section 22, and (v) to any other person subject to the prior written consent of Blue Water VR, which approval will not be unreasonably withheld, conditioned or delayed; provided no such assignment or sublease shall relieve Vista Ridge of any of its obligations hereunder, particularly to assure the reversion of the Lease Rights and Permits to Blue Water RV as provided herein at the end of the WPA Term. Except as may otherwise be expressly provided herein, the Blue Water Entities shall not be entitled to assign this Agreement (or any of their rights hereunder) to any other person, firm, corporation or other entity without the prior written consent of Vista Ridge, which approval shall not be unreasonably withheld, conditioned or delayed. Any such assignee of the Agreement shall be required to be a Single Purpose Entity.

b. Modifications. This Agreement cannot be changed orally, and no amendment shall be effective to waive, change, modify or discharge this Agreement unless such amendment is in writing and is signed by all of the Parties hereto.

c. Calculation of Time Periods. Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a day occurring on a Saturday, Sunday or legal holiday, then the due date of such obligation or scheduled time of

occurrence of such event shall be delayed until the next Business Day. For purposes of this Agreement the term "Business Day" means any day other than a Saturday, Sunday or legal holidays.

d. Further Assurances. Each of the Parties to this Agreement agree to execute and deliver to the other, any document or transfer instrument, or to take such other actions that another Party determines to be necessary or useful to fully carry out the transactions, assignments and subleases covered by this Agreement, including any pending or future applications for permits, amendments to permits filings required to achieve conformance with applicable laws or regulations of any Governmental Body now or hereafter having authority over the drilling of water wells, the spacing of water wells, the production of groundwater or the sale of water within or without the boundaries of any Governmental Body, in each case to provide for the full and timely performance of Vista Ridge's obligations pursuant to the WPA. In addition, the Parties agree to amend this Agreement in any manner any other Party deems necessary to cause this Agreement to be in full compliance, now or hereafter, with any applicable rules and regulations, transfer program rules, or groundwater filing and recordation information of any Governmental Body with jurisdiction over the groundwater, Permits or Leases. In lieu of filing this Agreement for record in the Office of the County Clerks in the counties in which the Leases are located, the Parties agree to execute any form of memorandum of this Agreement provided by Vista Ridge, necessary to provide public notice of this Agreement in conformance with any Senior Debt Financing Agreements; provided, however, that Vista Ridge shall have the authority, without prior consent of any other Party to this Agreement, to file a copy of this Agreement or the memorandum thereof in any public office if required by any Governmental Body to accomplish the purposes of this Agreement or the development, operation or maintenance of the Project Improvements, the Leases or the Permits.

e. Limited Recourse of Trustee. Notwithstanding any provision of this Agreement, or any other agreement, document or instrument to the contrary, it is expressly understood and agreed by the parties hereto that (i) this Agreement executed by the Trustee on behalf of the Trust is executed and delivered by Wilmington Trust, National Association not individually or personally but solely as Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it under the trust agreement of the Trust, (ii) each of the representations, warranties, undertakings, covenants, obligations and other agreements therein made on the part of the Trust is made and intended not as a personal representation, warranty, undertaking, covenant, obligation or other agreement by Wilmington Trust, National Association but is made and intended for the purpose of binding only the Trust, (iii) in no event shall Wilmington Trust, National Association have any obligation in its individual capacity to perform any of the obligations and covenants of the Trust under this Agreement or any related documents, and (iv) under no circumstances will Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation,

warranty or covenant made or undertaken by the Trust under this Agreement or any related documents, unless attributable to the breach of an agreement made herein by the Trustee or due to the acts of the gross negligence or willful misconduct of the Trustee.

f. Trust Costs. Except as expressly set out in the Trust Agreement to the contrary, all costs to establish, administer, operate and terminate the Trust, and all costs and expenses of the Trustee, shall be paid by Vista Ridge.

g. Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the successors and permitted assigns of the Parties hereto.

h. Entire Agreement. This Agreement, including the exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

i. Electronic Delivery. A telecopied facsimile or other electronically delivered copy of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof.

j. Multiple Counterparts. This Agreement may be simultaneously executed in a number of counterparts, each of which for all purposes shall be deemed an original and all of which, when taken together, shall constitute but one and the same instrument.

k. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

l. Applicable Law. This Agreement is performable in the State of Texas and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Texas.

m. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of the Parties only and are not for the benefit of any third party.

n. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

o. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the

effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

p. Time of Essence. Time is of the essence of this Agreement, therefore all deadlines and expiration times for periods set forth in this Agreement shall be strictly enforced.

q. Attorney's Fees and Court Costs. The prevailing Party in litigation brought in connection with this Agreement is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

[Signature Lines on Next Page]



EXECUTED THE 31 DAY OF JANUARY, 2015 (THE "EFFECTIVE DATE").

**ABENGOA VISTA RIDGE LLC**

By: 

Name: Pedro Alvarado Garcia

Title: President

**BLUEWATER VISTA RIDGE LLC**  
a Texas limited liability company

By: 

Ross M. Cummings, President

**BLUEWATER REGIONAL SUPPLY PROJECT LP**  
a Texas limited partnership

By Blue Water Regional Supply Project GP LLC  
a Texas limited liability company

By: 

Ross M. Cummings,  
President and Managing Member

**Burleson/Milam Master Lease Trust**

By: Wilmington Trust, National Association, not in its  
individual capacity but solely in its capacity as Trustee

By: 

Name: Charles F. Hicks

Title: Vice President

CHARLES F. HICKS  
VICE PRESIDENT

Exhibit "A"  
Leases

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
002-018	52.842	52.842	Delores Faye Luksa	Yes	3092
002-025	58.8	58.8	Estate of Adell Paukert Mikula, Deceased	Yes	3032
002-027	5	5	Steve Payne and wife, Patricia May Payne	Yes	3026
002-028.1	2.357	2.357	Dolores A. Boedeker	Yes	3027
002-028.2	3.444	3.444	Dolores A. Boedeker	Yes	3028
002-029	5.76	5.76	William V. Roskey and wife, Mary J. Roskey	Yes	3093
002-030	5.76	5.76	William V. Roskey and wife, Mary J. Roskey	Yes	5469
002-031	5.76	5.76	William V. Roskey and wife, Mary J. Roskey	Yes	5526
002-033	4.9	4.9	HOBOSBCF, LLC	Yes	3030
002-034	3	3	Rodriguez	Yes	3084
002-035	1.7178	1.7178	Landrum Busby	Yes	3235
002-036	3.736	3.736	Jerry Albert Kacer, Jr.	Yes	3082
002-037	45.6	45.6	Frank Horak	Yes	0329
002-037	45.6	-	LJ. Horak	Yes	0329
002-037	45.6	-	LJ. Horak	Yes	3070
002-037	45.6	-	Allen Ray Horak	Yes	3069
002-037	45.6	-	Allen Ray Horak	Yes	0329
002-037	45.6	-	Frank Horak	Yes	3071
002-038	10.766	10.766	Phyllis J. Urban	Yes	3033
002-042	60.89	60.89	John Albn Horak	Yes	3034
002-042	60.89	-	Mary Elizabeth Horak Miller	Yes	3034
002-042	60.89	-	Frank Mark Horak	Yes	3034
002-043	24.352	24.352	Delores Faye Luksa	Yes	3095
002-050	2	2	Martha Jo Lambrecht	Yes	3133
002-051	5	5	David Dennis	Yes	3134
002-056	4.985	4.985	Wayne A. Mobre and wife, Margaret L. Moore	Yes	3114
002-061	1	1	Richard J. Hogan and wife, Lillian Hogan	Yes	3243
002-062	49	49	Richard J. Hogan and wife, Lillian Hogan	Yes	3243
002-063.1	15.69	15.69	Cary Dane Balcar	Yes	3267
002-063.2	46.31	46.31	Bradly Balcar	Yes	3268
002-064	50	50	Joseph Louis Salvato	Yes	3269
002-065	61.221	61.221	Edward Zgabay	Yes	3274
002-067	25.979	25.979	Renny J. Kocurek	Yes	4733
002-069	51.83	51.83	William V. Roskey and wife, Mary J. Roskey	Yes	5498
002-070	20.31	20.31	Bradly Balcar and wife, Jamle K. Balcar	Yes	3276
002-071.1	19.97	19.97	Bradly Balcar and wife, Jamie K. Balcar	Yes	3278
002-072	29.94	29.94	person as Susan J. Balcar	Yes	3277
002-073	29.94	29.94	Sandra Jodene Balcar	Yes	3275
002-074	50	50	Leona Salvato Family Partnership, L.L.C.	Yes	3270
002-077	132.06	132.06	Charles H. Campbell	Yes	3123
002-077	132.06	-	Byron J. Plwetz	Yes	3174
002-077	132.06	-	Lynne M. Simpson	Yes	3123
002-077	132.06	-	Sylvia A. Handler	Yes	3123
002-077	132.06	-	Barry Ray Helweg	Yes	3148
002-083.1	85.43	85.43	Kevin Lyle Billig	Yes	3103
002-083.2	91.726	91.726	Kathy Marie Billig	Yes	3102
002-083.3	61.08	61.08	Kathy Marie Billig	Yes	3104
002-083.4	111.08	111.08	Kevin Lyle Billig	Yes	3101
002-087	103.582	103.582	Independent Executrix Ernest Zboril, Deceased	Yes	5472
002-092	47	47	Jack Kocurek and wife, Rebecca Kocurek	Yes	5203
002-116	52	52	Independent Executrix Ernest Zboril, Deceased	Yes	5473

**ABENGOA**

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
007-001m	202.36	202.36	S & V Partnership	No	1959
007-004m	10.647	10.647	Maxie R. Jackson and wife, Peggy Tucker Jackson	No	4350
007-005m	26.839	26.839	Maxie R. Jackson and wife, Peggy Tucker Jackson	No	3995
007-006m	7.16	7.16	Jerry Hosek and wife, Peggy L. Hosek	No	3970
007-007m	2.494	2.494	Jerry Hosek and wife, Peggy L. Hosek	No	3971
007-008m	5	5	Jerry Hosek and wife, Peggy L. Hosek	No	3972
007-010m	131.189	131.189	Floyd R. Byrd and wife, Dawn R. Byrd	No	3713
007-011m	32.623	32.623	Floyd R. Byrd and wife, Dawn R. Byrd	No	3714
007-014m	20	20	Jeffrey J. King	No	3889
007-016m	5.762	5.762	Woolverton	No	3731
007-018m	4.913	4.913	Gordon Todd	No	3903
007-019m	8.085	8.085	Gordon Todd	No	3739
007-028m	87.697	87.697	Gordon Todd	No	3738
007-034m	136.0508	136.0508	Jackline C. Thornton	No	3737
007-037m	4.86	4.86	Lamar Angell	No	4055
007-038m	74.5286	74.5286	Lamar Angell	No	4054
007-039m	3.79	3.79	Lamar Angell	No	4056
007-044m	19.84	19.84	Clayton Bruce Thornton	No	3888
007-044m	19.84	-	Bryan Jacob Thornton	No	3887
007-048m	35	35	Zeke Young and wife, Louise M. Young	No	3833
007-054m	4.48	4.48	Hubert Youngblood, Jr.	No	4241
007-081m	28.95	28.95	Richard Strelsky	No	3769
007-107m	1.318	1.318	Jerry Hosek and wife, Peggy L. Hosek	No	4018
007-108m	1.306	1.306	Jerry Hosek and wife, Peggy L. Hosek	No	4019
007-109m	2.83	2.83	Jerry Hosek and wife, Peggy L. Hosek	No	4020
007-110m	1.103	1.103	Jerry Hosek and wife, Peggy L. Hosek	No	4021
007-113m	1.1488	1.1488	Tom Woods	No	4096
007-114m	1.4463	1.4463	Tom Woods	No	4095
007-115m	1.4463	1.4463	wife, Carol Johnson	No	4093
007-116m	1.4463	1.4463	wife, Carol Johnson	No	4094
007-123m	6.304	6.304	Billy E. Strelsky and wife, Regina K. Strelsky	No	4235
007-124m	6.407	6.407	Linda Peacock Fuqua	No	4362
007-124m	6.407	-	Kenneth Keith Peacock, Jr.	No	4236
007-125m	6.407	6.407	Billy E. Strelsky and wife, Regina K. Strelsky	No	4234
007-126m	6.407	6.407	Wayne Strelsky	No	4233
007-131m	110	110	Melanie Ann Rielly Todd	No	4271
007-131m	110	-	Hilda McVoy	No	4191
007-132m	110	110	Hilda McVoy	No	4190
007-135.1m	33.401	33.401	S & V Partnership	No	5979
007-135.2m	10	10	S & V Partnership	No	5980
007-136m	61.905	61.905	Corey T. McIrvin	No	4319
007-139m	19.35	19.35	Michael Von Rosenberg	No	4320
007-155m	2.368	2.368	Micke Musgrave	No	4395
007-157m	1.239	1.239	Milton E. Frei, Jr. and wife, Laura R. Frei	No	4352
007-158m	1.11	1.11	Maria Cadena Buentello	No	4389
007-162m	4.57	4.57	Bell	No	4499
007-163m	8.235	8.235	Steven P. Walker	No	4497
007-164m	10.02	10.02	John P. Perry	No	4498
007-166m	4.28	4.28	Bobby Dale Wolf	No	4593
007-166m	4.28	-	Martha Stewart	No	4594
007-167m	2.135	2.135	Farley	No	4467

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
007-169m	2.14	2.14	Ken R. Morris and wife, Marie Morris	No	4503
007-171m	3.5	3.5	Nestor Vargas	No	4504
007-172m	1.539	1.539	Guillermo Pantaleon and wife, Susan Pantaleon	No	4469
007-173m	2	2	Thomas Vega and wife, Mary Vega	No	4505
007-174m	1.73	1.73	Jerry D. Alexander and wife, Debra L. Alexander	No	4468
007-176m	2.42	2.42	Revocable Trust dated April 17, 2003	No	4501
007-177m	2.4	2.4	person as Frances Elaine Miles Wilcox	No	4502
007-179m	1.96	1.96	Donald C. Lester	No	4507
007-189m	2.36	2.36	Israel Araujo	No	4508
011-019	136.5303	136.5303	Ginger, Ltd., a Texas Limited Partnership	Yes	0028
011-020	70	70	Piwonka Living Trust	Yes	5299
011-021	72.11	72.11	Barbara A. Kubelka	Yes	2610
011-022	61.4	61.4	Larry Ted Marek	Yes	0235
011-024	20	20	Charles Chovanec, Jr. and wife, Kristal Chovanec	Yes	2658
011-025	45.257	45.257	Barbara A. Kubelka	Yes	2611
011-027.1	10.71	10.71	Mark Skrabanek	Yes	5302
011-027.2	72.11	72.11	Mark Skrabanek	Yes	5303
011-027.3	47.9144	47.9144	Mark Skrabanek	Yes	5304
011-027.4	2	2	Mark Skrabanek	Yes	5305
011-029	71.1487	71.1487	Janette M. Hall	Yes	0496
011-029	71.1487	-	Larry Ted Marek	Yes	0233
011-033	2.997	2.997	Norsworthy	Yes	5321
011-035	66.67	66.67	Jerry Schafer	Yes	2793
011-039	61.263	61.263	James I. Swigert and wife, Patricia B. Swigert	Yes	2759
011-044	121.58	121.58	Schlelack	Yes	2779
011-046	99	99	Donnie S. Victorick	Yes	2780
011-047	73	24.3333	Donnie S. Victorick	Yes	2792
011-072	107	24.9666	Michael J. Ofczarzak	Yes	2959
011-072	107	-	Michael J. Ofczarzak	Yes	3012
011-072	107	-	Jerry Schafer	Yes	2794
021-001	26.395	26.395	James H. Bray	Yes	0007
021-002	9.626	9.626	James H. Bray	Yes	2321
021-003	45.494	45.494	James T. Lewis and wife, Mary C. Lewis	Yes	0002.2
021-022	3.05	3.05	Nathan Charles Ausley	Yes	3279
021-023	196.95	196.95	Ausley	Yes	3145
021-023	196.95	-	Nathan Charles Ausley	Yes	3144
021-027	2.34	2.34	Jody Lee Ausley	Yes	3450
026-018	13.33	13.33	Johnnie A. Love and wife, Lynne A. Love	Yes	5388
026-022	128.85	128.85	Yanez	Yes	5800
026-025	45.0793	45.0793	Jack W. Stifflemire and wife, Nita J. Stifflemire	Yes	5386
026-031	11.95	11.95	Hugh Jeffery Davis	Yes	2622
026-041	84	84	Jack W. Stifflemire and wife, Nita J. Stifflemire	Yes	5306
026-043	83	83	Richard J. Zgabay	Yes	4183
026-051.1	50	50	Edith Frances Hungerford	Yes	4181
026-051.2	75	75	Edith Frances Hungerford	Yes	4182
026-052.1	50	50	Crystal Luksa Cox	Yes	4138
026-052.2	60.5	60.5	Crystal Luksa Cox	Yes	4132
026-052.3	60	60	Crystal Luksa Cox	Yes	4104
026-052.4	4	4	Crystal Luksa Cox	Yes	4131
026-058	12	12	Alman Kouatli	Yes	4135
026-059	2	2	Trinidad Rubio and wife, Rosa Rubio	Yes	1130

**ABENGOA**

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
026-062	2	2	Delores Faye Luksa	Yes	4136
026-063	2	2	Delores Faye Luksa	Yes	4137
029-001m	182.42	182.42	Duke W. Turner and wife, Mari R. Turner	No	0667
029-002m	143.107	71.5535	Josephine Deloris Jones	No	3323
029-003m	13	13	Josephine Deloris Jones	No	3322
029-004m	28.518	23.7649	Anthony Ray Hutson	No	3324
029-004m	28.518	-	Bertha Lou Ella Moss	No	3427
029-004m	28.518	-	Bobbie Jean Dibbles	No	3426
029-004m	28.518	-	William Bennie Nelson	No	3425
029-004m	28.518	-	Riley Mae Pittman	No	3428
029-005.1m	92.66	84.9352	Anthony Ray Hutson	No	3325
029-005.1m	92.66	-	Robble E. Harris	No	3349
029-005.1m	92.66	-	Bobbie Jean Dibbles	No	3422
029-005.1m	92.66	-	Bertha Lou Ella Moss	No	3423
029-005.1m	92.66	-	William Bennie Nelson	No	3421
029-005.1m	92.66	-	Riley Mae Pittman	No	3424
029-005.1m	92.66	-	Mille M. Ferguson	No	3429
029-005.2m	0.482	0.482	Anthony Ray Hutson	No	3327
029-007m	10	10	Anthony Ray Hutson	No	3432
029-008m	22.17	22.17	Anthony Ray Hutson	No	3431
029-009m	23.67	23.67	Anthony Ray Hutson	No	3430
029-010m	875.454	437.727	R. Charles Hubert and wife, Marie M. Hubert	No	0915
029-010m	875.454	-	Betty Jezisek	No	0915
029-011m	25	25	A. Reese Brown Family Limited Partnership	No	3158
029-012m	78.5	78.5	A. Reese Brown Family Limited Partnership	No	3159
029-013m	50	50	Arvin J. Jones and wife, Charlotte R. Jones	No	3160
029-013m	50	-	Eric J. Jones	No	3160
029-014m	103	103	A. Reese Brown Family Limited Partnership	No	3161
029-015m	108.52	108.52	James Phillips and wife, Karin Phillips	No	3194
029-016m	548.822	548.822	S & V Partnership	No	3059
029-017m	17.237	17.237	Billy R. Davis	No	3295
029-018m	5.893	4.2092	Margaret Plentl and husband, Bruce Plentl	No	3310
029-018m	5.893	-	Tommy Garrison and wife, Linda Lou Garrison	No	3293
029-018m	5.893	-	Stanley Garrison and wife, Monica Garrison	No	3294
029-018m	5.893	-	Dalpa Nell Garrison	No	3291
029-019m	4.82	4.82	Bruce Plentl and wife, Margaret Plentl	No	3284
029-020m	28.25	28.25	Julia R. Molina	No	3283
029-021m	28	28	Vaughn E. Owens and wife, Wilma Owens	No	3153
029-022m	34.14	34.14	Donald R. Whiteley and wife, Katie V. Whiteley	No	3280
029-023m	25.07	25.07	Thomas Wyatt Gary	No	3290
029-024m	44.5	44.5	John T. Gary and wife, A. Laura Gary	No	3126
029-025m	10	10	Thomas Wyatt Gary	No	3125
029-026m	89.5	89.5	John T. Gary and wife, A. Laura Gary	No	3127
029-029m	288.47	288.47	Accurate, Inc.	No	0401
029-030m	120	120	Sumer Tanille Brown	No	3348
029-030m	120	-	Joe Edward Strawn	No	3348
029-030m	120	-	Kenneth Lee Strawn	No	3348
029-030m	120	-	Kathryn Marie Strawn Squier	No	3348
029-030m	120	-	Richard Ray Strawn	No	3348
029-031m	25	25	Kathryn Marie Strawn Squier	No	3347
029-031m	25	-	Sumer Tanille Brown	No	3347

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
029-031m	25	-	Richard Ray Strawn	No	3347
029-031m	25	-	Kenneth Lee Strawn	No	3347
029-031m	25	-	Joe Edward Strawn	No	3347
029-034m	53.538	53.538	Tommy Lynn Dennis and wfile, Terry Ann Dennis	No	3128
029-035m	68.5	68.5	Tommy Lynn Dennis and wfile, Terry Ann Dennis	No	3313
029-036m	82.089	82.089	Thelma Mae Williams	No	3354
029-037m	43.865	43.865	Betty Jezlsek	No	0916
029-037m	43.865	-	Lori L. Baggerly and husband, Roger W. Baggerly	No	0916
029-038m	53.667	53.667	Wesley Allen Nelson	No	3193
029-040m	145.52	145.52	Vaughn E. Owens and wife, Wilma Owens'	No	3152
029-041m	12.574	12.574	Vaughn E. Owens and wife, Wilma Owens	No	3157
029-042m	3	3	Accurate, Inc.	No	0853
029-043m	16	16	Accurate, Inc.	No	0607.3
029-044m	61	61	Accurate, Inc.	No	0607.4
029-045m	36	36	Accurate, Inc.	No	0607.8
029-046m	15	15	Accurate, Inc.	No	0607.7
029-047m	50.17	50.17	Accurate, Inc.	No	0607.5
029-048m	34.53	34.53	Accurate, Inc.	No	0607.6
029-049m	5.298	5.298	Triple H Land & Cattle Company, Inc.	No	3709
029-050m	46.41	46.41	Accurate, Inc.	No	0607.2
029-051m	257.36	257.36	Accurate, Inc.	No	0607.1
029-052m	32.25	32.25	Shelby G. Smith, Jr. and wife, Ernestine Smith	No	3162
029-053m	20	20	Edmond L. Garner and wife, Anita B. Garner	No	3533
029-054m	198.535	198.535	Stewart	No	3532
029-055m	537.298	537.298	Harry Vowell	No	3501
029-055m	537.298	-	Karen M. Ocana	No	3502
029-055m	537.298	-	Harry Vowell	No	3502
029-055m	537.298	-	Keith Debault	No	3502
029-055m	537.298	-	Karen M. Ocana	No	3501
029-055m	537.298	-	Rickey A. Jamison	No	3502
029-055m	537.298	-	Rickey A. Jamison	No	3501
029-055m	537.298	-	Keith Debault	No	3501
029-055m	537.298	-	Jon Hildebrand	No	3501
029-055m	537.298	-	Jon Hildebrand	No	3502
029-056m	39.53	39.53	Steven J. Hubbell	No	3683
029-056m	39.53	-	Harry Vowell	No	3683
029-056m	39.53	-	Jon Hildebrand	No	3683
029-056m	39.53	-	David J. Weber	No	3683
029-057m	11.18	11.18	Terr J. Threet	No	3702
029-058m	17.61	17.61	Terr J. Threet	No	3701
029-059m	13.93	13.93	Terr J. Threet	No	3677
029-060m	22.564	22.564	Robert Blake	No	3676
029-061m	22.65	22.65	Michael K. Morgan and wife, Michelle C. Morgan	No	3700
029-062m	72.884	72.884	Steven J. Hubbell	No	3684
029-062m	72.884	-	Harry Vowell	No	3684
029-062m	72.884	-	David J. Weber	No	3684
029-062m	72.884	-	Jon Hildebrand	No	3684
029-063m	200	200	Accurate, Inc.	No	3708
029-064m	93.02	93.02	Ronald Ray Creek and wife, Nancy J. Creek	No	3712
029-065m	20.22	20.22	Dustin Ray Creek	No	3715
029-066m	2.94	2.94	Dustin Ray Creek	No	3716

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
029-067m	43.31	43.31	Ann C. Galvan and Eugene L. Gilmore	No	3717
029-075m	23.15	23.15	Joseph W. Cooper and wife, Cathy A. Cooper	No	3719
029-079m	20	20	Arvin J. Jones and wife, Charlotte R. Jones	No	3741
029-080m	1	1	Arvin J. Jones and wife, Charlotte R. Jones	No	3742
029-084m	1.02	1.02	James L. McWhorter	No	3989
029-087m	52.767	52.767	John D. Kovar and wife, Madeline Kovar	No	3931
029-096m	70	70	as Sandy Braswell and wife, Vicky K. Braswell	No	3846
029-097m	163.113	163.113	Ronnie Vlnkoff	No	3786.1
029-099m	270.351	270.351	James L. McWhorter	No	3988
029-100.1m	67	67	Manveltex, Inc.	No	3733
029-100.2m	80	80	Accurate, Inc.	No	3734
029-101m	5.289	5.289	Accurate, Inc.	No	5448
029-103.2m	15	15	Michael Walker and wife, Shirley Walker	No	5449
029-112m	50	50	Manuel C. Doud	No	3787.2
029-158m	57.65	57.65	James Barry Dean and wife Susan Ann Dean	No	4631
029-159m	57.65	57.65	James Barry Dean and wife Susan Ann Dean	No	4632
029-160m	13.4	13.4	Ronald D. McGuire.	No	4184
029-161m	56	56	Ronald D. McGuire.	No	4185
029-162m	33.9	33.9	James David Cunningham	No	5408
029-163m	68.5	68.5	James David Cunningham	No	5409
029-167m	3	3	Arnold J. Prazak and wife, Gerlane B. Prazak	No	4351
039-001m	105.98	105.98	Richard E. Frock and wife, Lanette Frock	No	2192
039-001m	105.98	-	James E. Schreiner and wife, Rebecca L. Schreiner	No	2192
039-015m	26.73	26.73	Eunice Ann Walker	No	3901
039-015m	26.73	-	George Clinton Walker, III	No	3897
039-015m	26.73	-	Janice Walker Gunter	No	3900
039-016m	27	27	Eunice Ann Walker	No	3809
039-016m	27	-	George Clinton Walker, III	No	3896
039-016m	27	-	Janice Walker Gunter	No	3899
039-017m	27	27	George Clinton Walker, III	No	3895
039-017m	27	-	Eunice Ann Walker	No	3808
039-017m	27	-	Janice Walker Gunter	No	3898
039-018m	84.68	84.68	Trust	No	3795.2
039-018m	84.68	-	Elizabeth A. Walker	No	3795.2
039-019m	40.03	40.03	Elizabeth A. Walker	No	3796
039-019m	40.03	-	Trust	No	3796
039-020m	192.919	192.919	Freddye S. Frock Debault	No	2191
052-001m	7.75	7.75	Doyle W. Cryer, Jr. and wife, Donna L. Cryer	No	5455
052-002m	5.404	5.404	Larry J. Rubino and wife, Carol A. Rubino	No	4318
052-003m	7.25	7.25	Thornton	No	4270
052-004m	30.606	30.606	Thornton	No	4284
052-005m	109.402	109.402	Joel David Stewart	No	4022
052-005m	109.402	-	Susan Blair Stewart	No	4022
052-005m	109.402	-	Kimberly Ann Riley	No	4022
052-007m	10.04	10.04	Jerry S. Cass and wife, Kyle Cass	No	4317
052-008m	48.5	48.5	Jerry S. Cass and wife, Kyle Cass	No	4316
052-009m	59.065	59.065	Robert Nathan Von Gonten	No	4369
052-012m	30.049	30.049	James F. Doss, Jr. and wife, Denlce Doss	No	4329
052-013m	53.75	53.75	Henry J. Bradford and wife, Jo Ann Bradford	No	4458
052-014m	53.8	53.8	Henry J. Bradford and wife, Jo Ann Bradford	No	4459
052-015m	1	1	Sandra Kay Ellis	No	4548



Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
052-016m	9	9	Sandra Kay Ells	No	4549
052-017m	10	10	Sandra Kay Ells	No	4550
052-021m	11.431	11.431	Billy Joe Hall	No	4552
052-049m	34.813	17.4065	Dorothy Lewing	No	4286
052-076m	10.2	10.2	Wesley W. Van Horn	No	4048
052-077m	2	2	Wesley W. Van Horn	No	4099
052-078m	112.344	112.344	Wesley W. Van Horn	No	4049
052-079m	30.8	30.8	David Carter and wife, Tammy Lynn Carter	No	4707
052-081m	70.395	70.395	Fisher	No	4283
052-082m	90.795	68.0962	Jackie L. Roderick	No	4332
052-082m	90.795	-	Jackie L. Roderick	No	4333
052-082m	90.795	-	Rita Phillips	No	4332
052-094m	3.5448	3.5448	Trustees of the Clark Family Living Trust	No	4227
052-095m	45.15	45.15	James E. Luetge	No	4363
052-099m	9.4844	9.4844	Walter F. Gest and wife, Dolores Gest	No	4228
052-100m	7.7834	7.7834	Lenora Jackson	No	4229
052-118m	1	1	Pete Ortega and wife, Rowena Ortega	No	4462
052-119m	3.889	3.889	Pete Ortega and wife, Rowena Ortega	No	4463
052-120m	5	5	John C. Pruett and wife, Laura Lynn Pruett	No	4546
052-121m	10.346	10.346	John C. Pruett and wife, Laura Lynn Pruett	No	4547
052-122m	10.976	10.976	James Carter	No	4491
052-123m	1	1	James Carter	No	4492
052-124m	2.5	2.5	James Carter	No	4493
052-125m	7.5	7.5	William Ben Terry and wife, Tonja Irene Terry	No	4464
052-127m	50	50	Billy W. Kopetsky	No	4454
052-128m	49.085	49.085	Jackson Freed	No	4455
052-135m	10.692	10.692	Rita Annette Beery	No	5454
052-136m	1	1	Rita Annette Beery	No	4510
052-139m	32.17	32.17	Meadors	No	5391
052-142m	31.674	31.674	Darlene Applegate	No	4451
052-143m	12	12	David M. Johnson and wife, Danille McAfee	No	4443
052-144m	45.557	45.557	Jason L. Worley and wife, Carol A. Worley	No	4449
052-145m	38.616	38.616	John D. Acord and wife, Florene Acord	No	4448
052-146m	9.612	9.612	John D. Acord and wife, Florene Acord	No	4447
052-147m	9.45	9.45	Travis R. Lincoln	No	4424
052-170m	14.07	14.07	Finis E. Black	No	4473
052-174m	105.495	105.495	Jackson Freed	No	4439
052-175m	138	138	Gonten	No	4440
052-176m	122.74	122.74	Stanley R. Von Gonten	No	4532
052-179m	183.31	183.31	David H. Boyd, Sr. and wife, Carolyn N. Boyd	No	4533
052-180m	60	60	David H. Boyd, Jr. and wife, Dawn L. Boyd	No	4536
052-181m	10	10	David H. Boyd, Jr. and wife, Dawn L. Boyd	No	4535
052-182m	31.19	31.19	David H. Boyd, Sr. and wife, Carolyn N. Boyd	No	4534
058-003.1	18.7	18.7	Billie B. Beran	Yes	2524
058-003.2	32	32	Billie B. Beran	Yes	2525
058-004	56.291	56.291	Georgia Howry	Yes	2724
058-004	56.291	-	Georgia Howry	Yes	2407
058-004	56.291	-	Georgia Howry	Yes	2723
058-005	56.291	56.291	Franklin James Beran	Yes	2409
058-020	47.296	47.296	Joe Don Brymer and wife, Martha J. Brymer	Yes	2483
058-021	12.48	12.48	Keith Alan Weeber	Yes	2635

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
058-022	8	8	John C. Hoffman	Yes	2628
058-023	4.4007	4.4007	Johnny C. Brewer, Jr. and wife, Shanee L. Brewer	Yes	2664
058-025	8	8	Marquis Gordon and wife, Chella A. Gordon	Yes	2629
058-027.1	10.0689	10.0689	Cullen Dustin Tittle and wife, Debra Marie Tittle	Yes	2651
058-027.2	7	7	Cullen Dustin Tittle and wife, Debra Marie Tittle	Yes	2652
058-030.1	25.5	25.5	Joe Don Brymer and wife, Martha J. Brymer	Yes	2479
058-030.2	20	20	Joe Don Brymer and wife, Martha J. Brymer	Yes	2480
058-030.3	17.05	17.05	Joe Don Brymer and wife, Martha J. Brymer	Yes	2482
058-030.4	7.0126	7.0126	Joe Don Brymer and wife, Martha J. Brymer	Yes	2481
058-031	101.3	101.3	Keith Alan Weeber	Yes	2631
058-032	5	5	John Kucera and wife, Therese Kucera	Yes	2653
058-034.2	4.5	4.5	Shirley Jean Sanchez	Yes	2654
058-035	4	4	Randy Hall and wife, Linda Witt Hall	Yes	2655
058-036	93.407	93.407	Steve Ray Schoeneman	Yes	2636
058-037	76.39	76.39	Lonneida P. Alexander	Yes	2680
058-038	198.2	198.2	Michael Lina and wife, Ginger Lina	Yes	2637
058-039.2	7.81	7.81	Mauricio Silos, Trustee for Margarito Silos	Yes	5323
058-039.3	5	5	Mauricio Silos, Trustee for Margarito Silos	Yes	5322
058-059	44.1425	44.1425	J.F. Goodson and wife, Opal Goodson	Yes	0201
058-075	49.9	49.9	Charles G. Maddox	Yes	2817
058-076	3.37	3.37	Charles G. Maddox	Yes	2816
058-086	55.8575	55.8575	Daniel W. Junek and wife, Elizabeth Junek	Yes	0201
058-090	37	37	Henry E. Gaas and wife, Laura J. Gaas	Yes	2765
058-091	50.225	50.225	Terry O. Myers and wife, Barbara A. Myers	Yes	2764
058-092	121	80.6663	Georgia Howry	Yes	2733
058-092	121	-	Franklin James Beran	Yes	2438
058-092	121	-	Dawn Kathleen Janacek	Yes	2735
058-092	121	-	Randy Howry	Yes	2402
058-092	121	-	Diane E. Blake	Yes	2735
058-092	121	-	Franklin James Beran	Yes	2408
058-093	4.0113	4.0113	Trustee of the Security National Funding Trust	Yes	2710
058-094	5.41	5.41	Timothy Owens and wife, Lori Owens	Yes	2709
060-001	128.67	128.67	Ann R. Terral	Yes	2336
060-005	2	2	Joe Manuel	Yes	5687
060-006	9.125	4.6382	Eldrick Cooper	Yes	5973
060-006	9.125	-	Ollie Cooper McDowell	Yes	5974
060-006	9.125	-	Donald Cooper	Yes	5969
060-006	9.125	-	Nola Cooper Hamilton	Yes	5967
060-006	9.125	-	Robert Lee Scott	Yes	5700
060-006	9.125	-	Maggie Leone Menton Williams	Yes	5701
060-006	9.125	-	Lesla Cooper Crenshaw	Yes	5971
060-006	9.125	-	Versle Freeman	Yes	5703
060-006	9.125	-	Leon Cooper	Yes	5970
060-006	9.125	-	Gentry Cooper, Jr.	Yes	5972
060-006	9.125	-	Laredo Marion	Yes	5702
060-006	9.125	-	Carrle Menton	Yes	5698
060-007	1	1	Joe Manuel	Yes	5924
060-011	62.5	62.5	Farm Trust Agreement	Yes	2355
060-012	81	40.5	Edward C. Wotipka	Yes	2533
060-014	204	49.9999	Adamek	Yes	2534
060-015.1	98.597	98.597	Irene E. Perry	Yes	2638.1

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
060-015.2	98.597	98.597	Irene E. Perry	Yes	2638.2
062-009	17.836	17.836	Bradley Paul Sanders	Yes	4167
062-010	28.647	28.647	Calvin G. Kocurek and wife, Judy Kocurek	Yes	5180
062-010	28.647	-	person as Scarlette G. Pivonka	Yes	5158
062-011	80	80	person as Scarlette G. Pivonka	Yes	5159
062-011	80	-	Calvin G. Kocurek and wife, Judy Kocurek	Yes	5181
062-011	80	-	Jack Kocurek and wife, Rebecca Kocurek	Yes	5182
062-011	80	-	Renny J. Kocurek and wife, Margaret Kocurek	Yes	5230
062-012	113.6358	113.6358	Stern Christian	Yes	4166
062-016.1	10	10	Delores Faye Luksa	Yes	4149
062-016.2	12.384	12.384	Delores Faye Luksa	Yes	4150
062-016.3	16.7571	16.7571	Delores Faye Luksa	Yes	4151
062-017.1	64.25	64.25	Barry Ray Helweg	Yes	4164
062-017.2	68	68	Barry Ray Helweg	Yes	4165
062-018	120	120	Brian Kubena and wife, Diana Kubena	Yes	5234
062-018	120	-	Dyonis Kubelka	Yes	5234
062-020	62.3	62.3	Gordon W. Zavodney	Yes	4169
062-021	197.19	197.19	William Paul Harper	Yes	4170
062-023	104.28	104.28	Kelly Jean Pampell	Yes	5233
062-036.1	2.805	2.805	Delores Faye Luksa	Yes	4153
062-036.2	2.149	2.149	Delores Faye Luksa	Yes	4154
062-036.3	1.058	1.058	Delores Faye Luksa	Yes	4155
062-036.4	1	1	Delores Faye Luksa	Yes	4160
062-036.5	1	1	Delores Faye Luksa	Yes	4156
062-036.6	1	1	Delores Faye Luksa	Yes	4158
062-036.7	1	1	Delores Faye Luksa	Yes	4157
062-036.8	1	1	Delores Faye Luksa	Yes	4159
062-041	1.7	1.7	Ysmaela Bautista	Yes	4736
062-042	3.354	3.354	Cristian Bautista	Yes	4734
062-043	5	5	Cristian Bautista	Yes	4735
062-044	6.49	6.49	Delores Faye Luksa	Yes	4152
062-045	35.71	35.71	Delores Faye Luksa	Yes	4134
062-046	8.15	8.15	Delores Faye Luksa	Yes	4133
062-060	76.407	76.407	Marshelllet Cleveland	Yes	4748
062-060	76.407	-	George Jackson	Yes	4747
071-004m	89.66	89.66	Hilda McVoy	No	4187
071-005m	73.66	73.66	Hilda McVoy	No	4188
071-006m	63	39.375	Robert Seth Fisher	No	4403
074-001m	64	64	Operating Co.	No	2120
074-002m	99.84	99.84	Operating Co.	No	2119
074-003m	22	22	Operating Co.	No	2117
074-004m	3	3	Operating Co.	No	2124
074-005m	27	27	Operating Co.	No	2122
074-006m	100	100	Operating Co.	No	2123
074-007m	0.9602	0.9602	Operating Co.	No	2121
074-008m	8	8	David Yount and wife, Yvonne Yount	No	4013
074-009m	14.7	14.7	Juan Valdivia and wife, Joanne M. Valdivia	No	4014
074-019m	46.096	46.096	Stephen M. Pruett	No	5525
074-021.1m	8.987	8.987	S & V Partnership	No	5954
074-021.2m	9.491	9.491	S & V Partnership	No	5952
074-021.3m	6.42	6.42	S & V Partnership	No	5953

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
074-021.5m	5.186	5.186	S & V Partnership	No	5978
077-004	23.735	23.735	Darrin N. Brust and wife, Heidi Brust	Yes	2426
077-005	47	47	John H. Brown and wife, Nehoma Brown	Yes	0136
077-006	1.5	0.9999	John H. Brown and wife, Nehoma Brown	Yes	2459
077-007	0.5	0.5	Linda D. Brown	Yes	2516
077-008	28	28	Maggie B. Freeman	Yes	0541
077-008	28	-	Maggie B. Freeman	Yes	0534
077-008	28	-	Maggie B. Freeman	Yes	0533
077-008	28	-	Maggie B. Freeman	Yes	0539
077-008	28	-	Maggie B. Freeman	Yes	0542
077-009	92.692	92.692	Anton M. Lehmann	Yes	2386
077-010	4	4	Rosetta Manual	Yes	2399
077-011	17	17	Credit Shelter Trust	Yes	2425
077-012	3.098	3.098	Lehmann	Yes	2395
077-014	50	50	Mike Allen Palermo	Yes	0389
077-015	50	50	Peter M. Cook and wife, Mary Jane Webb Cook	Yes	2456
077-015	50	-	Walter Briceson Cook	Yes	2456
077-015	50	-	Peter Mark Cook	Yes	2456
077-015	50	-	Walter Briceson Cook	Yes	2456
077-016	35	26.2499	Ivra Mae Gilbert	Yes	3035
077-016	35	-	Hubert Errol Fisher	Yes	3039
077-016	35	-	Bruce E. Maxwell	Yes	3079
077-016	35	-	Valerie M. Adams	Yes	3078
077-016	35	-	Dorothy Bookman	Yes	3077
077-016	35	-	Charlotte M. Stanley	Yes	3080
077-016	35	-	Leon Fisher	Yes	3021
077-016	35	-	Vaulne Fisher	Yes	0325
077-017	35	35	Peter Mark Cook	Yes	2457
077-017	35	-	Walter Briceson Cook	Yes	2457
077-018	40	40	Walter Briceson Cook	Yes	2962
077-018	40	-	Peter Mark Cook	Yes	2962
078-002	135.4598	122.9171	Dawn Hoover Haynes	Yes	0096
078-002	135.4598	-	Nellie Ross Valigura	Yes	0094
078-002	135.4598	-	James David Plasek	Yes	0031
078-002	135.4598	-	Laura Cox	Yes	0092
078-002	135.4598	-	Estate of Alice Thompson, Deceased	Yes	0090
078-002	135.4598	-	Steve Hughes	Yes	2381
078-002	135.4598	-	Kathryn Hutcheson	Yes	2383
078-002	135.4598	-	Estate of Alice Thompson, Deceased	Yes	0032
078-002	135.4598	-	Raymond Plasek	Yes	0031
078-002	135.4598	-	Linda Plasek	Yes	0031
078-002	135.4598	-	Laura Plasek Hynson	Yes	0031
078-002	135.4598	-	Thomas Plasek	Yes	0031
078-003	26.566	26.566	Harriett Geick Trust	Yes	2327
078-003	26.566	-	William Henry Peckham, III	Yes	2327
078-003	26.566	-	Elizabeth Booth	Yes	2327
078-004	28.7	28.7	Michael J. Kutach	Yes	2323
078-005	28.718	28.718	Larry Weichert and wife, Cherly Weichert	Yes	2326
078-006	54.731	54.731	James Rinker and wife, Janelle E. Rinker	Yes	2325
080-001m	115.808	115.808	Carol Dyer	No	4359
080-001m	115.808	-	W.T. Dyer	No	4261

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
080-001m	115.808	-	Judy Mills	No	4525
080-001m	115.808	-	Shirley Caffey	No	4358
080-001m	115.808	-	Glenda Gerren	No	4356
080-001m	115.808	-	Ronnie Dyer	No	4386
080-001m	115.808	-	June Withers	No	4387
080-001m	115.808	-	Joyce Betchan	No	4357
082-006	223.261	223.261	Dena B. Haenchen	Yes	3489
082-006	223.261	-	Paul J. Batlsta	Yes	3087
082-006	223.261	-	Dena B. Haenchen	Yes	3087
082-006	223.261	-	Douglas F. Batlsta	Yes	3087
082-006	223.261	-	Paul J. Batlsta	Yes	3088
082-006	223.261	-	Douglas F. Batlsta	Yes	3490
082-007	10.751	10.751	Kenneth Harlel Weaver	Yes	3089
082-008	2.276	2.276	Delores Faye Luksa	Yes	3096
082-011.1	88.628	88.628	M. Lange Family Trust	Yes	3141
082-011.1	88.628	-	Independent Executor of the Estate of Dorothy	Yes	3085
082-011.1	88.628	-	M. Lange Family Trust	Yes	3140
082-011.1	88.628	-	M. Lange Family Trust	Yes	3099
082-011.1	88.628	-	M. Lange Family Trust	Yes	3086
082-011.2	88.725	88.725	Independent Executor of the Estate of Dorothy	Yes	3143
082-011.2	88.725	-	M. Lange Family Trust	Yes	3100
082-011.2	88.725	-	M. Lange Family Trust	Yes	3142
082-011.2	88.725	-	M. Lange Family Trust	Yes	2993
082-012	67.179	67.179	Diane C. McElroy	Yes	2980
082-012	67.179	-	Diane C. McElroy	Yes	2993
082-012	67.179	-	Hejtmancik	Yes	2996
082-012	67.179	-	Hejtmancik	Yes	3001
082-012	67.179	-	Diane C. McElroy	Yes	3001
082-012	67.179	-	Hejtmancik	Yes	3000
082-012	67.179	-	Diane C. McElroy	Yes	3000
082-012	67.179	-	Hejtmancik	Yes	2999
082-012	67.179	-	Diane C. McElroy	Yes	2996
082-012	67.179	-	Diane C. McElroy	Yes	2999
082-012	67.179	-	Hejtmancik	Yes	2980
082-012	67.179	-	Hejtmancik	Yes	2974
082-015	12.939	12.939	Jullus L. Dawson	Yes	2973
082-017	50	50	Dorothy Lee Burks	Yes	2854
082-018	10	5.8333	Lottie Jones	Yes	3132
082-018	10	-	Frankie Lee Bell	Yes	2853
082-018	10	-	Danny V. Jones, Sr.	Yes	2988
082-018	10	-	Johnnie Jones Jr.	Yes	2866
082-018	10	-	Cheryl J. Jones	Yes	2854
082-018	10	-	Barbara Vincent	Yes	2913
082-018	10	-	Estate of Carris Jones Hawkins, Deceased	Yes	2912
082-018	10	-	Wille M. Harvey	Yes	2948
082-018	10	-	Pearlie M. Mack	Yes	2864
082-018	10	-	Joyce L. Jones	Yes	0552
082-019	11	7.3333	Ray Jewell Bell	Yes	2511
082-022	56.7	56.7	Dan Hendrix and Amanda Hendrix	Yes	2511
082-022	56.7	-	Garlene Flippin	Yes	4633
082-023	60	60	Watson Keilberg Trust	Yes	2900
082-024.1	30	21.4285	Pinkle Jo Jeffries	Yes	

**ABENGOA**

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
082-024.1	30	-	Lon Arthur Williams	Yes	2875
082-024.1	30	-	Henry Earl Johnson	Yes	2873
082-024.1	30	-	Charlie Mae Jones	Yes	2904
082-024.1	30	-	George Wendell Johnson	Yes	2906
082-024.2	30	21.4285	Charlie Mae Jones	Yes	2905
082-024.2	30	-	George Wendell Johnson	Yes	2907
082-024.2	30	-	Lon Arthur Williams	Yes	2874
082-024.2	30	-	Pinkle Jo Jeffries	Yes	2901
082-024.2	30	-	Henry Earl Johnson	Yes	2871
082-025	1.86	1.86	Edward Harrison, Jr.	Yes	2914
082-026	40.593	40.593	Patricia Ball	Yes	2872
082-027	513.018	513.018	Watson Keilberg Trust	Yes	3118
082-033	0.5	0.5	Gary A. Watson	Yes	3091
082-034	79.55	79.55	Johnnie Cooper, Jr.	Yes	2880
082-034	79.55	-	Estate of Nellie Vernell Pollard Cooper	Yes	2880
082-034.1	1.5	1.5	Community	Yes	5524
082-037	5	5	Glennett Allen	Yes	2910
082-039	6.119	6.119	Williams	Yes	0341
082-042	32.3321	32.3321	Williams	Yes	0341
082-044	2	2	Delbert Lee Washington	Yes	2908
082-044	2	-	Sean Washington	Yes	2908
082-045	2	0.8572	Chester Odele Pollard	Yes	2983
082-045	2	-	Ruthie Ellison	Yes	2982
082-045	2	-	John Crockett	Yes	5534
082-046	2	2	Bonzell Jones	Yes	2884
082-047	71.5122	71.5122	Darren Keith Broesche	Yes	2771
082-048	3	3	Cain	Yes	3122
082-049	3.5	3.5	to Ame Methodist Church and Bell Town Ame	Yes	5522
082-050	2.8903	2.8903	Hazel E. Robbins	Yes	2941
082-051	48.25	48.25	Vauline Fisher	Yes	0510.2
082-051	48.25	-	Woodrow Heslip, II	Yes	5537
082-051	48.25	-	Early L. Knox, Jr.	Yes	3121
082-052	1.75	1.75	The Providence Baptist Church	Yes	5523
082-053	2.4	0.5417	Darryl E. Johnson	Yes	2932
082-053	2.4	-	Ruby Johnson	Yes	2926
082-053	2.4	-	Sandra Johnson Guillory	Yes	2940
082-053	2.4	-	Jerome K. Johnson	Yes	2929
082-053	2.4	-	Willie Lois Jones	Yes	2920
082-053	2.4	-	Cedric Shawn Johnson	Yes	2957
082-053	2.4	-	Willie Lois Jones	Yes	2923
082-054	5.927	5.927	Lonnle Clinard and wife, Ruby M. Clinard	Yes	2881
082-055.1	47.1097	40.1307	Elnora Moore	Yes	3011
082-055.1	47.1097	-	Hardy G. Moore	Yes	3002
082-055.1	47.1097	-	Johnny B. Moore, Jr.	Yes	3003
082-055.1	47.1097	-	Olean Lemons	Yes	3008
082-055.1	47.1097	-	Ernestine Moore Maxwell	Yes	3004
082-055.1	47.1097	-	Ruby Jean Moore Williams	Yes	2942
082-055.1	47.1097	-	Gaynella Lemons	Yes	3009
082-055.1	47.1097	-	Josephine Moore	Yes	3006
082-055.1	47.1097	-	Tomeka Moore	Yes	3010
082-055.1	47.1097	-	Roger R. Moore	Yes	2934

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
082-055.2	4.642	3.9543	Johnny B. Moore, Jr.	Yes	3003
082-055.2	4.642	-	Olean Lemons	Yes	3008
082-055.2	4.642	-	Ernestine Moore Maxwell	Yes	3004
082-055.2	4.642	-	Ruby Jean Moore Williams	Yes	2942
082-055.2	4.642	-	Tomeka Moore	Yes	3010
082-055.2	4.642	-	Roger R. Moore	Yes	2934
082-055.2	4.642	-	Gaynella Lemons	Yes	3009
082-055.2	4.642	-	Elnora Moore	Yes	3011
082-055.2	4.642	-	Josephine Moore	Yes	3006
082-055.2	4.642	-	Hardy G. Moore	Yes	3002
082-056	2	2	Mary Delois Jones	Yes	5519
082-057	1	1	Lucinda M. Hargers	Yes	5494
082-058	1	1	Michael Canterberry	Yes	5495
082-059.1	1	1	Charles E. Guyton	Yes	5491
082-059.2	1.678	1.678	Charles E. Guyton	Yes	5490
082-060	6.025	6.025	Lucille Williams	Yes	2888
082-060	6.025	-	Eugene L. Williams and wife, Lucille E. Williams	Yes	2889
082-061	16.125	16.125	Lucille Williams	Yes	2882
082-061	16.125	-	Eugene L. Williams and wife, Lucille E. Williams	Yes	2887
082-062	16.625	16.625	Robble M. Williams	Yes	2892
082-063	1	1	Bennie Lee Williams, II	Yes	2971
082-064.1	1	1	Harold E. Moncal and wife, Barbara Moncal	Yes	2968
082-064.2	0.47	0.47	Darren Keith Broesche	Yes	2969
082-065	0.943	0.943	James A. McBride	Yes	2972
082-066	14.15	14.15	Raymond J. Laslie and wife, Ann Laslie	Yes	2883
082-066	14.15	-	Johnnie Laslie	Yes	2963
082-067	3.77	3.77	Willie Lois Jones	Yes	2921
082-067	3.77	-	Sandra Johnson Gullory	Yes	2939
082-067	3.77	-	Ruby Johnson	Yes	2924
082-067	3.77	-	Stephanie Holcombe	Yes	5548
082-067	3.77	-	Carven Holcombe	Yes	5550
082-067	3.77	-	Darryl E. Johnson	Yes	2930
082-067	3.77	-	Jerome K. Johnson	Yes	2927
082-067	3.77	-	Palmer Lee Moore	Yes	5544
082-067	3.77	-	Maggie Lee Sweeney Houston	Yes	5540
082-067	3.77	-	Derrick Holcombe	Yes	5546
082-067	3.77	-	Edith Moore	Yes	5538
082-067	3.77	-	Margaret Moore Woodard	Yes	5543
082-067	3.77	-	Cedric Shawn Johnson	Yes	2956
082-068	3.77	3.77	Ransom Craddock	Yes	5492
082-069	3.77	3.77	Willie Lois Jones	Yes	5511
082-070	16.832	16.832	Arthur Trull	Yes	2897
082-071	9.08	9.08	Cedric Shawn Johnson	Yes	2955
082-071	9.08	-	Carven Holcombe	Yes	5551
082-071	9.08	-	Sandra Johnson Gullory	Yes	2938
082-071	9.08	-	Darryl E. Johnson	Yes	2931
082-071	9.08	-	Stephanie Holcombe	Yes	5549
082-071	9.08	-	Willie Lois Jones	Yes	2922
082-071	9.08	-	Palmer Lee Moore	Yes	5545
082-071	9.08	-	Maggie Lee Sweeney Houston	Yes	5541
082-071	9.08	-	Edith Moore	Yes	5539

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
082-071	9.08	-	Derrick Holcombe	Yes	5547
082-071	9.08	-	Jerome K. Johnson	Yes	2928
082-071	9.08	-	Ruby Johnson	Yes	2925
082-071	9.08	-	Margaret Moore Woodard	Yes	5542
082-073	2.33	-2.33	Johson Guillory	Yes	2935
082-073	2.33	-	Johson Guillory	Yes	2895
082-073	2.33	-	Johson Guillory	Yes	2898
082-073	2.33	-	Johson Guillory	Yes	2876
082-073	2.33	-	Johson Guillory	Yes	2894
082-074.1	6.42	6.42	Willie Lois Jones	Yes	2890
082-074.2	0.5	0.5	Wille Lols Jones	Yes	2918
082-075	12.51	12.51	Johnnie Laslie	Yes	2878
082-076.1	18.42	18.42	Ruby Johnson	Yes	2877
082-076.1	18.42	-	Darryl E. Johnson	Yes	2896
082-076.1	18.42	-	Jerome K. Johnson	Yes	2893
082-076.1	18.42	-	Sandra Johnson Guillory	Yes	2936
082-076.1	18.42	-	Cedric Shawn Johnson	Yes	2899
082-076.2	0.5	0.5	Darryl E. Johnson	Yes	2916
082-076.2	0.5	-	Sandra Johnson Guillory	Yes	2937
082-076.2	0.5	-	Ruby Johnson	Yes	2915
082-076.2	0.5	-	Jerome K. Johnson	Yes	2917
082-076.2	0.5	-	Cedric Shawn Johnson	Yes	2919
082-077	39.333	39.333	Washington	Yes	2879
082-078	80	80	Hubert Bell, Jr.	Yes	1095
082-078	80	-	Marilyn Bell Rucker	Yes	1048
082-078	80	-	Hazel E. Robblns	Yes	2941
082-078	80	-	Arlene Roberson, Deceased	Yes	5535
082-078	80	-	Harold L. Gamble	Yes	2799
082-078	80	-	Marvin W. Gamble	Yes	2775
082-078	80	-	Marvin W. Gamble	Yes	2772
082-078	80	-	Erma Morris	Yes	2814
082-078	80	-	Bessie Louise Hodrick	Yes	2774
082-078	80	-	L.C. Gamble Jr.	Yes	2773
082-079	211.606	211.606	Delores Faye Luksa	Yes	2784
082-081	68.59	68.59	James Brymer	Yes	2967
082-081	68.59	-	Carol Brymer Bedrich	Yes	2967
082-081	68.59	-	Brian Brymer	Yes	2967
082-081	68.59	-	Chalon Jones	Yes	2967
082-081	68.59	-	Randy Michel	Yes	2967
082-081	68.59	-	Byron McAllister and wife, Elaine McAllister	Yes	2967
082-082	1	1	Alvin R. McNiel and wife, Nancy J. McNiel	Yes	2978
082-085	80.816	60.612	Joshua Royall	Yes	5471
082-085	80.816	-	Jason Royall	Yes	5470
082-086	99.604	99.604	Byron McAllister and wife, Elaine McAllister	Yes	2970
082-088	0.5	0.5	Kathlyn Bailey Bell	Yes	5518
082-089	69.919	69.919	James Brymer	Yes	2966
082-089	69.919	-	Carol Brymer Bedrich	Yes	2966
082-089	69.919	-	Brian Brymer	Yes	2966
082-089	69.919	-	Chalon Jones	Yes	2966
082-089	69.919	-	Randy Michel	Yes	2966
082-089	69.919	-	Byron McAllister and wife, Elaine McAllister	Yes	2966



Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
082-090	50	50	Billy Neal Barnett	Yes	4706
090-013m	7.91	7.91	Alden D. Crowe and wife, Paula Crowe	No	0611.3
090-014m	6	6	Alden D. Crowe and wife, Paula Crowe	No	0611.1
090-015m	6	6	Alden D. Crowe and wife, Paula Crowe	No	0611.2
090-016m	6	6	Alden D. Crowe and wife, Paula Crowe	No	0611.4
090-018m	6	6	Danny N. Crowe	No	0608
090-019m	6	6	Robert Bryce Crowe	No	0621
090-020m	6	6	Robert Bryce Crowe	No	0622
091-001	155	155	Michael Lina and wife, Ginger Lina	Yes	2349
091-003	135.2	135.2	Mike R. Grohosky	Yes	2350
095-001	230	230	Lenora Ruth Crawford	Yes	2446
095-001	230	-	Dana Ann Crawford	Yes	2445
095-001	230	-	William E. Crawford, II	Yes	2447
098-001m	91.15	91.15	Harry Vowell	No	0812.4
098-001m	91.15	-	Ranch	No	0812.4
098-002m	52.5	52.5	Harry Vowell	No	0812.3
098-002m	52.5	-	Ranch	No	0812.3
098-003m	5.9	5.9	Richard Jenkins Willingham	No	2042
098-003m	5.9	-	Janice Ann Wise	No	2031
098-003m	5.9	-	Joe Charles Willingham	No	2031
098-003m	5.9	-	Richard Jenkins Willingham	No	2031
098-003m	5.9	-	Janice Ann Wise	No	2042
098-003m	5.9	-	Joe Charles Willingham	No	2042
099-001m	83.335	83.335	Harry Vowell, d/b/a S & V Operating Co.	No	2152
099-002m	80.446	80.446	Harry Vowell, d/b/a S & V Operating Co.	No	2153
099-003m	157.673	157.673	Harry Vowell, d/b/a S & V Operating Co.	No	2151
102-001	101.175	101.175	Robert Livitz	Yes	2570
102-002	18.33	18.33	Gayle Thornton Willard	Yes	2549
102-003	18.33	18.33	Bronson Lee Willard	Yes	2555
102-004	18.33	15.275	Gayle Thornton Willard	Yes	2556
102-004	18.33	-	Gayle Thornton Willard	Yes	2552
102-004	18.33	-	Gayle Thornton Willard	Yes	2550
102-004	18.33	-	Gayle Thornton Willard	Yes	2551
102-005	18.33	18.33	Gayle Thornton Willard	Yes	2553
102-006	18.33	18.33	Brent Edward Willard	Yes	2557
102-007	21	21	Gayle Thornton Willard	Yes	2554
102-008	100	100	Gayle Thornton Willard	Yes	2488
102-009	191.344	191.344	the Estate of Clarence R. Creger, Deceased	Yes	2492
102-009	191.344	-	Max M. Stratton, II and wife, Shawn Stratton	Yes	2493
102-013	46.58	46.58	Fact for Marvin E. Willard	Yes	0418
102-016	39	39	Edward Harrison, Jr.	Yes	2909
102-016	39	-	Dorothy Menton	Yes	2953
102-016	39	-	Jimmie Roy Harrison	Yes	2856
102-016	39	-	George Harrison	Yes	2952
102-016	39	-	Betty Jean Moore	Yes	2951
102-016	39	-	Thelma Dibles	Yes	2868
102-016	39	-	Cecil Lee Denmon	Yes	2867
102-017	19	19	Elijah Bell	Yes	2858
102-017	19	-	Titus Henry Bell	Yes	2857
102-020	15.605	15.605	Wille Matthews	Yes	2598
102-021	3.107	3.107	Brenda Thornton	Yes	2590

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
102-022	235	137.973	Pearlie M. Mack	Yes	2947
102-022	235	-	Lottie Jones	Yes	2599
102-022	235	-	Frankle Lee Bell	Yes	3131
102-022	235	-	Barbara Vincent	Yes	2599
102-022	235	-	Estate of Carris Jones Hawkins, Deceased	Yes	2756
102-022	235	-	Joyce L. Jones	Yes	2603
102-022	235	-	Patricia E. Garcia	Yes	2609
102-022	235	-	Johnnie Jones Jr.	Yes	2987
102-022	235	-	Cheryl J. Jones	Yes	2601
102-022	235	-	Danny V. Jones, Sr.	Yes	2600
102-022	235	-	Willie M. Harvey	Yes	2911
102-023	18.25	18.25	Gayle Thornton Willard	Yes	2489
102-025	32.0375	32.0375	Douglas A. Maddox	Yes	2589
102-026	100	100	Gayle Thornton Willard	Yes	2487
102-027	4.348	4.348	Gayle Thornton Willard	Yes	2559
104-001	50.39	50.39	Stanley A. Kutzy	Yes	2275
104-002	30	30	Lewis S. Vallette, Jr. and wife, Anne W. Vallette	Yes	0328
104-003	44.99	14.9966	Scott Macleod and wife, Amy Macleod	Yes	0005
104-005	24.234	24.234	GRE XI, LLC	Yes	2318
104-006	6	6	James Lofton	Yes	2311
104-006	6	-	Marl-Lisa Lofton	Yes	2311
112-002	231	231	and Billie E. Wolff Family Trust, under Article IV	Yes	2562
112-003	142.833	142.833	Robert E. Sebesta and wife, Frances Sebesta	Yes	2558
114-006	4.369	4.369	Fred D. Ellis, Jr.	Yes	2273
114-007	6	6	Warren Lee Titel and wife, Jessie M. Titel	Yes	2272
114-008	12.59	12.59	Richard E. Odom	Yes	2271
114-009	19.56	19.56	Deborah Anderson and husband, Roger Anderson	Yes	2333
114-014	34.55	34.55	Alice Anderson	Yes	1049
114-016	22.07	22.07	Darrell Perrard and wife, Shawn Perrard	Yes	2332
114-019	47.54	47.54	Arthur Behrends, Jr. and wife, Eloise Behrends	Yes	0039
114-021	1355.4383	1355.4383	John Wyble and wife, Cheryl Wyble	Yes	0197
114-021	1355.4383	-	Garrison	Yes	0197
115-001	160.33	13.8747	Neal Barron	Yes	2826
115-001	160.33	-	Carrizo-Wilcox Water Works, L.P.	Yes	3175
116-001m	98.393	98.393	Vaughn E. Owens and wife, Wilma Owens	No	3760
116-002m	200	133.3332	Baskin Family Trust	No	3773
116-002m	200	-	dated June 24, 2008	No	3772
116-006m	75.52	75.52	Nina K. Krienke, F-K-A Nina Krienke Hall	No	3764
119-001m	208.298	208.298	Gregory Wayne Brinkley	No	2125
119-002m	20.005	20.005	Florian C. Skubal	No	4297
119-003m	20	20	Florian C. Skubal	No	4299
119-004m	1.99	1.99	Florian C. Skubal	No	4300
119-005m	26.007	26.007	Florian C. Skubal	No	4298
119-008m	38.97	38.97	David W. Svrcek and wife, Janet O. Svrcek	No	4275
119-009m	41.179	41.179	Mark W. Skubal and wife, Gladys E. Skubal	No	4276
119-010m	46.201	46.201	Chad L. Clark and wife, Kelly N. Bujnoch	No	4231
119-013m	18.857	18.857	David L. Bujnoch and wife, Sharon Bujnoch	No	4226
119-014m	53.373	53.373	Victor J. Svetlik and wife, Victoria A. Svetlik	No	4308
119-015m	53.373	53.373	Paul D. Leopold and wife, Doris A. Leopold	No	4277

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
119-017m	7.677	7.677	Victor J. Svetlik and wife, Victoria A. Svetlik	No	4301
119-018m	6.518	6.518	Victor J. Svetlik and wife, Victoria A. Svetlik	No	4302
119-035m	0.378	0.378	Wendy Nell Brinkley Pickett	No	4216
119-044m	0.891	0.891	Jennifer Bell Brinkley Strelsky	No	4217
124-010	64.687	64.687	Dawn Marie Moratto	Yes	2848
124-010	64.687	-	Dawn Marie Moratto	Yes	2849
124-011	84.319	84.319	GRE XI, LLC	Yes	2354
126-002	634.927	39.9959	Lisa Dawn Russell	Yes	3139
126-003	295.52	295.52	Bettye Carolyn Siptak Tolar	Yes	2614
126-003	295.52	-	John Edward Siptak, Jr.	Yes	2612
126-003	295.52	-	James Franklin Siptak	Yes	2615
126-003	295.52	-	Steven Charles Siptak	Yes	2613
130-001	20	10	Elvie Mae Benson Harris	Yes	2586
130-002	108	68.1438	Les and Darlene Benson Living Trust	Yes	2455
130-002	108	-	Elvie Mae Benson Harris	Yes	5583
130-002	108	-	Elma Rayford	Yes	2538
130-002	108	-	Les and Darlene Benson Living Trust	Yes	2537
130-005	46	28.9149	Les and Darlene Benson Living Trust	Yes	2537
130-005	46	-	Elvie Mae Benson Harris	Yes	5584
130-005	46	-	Elma Rayford	Yes	2538
130-005	46	-	Les and Darlene Benson Living Trust	Yes	4615
132-001	60	60	Alpha Ann Morris	Yes	5426
132-001	60	-	James Harmon Morton, A-K-A buddy Morton	Yes	5434
132-001	60	-	John Wayne Morton	Yes	5429
132-001	60	-	Gerald Eugene Morton	Yes	5430
132-006	134.2375	134.2375	Glenn Marie Cotton	Yes	3935
132-006	134.2375	-	Lowene Morgan	Yes	3982
132-006	134.2375	-	Regina Lee Harris	Yes	3939
132-006	134.2375	-	Clara Estelle Wampler	Yes	3935
132-006	134.2375	-	Condale Cotton	Yes	3935
132-006	134.2375	-	Lora Christine Beard	Yes	3935
132-006	134.2375	-	Condale Cotton and wife, Christine Cotton	Yes	3923
132-006	134.2375	-	Dale Bert Cotton	Yes	3935
132-006	134.2375	-	Lora Christine Beard	Yes	3937
132-006	134.2375	-	Glenn Marie Cotton	Yes	3980
132-006	134.2375	-	Dale Bert Cotton	Yes	3921
132-006	134.2375	-	Deborah Allyne York	Yes	3939
132-006	134.2375	-	Lowene Morgan	Yes	3935
132-006	134.2375	-	Deborah Allyne York	Yes	3935
132-006	134.2375	-	Clara Estelle Wampler	Yes	3984
132-006	134.2375	-	Regina Lee Harris	Yes	3935
132-007	19.849	19.849	Ronnie Burrough	Yes	3943
132-008	8	8	John D. Kovar and wife, Madeline Kovar	Yes	3942
132-013m	85	85	Milton R. Currey, also known as Jim Currey	Yes	3951
132-014m	49.992	49.992	Jim F. Brooks	Yes	4051
132-017	57.467	57.467	L. Dlestel	Yes	4101
139-001m	16	16	Ranch	No	0810.2
139-001m	16	-	Harry Vowell	No	0810.2
139-002m	16	16	Ranch	No	0810.1

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
139-002m	16	-	Harry Vowell	No	0810.1
139-003m	70	70	Thana Keen Kemper	No	1992
139-003m	70	-	James P. Keen	No	1992
139-004m	56.2	56.2	James P. Keen	No	1989
139-004m	56.2	-	Thana Keen Kemper	No	1989
139-005m	56.2	56.2	Thana Keen Kemper	No	1990
139-005m	56.2	-	James P. Keen	No	1990
139-006m	20	20	James P. Keen	No	1993
139-006m	20	-	Thana Keen Kemper	No	1993
139-007m	61.22	61.22	James P. Keen	No	1995
139-007m	61.22	-	Thana Keen Kemper	No	1995
139-008m	134.75	134.75	James P. Keen	No	1994
139-008m	134.75	-	Thana Keen Kemper	No	1994
139-009m	31	31	Jessie W. Tate and wife, Glna M. Tate	No	0984
139-010m	98	58.8002	William Budnik	No	4428
139-010m	98	-	William Budnik	No	4433
139-010m	98	-	Jerry Schafer	No	3120
139-010m	98	-	Jerry Schafer	No	4428
139-010m	98	-	Stanley J. Budnik	No	4433
139-010m	98	-	Stanley J. Budnik	No	4428
139-010m	98	-	William Budnik	No	3120
139-010m	98	-	Stanley J. Budnik	No	3120
139-010m	98	-	Jerry Schafer	No	4433
139-015m	63.9634	38.3782	Stanley J. Budnik	No	4434
139-015m	63.9634	-	Stanley J. Budnik	No	4391
139-015m	63.9634	-	Stanley J. Budnik	No	4429
139-015m	63.9634	-	Daniel M. Topper, Jr.	No	4429
139-015m	63.9634	-	Jerry Schafer	No	4429
139-015m	63.9634	-	William Budnik	No	4391
139-015m	63.9634	-	Jerry Schafer	No	4391
139-015m	63.9634	-	William Budnik	No	4434
139-015m	63.9634	-	Jerry Schafer	No	4434
139-015m	63.9634	-	William Budnik	No	4429
139-015m	63.9634	-	Daniel M. Topper, Jr.	No	4391
139-015m	63.9634	-	Daniel M. Topper, Jr.	No	4434
142-002	30	30	Rivera	Yes	5809
142-020	25	25	Caleb Pennie and wife, Ethyl Pennie	Yes	2575
142-024	20.58	20.58	Chapman	Yes	2582
142-025	20	20	Chapman	Yes	2296
146-007m	165.246	165.246	John Andrew Isaacs and wife, Rita Kay Isaacs	No	3357
146-009m	47.09	47.09	Phillip M. Oliver and wife, Anne Marie Oliver	No	3438
146-010m	82.5294	82.5294	Charles Howard Helmer	No	2288
146-011m	192.825	192.825	S & V Partnership	No	3287
157-001	78.74	26.2466	Vance D. McManus	Yes	2565
157-002	230.921	230.921	Delores Faye Luksa	Yes	2649
158-001m	9.85	9.85	Templeton	No	4309
171-001	151	151	Bettye Carolyn Siptak Tolar	Yes	2595
171-001	151	-	James Franklin Siptak	Yes	2594
171-003	10.01	10.01	Chapman	Yes	2297
171-004.1	15.97	15.97	Wayne D. Oliver	Yes	2688
171-004.2	4	4	Wayne D. Oliver	Yes	2689

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
171-005	12.5	12.5	Don Ourada	Yes	2869
171-007	8.04	8.04	Michael Prigmore and wife, Barbara Prigmore	Yes	2691
171-008	2	2	Michael Prigmore and wife, Barbara Prigmore	Yes	2692
171-010	41.675	41.675	Elizabeth Louise Blaha	Yes	2690
171-013	1	1	Trinidad Gonzales	Yes	2862
171-021	64.576	64.576	Delores Faye Luksa	Yes	2621
171-023	3	3	Delores Faye Luksa	Yes	2687
171-024	15.146	15.146	Connie Manzi	Yes	2702
171-024	15.146	-	Justin Nadratowski and wife, Sara Nadratowski	Yes	2702
171-027	113.5	113.5	Estate of Carris Jones Hawkins, Deceased	Yes	2703
171-028	39.05	39.05	as Lockhart Apiaries	Yes	2852
171-028	39.05	-	Lockhart Apiaries	Yes	2704
171-032.1	46.651	46.651	S & V Partnership	Yes	5566
171-032.2	19.259	19.259	S & V Partnership	Yes	5565
171-032.3	19.259	19.259	S & V Partnership	Yes	5564
171-032.4	19.259	19.259	S & V Partnership	Yes	5563
171-032.5	19.259	19.259	S & V Partnership	Yes	5562
171-032.6	19.266	19.266	S & V Partnership	Yes	5561
171-035	170	56.6666	William J. Przybyla	Yes	2859
171-038	16.091	16.091	Horace Bell	Yes	0511
171-041	16.091	16.091	Ray J. Bell and John B. Bell	Yes	0512
171-043	34.3112	34.3112	Lon A. Williams and wife, Barbara A. Williams	Yes	0341
171-047	71.5122	71.5122	Roger Alan Broesche	Yes	2798
171-048	45.5	45.5	Vauline Flsher	Yes	0510.1
171-049	13.6	13.6	Stephanie Holcombe	Yes	5487
171-049	13.6	-	Margaret Moore Woodard	Yes	5484
171-049	13.6	-	Edith Moore	Yes	5489
171-049	13.6	-	Bonzell Jones	Yes	5531
171-049	13.6	-	Carven Holcombe	Yes	5486
171-049	13.6	-	Derrick Holcombe	Yes	5488
171-050	16.995	16.995	Gary M. Dominy	Yes	5497
171-051	214.8	214.8	Nathan Flippin	Yes	4644
171-051	214.8	-	Billy Neal Barnett	Yes	4644
171-053	144.673	144.673	Nathan Flippin	Yes	4643
171-053	144.673	-	Goetsch	Yes	4643
176-011	125	20.8332	Gregory L. Garbs and Gregory Lynn Garbs	Yes	0230
176-011	125	-	Jeffrey Jerry Garbs	Yes	0317
185-004m	30.098	30.098	Vaughn E. Owens and wife, Willma Owens	Yes	3758
185-005m	16.617	16.617	John D. Fishero and wife, Diane W. Fishero	Yes	3932
185-014m	113.133	113.133	Robert Keith Luetge	Yes	3946
185-014m	113.133	-	Robert Keith Luetge	Yes	3945
185-015m	255.3498	255.3498	John R. Williams	Yes	4079
185-015m	255.3498	-	S & V Partnership	Yes	4079
185-016m	49	49	S & V Partnership	Yes	4264
185-017m	51.5	51.5	S & V Partnership	Yes	4265
185-018m	28	28	Dennis W. Payne	Yes	3929
185-019m	44	44	RNR, LLC, a Texas Limited Liability Company	Yes	4483
185-020m	50.6	50.6	RNR, LLC, a Texas Limited Liability Company	Yes	4484
185-021m	28.75	28.75	RNR, LLC, a Texas Limited Liability Company	Yes	4487
185-022m	28.75	28.75	RNR, LLC, a Texas Limited Liability Company	Yes	4486
185-023m	60	60	RNR, LLC, a Texas Limited Liability Company	Yes	4485

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
185-027m	159.5	159.5	RNR, LLC, a Texas Limited Liability Company	Yes	4204
185-028m	54.9487	54.9487	Dennis W. Payne	Yes	3927
185-029m	22.75	22.75	Dennis W. Payne	Yes	3928
185-030m	27	27	Dennis W. Payne	Yes	4274
185-031m	112.37	112.37	Dennis W. Payne	Yes	3926
185-032m	11.6502	11.6502	John R. Williams	Yes	4267
185-033m	3.362	3.362	Ronald W. Hudson	Yes	4139
185-034m	36.74	36.74	Ronald W. Hudson	Yes	3934
185-035m	37.94	37.94	Ronald W. Hudson	Yes	3933
185-036m	1.2	1.2	Ronald W. Hudson	Yes	4140
185-038m	80.991	80.991	Debra Duncum Jackson	Yes	3954
185-040m	4.05	4.05	Dennis W. Payne	Yes	4456
185-041m	2.75	2.75	Dennis W. Payne	Yes	4457
185-043m	53.7789	53.7789	Vaughn E. Owens and wife, Wilma Owens	Yes	4215
185-043m	53.7789	-	Vaughn E. Owens and wife, Wilma Owens	Yes	4052
185-043m	53.7789	-	Vaughn E. Owens and wife, Wilma Owens	Yes	4053
185-044m	66.722	66.722	Ruth Bachler Family Trust	Yes	3987
185-045m	120.3678	120.3678	Ascenia P. Underwood	Yes	4258
185-046m	34.75	34.75	Ascenia P. Underwood	Yes	4259
185-052m	50.778	50.778	Carol S. Pivonka	Yes	3986
185-053m	28.717	28.717	Mark K. Hull	Yes	4114
185-055m	26.141	26.141	Virginia Wells Judkins	Yes	4120
185-056m	25	25	Virginia Wells Judkins	Yes	4119
185-057m	25	25	Richard D. Dunn and wife, Debra Dunn	Yes	4118
185-059m	17.582	17.582	Vernon Ferguson	Yes	4116
186-003m	76.62	76.62	Curtis W. Abernathy	No	3369
186-005m	84	84	Michael Wesley Diver	No	3356
186-008m	38.349	38.349	Dorothy M. Nelson	No	4446
186-009m	140	140	Bill Foster	No	3358
186-010m	100	100	Janice A. King	No	2113
186-010m	100	-	Bobby Lee Moore	No	2113
186-012m	2	2	Doyle R. Moore	No	2111
186-012m	2	-	Patricia Ann Chernosky	No	2111
186-013m	120.233	120.233	Patricia Ann Chernosky	No	2112
186-013m	120.233	-	Doyle R. Moore	No	2112
186-013m	120.233	-	Jimmie Wayne Moore	No	2112
186-020m	99.275	99.275	Trust	No	3165
186-021m	43.98	43.98	Michael Wesley Diver	No	3355
186-022m	23.99	23.99	Wayman Lee Keen	No	2000
186-023m	43.98	43.98	Wayman Lee Keen	No	2014
186-026m	23.99	23.99	Velma Young Trust	No	4141
186-027m	63.96	63.96	Velma Young Trust	No	4142
186-032m	1.151	1.151	Stephanie Faith Rose Yakesh Philpott	No	4481
186-033m	0.5	0.5	Jim Thomas Nelson	No	4480
191-001m	27.755	27.755	Shirley Jean Lunsford	No	3337
191-003m	13.878	13.878	Phyllis R. Johnson	No	3338
191-004m	78.09	78.09	Randy Markowski and wife, Peggy S. Markowski	No	3339
191-004m	78.09	-	Carl Markowski and wife, Judy Markowski	No	3339
191-007m	29.256	29.256	John T. Voyles and wife, Patricia Voyles	No	4292
191-008m	28.138	28.138	Jimmy W. Voyles and wife, Judy Voyles	No	4303
191-014m	95.048	95.048	William A. Casario and wife, Diana M. Casario	No	3340

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
191-015m	50	50	Harry Vowell, d/b/a S & V Operating Co.	No	3664
191-016m	77.291	77.291	Thomas D. Schultea and wife, Marian E. Schultea	No	3344
191-018m	36.701	36.701	Alexander	No	3341
191-019m	9	9	Jimmy W. Voyles and wife, Judy Voyles	No	4337
191-020m	36.702	36.702	Milton E. Frel, Jr. and wife, Laura R. Frei	No	3342
191-022m	50	50	Jay Bob Blackwell	No	3522
191-022m	50	-	Christopher D. Lay	No	3523
191-022m	50	-	Charles C. Blackwell, Jr.	No	3522
191-022m	50	-	Len Evelyn Baird	No	3380
191-024m	5	5	Bruce Edward Hall	No	4344
191-025m	9.5	9.5	Bruce Edward Hall	No	4343
191-027m	11.2	11.2	Rodrigo Mancillas and wife, Dora Mancillas	No	4342
191-028m	10.167	10.167	Steve T. Pruett	No	4341
191-029m	7.84	7.84	David G. Winkler	No	4340
191-030m	9.134	9.134	Ruth B. Voyles	No	4339
191-031m	9.95	9.95	Alexander	No	4338
191-032m	9.55	9.55	John T. Voyles and wife, Patricia Voyles	No	4306
191-033m	9.39	9.39	John T. Voyles and wife, Patricia Voyles	No	4305
191-034m	30.229	30.229	Shane Silvey	No	4345
191-039m	45.6	45.6	Lille Virginia Morton Johnson	No	4376
191-040m	466	466	Dated April 26, 1993	No	4296
191-041m	43.75	43.75	Lille Virginia Morton Johnson	No	4377
191-042m	50	50	Lille Virginia Morton Johnson	No	4375
191-043m	50	50	Lille Virginia Morton Johnson	No	4374
191-044m	122.667	122.667	Joseph Slusher and wife, Judith Slusher	No	3991
191-046m	49	49	Arnold J. Prazak and wife, Gerlane B. Prazak	No	4304
191-048m	1	1	Lille Virginia Morton Johnson	No	4378
191-049m	3	3	Sammie Lee Johnson, Jr.	No	4379
191-051m	100	100	B.M. Drinkard and wife, Tiny B. Drinkard	No	3885
191-053m	174.594	109.1212	S & V Partnership	No	0880
191-053m	174.594	-	S & V Partnership	No	0879
191-053m	174.594	-	S & V Partnership	No	0933
191-053m	174.594	-	S & V Partnership	No	0934
191-055m	41.98	41.98	Amanda Lee Colbert	No	2150
191-055m	41.98	-	Jack Colbert	No	2142
191-056.1m	25	25	Seven Lindberg, LLC	No	6035
191-056m	122.765	122.765	Seven Lindberg, LLC	No	3884
191-057m	10	10	Amanda Lee Colbert	No	2148
191-057m	10	-	Jack Colbert	No	2140
191-058m	17	17	Amanda Lee Colbert	No	2149
191-058m	17	-	Jack Colbert	No	2141
191-060m	10	10	William Todd Marsh	No	3594
191-064m	5	5	Barbara J. Mullins	No	3440
191-077m	5	5	Jose A. Lemus and wife, Josefina Lemus	No	3691
191-077m	5	-	Oscar Saucedo and wife, Sabrina Ann Saucedo	No	3691
191-078m	2.097	2.097	Hugo Hartsfield, Jr.	No	3411
191-079m	6.79	6.79	Warren A. Gaswint, Jr. and wife, Debra J. Gaswint	No	3365
191-082m	12.05	12.05	Billy R. Thompson	No	3362
191-083m	12.05	12.05	Hugo Hartsfield, Jr.	No	3361
191-084m	9.891	9.891	De Navarro	No	3363
191-085m	9.99	9.99	Miguel Hernandez and wife, Taribia Hernandez	No	3353

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
191-086m	8.828	8.828	John Hays and wife, Carolyn Hays	No	3364
191-087m	65.69	65.69	William Todd Marsh	No	2138
191-090m	116.1	116.1	Charles E. Rackel, Jr and wife, Myra Sue Rackel	No	3886
191-092.1m	40	40	Linda Gebhart Kessler	No	3979
191-092.1m	40	-	Linda Gebhart Kessler	No	4092
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4086
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4355
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4092
191-092.1m	40	-	Linda Gebhart Kessler	No	4355
191-092.1m	40	-	Linda Gebhart Kessler	No	4089
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3979
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4089
191-092.1m	40	-	Linda Gebhart Kessler	No	3876
191-092.1m	40	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3876
191-092.1m	40	-	Linda Gebhart Kessler	No	4086
191-092.2m	33	33	Linda Gebhart Kessler	No	3875
191-092.2m	33	-	Linda Gebhart Kessler	No	4085
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3978
191-092.2m	33	-	Linda Gebhart Kessler	No	4091
191-092.2m	33	-	Linda Gebhart Kessler	No	4354
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4088
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4091
191-092.2m	33	-	Linda Gebhart Kessler	No	4088
191-092.2m	33	-	Linda Gebhart Kessler	No	3978
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4085
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3875
191-092.2m	33	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4354
191-093m	15.3125	15.3125	Linda Gebhart Kessler	No	4353
191-093m	15.3125	-	Linda Gebhart Kessler	No	3874
191-093m	15.3125	-	Linda Gebhart Kessler	No	4084
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3874
191-093m	15.3125	-	Linda Gebhart Kessler	No	4087
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4087
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	3977
191-093m	15.3125	-	Linda Gebhart Kessler	No	3977
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4090
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4084
191-093m	15.3125	-	Jason Keith Gebhart and wife, Sunny Gebhart	No	4353
191-093m	15.3125	-	Linda Gebhart Kessler	No	4090
191-094m	97.101	97.101	Stephen D. Jones and wife, Kim Jones	No	3366
192-001m	177	177	Hilda McVoy	No	4189
195-001	4.3013	4.3013	John C. North	Yes	2496
195-002	2.9943	2.9943	Luna	Yes	2497
195-004.1	54.3249	54.3249	Ronnie L. Albright and wife, Ethel Ruth Albright	Yes	2450
195-004.2	32.7321	32.7321	Ronnie L. Albright and wife, Ethel Ruth Albright	Yes	2451
195-005	62.538	62.538	Lehmann	Yes	2401
195-006	113.546	113.546	Richard Kretzer	Yes	0527
195-007	35.25	35.25	Lenora Ruth Crawford	Yes	2446
195-007	35.25	-	William E. Crawford, II	Yes	2447
195-007	35.25	-	Dana Ann Crawford	Yes	2445
195-013	47.132	47.132	Susan Wotipka	Yes	2448



Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
195-013	47.132	-	Lille Wotipka	Yes	2448
195-013	47.132	-	Edward C. Wotipka	Yes	2448
195-014	64.234	64.234	Franklin James Beran	Yes	2410
195-020	372.735	372.735	Ginger, Ltd., a Texas Limited Partnership	Yes	0028
195-023	197.484	197.484	Lynn Dennis Monical and wife, Deanna Monical	Yes	0029
195-024	46.63	46.63	Lynn Dennis Monical and wife, Deanna Monical	Yes	0029
195-025	2	2	Pauline W. Jones	Yes	0700
195-026	618.57	618.57	David Lewis Flosi	Yes	2352
195-026	618.57	-	Sally Flosi	Yes	2352
195-026	618.57	-	Dennis Wayne Flosi	Yes	2352
195-026	618.57	-	Darryl Arthur Flosi	Yes	2352
195-026	618.57	-	Sally Flosi	Yes	0227
196-001m	104.795	104.795	Brinkley	No	2128
196-002m	208.298	208.298	Jennifer Bell Brinkley Strelsky	No	2127
196-003m	208.298	208.298	Wendy Nell Brinkley Pickett	No	2126
196-004m	374.48	374.48	Edwin Voss and wife, Joyce Marie Voss	No	5927
196-005m	35	35	Evelyn Lacaze	No	5934
196-006m	51.9	51.9	Edwin Voss and wife, Joyce Marie Voss	No	5930
196-007m	35	35	Evelyn Lacaze	No	5935
196-008m	56	56	Edwin Voss and wife, Joyce Marie Voss	No	5928
196-009m	10.67	10.67	Edwin Voss and wife, Joyce Marie Voss	No	5929
196-010m	10.67	10.67	Evelyn Lacaze	No	5933
196-011m	56	56	Evelyn Lacaze	No	5932
196-012m	107.1	107.1	Voss Clinard	No	5931
199-001m	4.091	4.091	Jimmy D. Alexander	No	4407
199-002m	4.132	4.132	Carlos Garza	No	4408
199-007m	4.05	4.05	Donald Owen Boothe	No	4278
199-011m	1.384	1.384	Gary T. Stewart	No	4412
199-018m	4.816	4.816	Eddie D. Turner and wife, Shelli A. Turner	No	4310
199-019m	2.372	2.372	Eddie D. Turner and wife, Shelli A. Turner	No	4311
199-020m	4.788	4.788	Robert C. Minor III and wife, Sherril Minor	No	4312
199-021m	10.1	10.1	Thomas Edward Kesner	No	4393
199-022m	10	10	Pam Wall	No	4390
199-032m	1.474	1.474	George Doelitsch and wife, Nell R. Doelitsch	No	4335
199-033m	1.532	1.532	John R. Doelitsch and wife, Bettie A. Doelitsch	No	4334
199-034m	1.532	1.532	Leslie Suarez	No	4392
199-035m	3.829	3.829	Don B. Earnst and wife, Beverly J. Earnst	No	4336
199-039m	10.81	10.81	Manuel P. Perez	No	4406
199-045m	15.355	15.355	Alonzo Albert Johnson	No	4404
199-046m	16.286	16.286	Robert S. Flisher and wife, Patricia J. Flisher	No	4394
203-001	31.2571	31.2571	Grace E. Ekman	Yes	2473
203-002	8.5	8.5	Dean H. Priem and wife, Sharon K. Priem	Yes	2472
203-003	7.65	7.65	Edward C. Wotipka	Yes	3711
203-003	7.65	-	Susan Wotipka	Yes	3711
203-003	7.65	-	Lille Wotipka	Yes	3711
203-005	92	92	Billie Louise Kretzer Lauderdale	Yes	0524
203-007	40	40	Ernest L. Faust and wife, Carolyn Faust	Yes	2498
203-008	40	40	Lauderdale	Yes	2499
203-009.1	70	70	Kenneth W. Lauderdale	Yes	2462
203-009.1	70	-	Cathy A. Lauderdale	Yes	2462
203-009.2	30.005	30.005	Cathy A. Lauderdale	Yes	2465

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Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
203-009.2	30.005	-	Kenneth W. Lauderdale	Yes	2465
203-009.3	10.001	10.001	Kenneth W. Lauderdale	Yes	2682
203-009.3	10.001	-	Cathy A. Lauderdale	Yes	2682
203-009.4	33.45	33.45	Cathy A. Lauderdale	Yes	2464
203-009.4	33.45	-	Kenneth W. Lauderdale	Yes	2464
203-010	79.85	79.85	Joe F. Baldwin and wife, Junice K. Baldwin	Yes	0493
203-011	100	100	Lauderdale	Yes	5976
203-012	2.22	2.22	Carolyn Wine	Yes	5301
203-036	37.518	37.518	Karen Laverne Read	Yes	2633
203-036	37.518	-	Linda Gay Harmon	Yes	2633
203-037	37.518	37.518	Cathy A. Lauderdale	Yes	2463
203-037	37.518	-	Kenneth H. Weaver	Yes	2463
203-038	101.9	101.9	Donald Snider and wife, Nancy J. Snider	Yes	2470
203-039	69.5	69.5	Joe Don Brymer and wife, Martha J. Brymer	Yes	2471
203-040	14.9462	14.9462	Dianne Corvin	Yes	2513
209-046	14.62	14.62	Mike R. Grohosky	Yes	2821
209-051	107.819	107.819	Frederick A. Jackson and wife, Debra A. Jackson	Yes	3097
209-052	136.49	136.49	Frederick A. Jackson and wife, Debra A. Jackson	Yes	2829
210-015	10	10	James D. Stewart	Yes	3852
210-018	10	10	Ray Johnson	Yes	4205
210-029	10	10	Mack A. Carson and wife, Cheryl A. Carson	Yes	3863
210-030	10	10	Sharon Vaughn	Yes	3866
210-032	10	10	Linda Jean Boecker	Yes	3868
210-032	10	-	Michael David Walters	Yes	3868
210-032	10	-	Susan Ann Buntin	Yes	3868
210-032	10	-	Joyce Elaine Slayton	Yes	3868
210-033.1	10	10	A. Javier Martinez	Yes	4038
210-033.1	10	-	A. Javier Martinez	Yes	4061
210-033.1	10	-	A. Javier Martinez	Yes	4037
210-033.1	10	-	A. Javier Martinez	Yes	4062
210-033.1	10	-	A. Javier Martinez	Yes	4033
210-033.1	10	-	A. Javier Martinez	Yes	4034
210-033.1	10	-	A. Javier Martinez	Yes	4036
210-033.1	10	-	A. Javier Martinez	Yes	4035
210-033.2	10	10	A. Javier Martinez	Yes	4068
210-033.2	10	-	A. Javier Martinez	Yes	4066
210-033.2	10	-	A. Javier Martinez	Yes	4063
210-033.2	10	-	A. Javier Martinez	Yes	4070
210-033.2	10	-	A. Javier Martinez	Yes	4067
210-033.2	10	-	A. Javier Martinez	Yes	4064
210-033.2	10	-	A. Javier Martinez	Yes	4065
210-033.2	10	-	A. Javier Martinez	Yes	4069
210-033.3	10	10	A. Javier Martinez	Yes	4077
210-033.3	10	-	A. Javier Martinez	Yes	4076

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
210-033.3	10	-	A. Javier Martinez	Yes	4074
210-033.3	10	-	A. Javier Martinez	Yes	4075
210-033.3	10	-	A. Javier Martinez	Yes	4078
210-033.3	10	-	A. Javier Martinez	Yes	4072
210-033.3	10	-	A. Javier Martinez	Yes	4071
210-033.3	10	-	A. Javier Martinez	Yes	4073
210-035	10	10	Richard E. Wheeler and wife, Mary S. Wheeler The Jessie E. Jeffcoat and Priscilla J. Jeffcoat	Yes	3869
210-036m	10	10	Revocable Living Trust	Yes	3870
210-037.1	10	10	Stacey L. Luecken Campbell	Yes	4028
210-037.1	10	-	Sharon M. Luecken	Yes	3966
210-037.2	10	10	Stacey L. Luecken Campbell	Yes	3994
210-037.2	10	-	Sharon M. Luecken	Yes	3967
210-046.2	31.881	31.881	Doris J. Allen	Yes	3894
210-059m	98.589	61.6181	Randle G. Jones	No	1244
210-059m	98.589	-	Randle G. Jones	No	1235
210-059m	98.589	-	Randle G. Jones	No	1237
210-059m	98.589	-	Randle G. Jones	No	0895
210-060m	200	200	William Dwain Payne	No	3690
210-060m	200	-	William Dwain Payne	No	4269
210-061m	4.805	4.805	William Dwain Payne	No	3396
210-063m	263.551	263.551	Vaughn E. Owens and wife, Wilma Owens	No	3187
210-064m	87.276	87.276	S & V Partnership	No	3416
219-001m	11.4167	11.4167	Velma Young Trust	Yes	4143
219-002m	69.965	69.965	Velma Young Trust	Yes	4144
219-003m	177.512	177.512	Douglas Wayne Young	Yes	4196
219-004m	10.003	10.003	Velma Young Trust	Yes	4194
245-001	126.459	126.459	Ryal Harmon and wife, Linda Harmon	Yes	2785
245-002	100	50	David Hancock and Irma Harper-Hancock	Yes	2831
245-002	100	-	David Hancock and Irma Harper-Hancock	Yes	2831
245-002	100	-	David Hancock and Irma Harper-Hancock	Yes	3517
245-005	250.873	250.873	David and Patricia Koch Family Trust	Yes	0107
245-006	177.96	177.96	Jon F. Koch and wife, Mary Jane Koch	Yes	0108
245-007	354.241	354.241	David H. Nichols and wife, Kay Nichols	Yes	0168
245-008	65.007	65.007	Frank Burrough, Jr. and wife, Evelyn Burrough	Yes	3993

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
245-008	65.007	-	William Max Jones and wife, Betsy Jones	Yes	3993
245-009	65.007	65.007	Delores Woolverton	Yes	4080
245-011	3.1829	3.1829	Condale Cotton and wife, Christine Cotton	Yes	3924
245-012	26.8171	26.8171	Lora Christine Beard	Yes	3936
245-012	26.8171	-	Regina Lee Harris	Yes	3940
245-012	26.8171	-	Deborah Allyne York	Yes	3936
245-012	26.8171	-	Glenn Marie Cotton	Yes	3936
245-012	26.8171	-	Condale Cotton	Yes	3936
245-012	26.8171	-	Deborah Allyne York	Yes	3940
245-012	26.8171	-	Clara Estelle Wampler	Yes	3936
245-012	26.8171	-	Dale Bert Cotton	Yes	3936
245-012	26.8171	-	Clara Estelle Wampler	Yes	3985
245-012	26.8171	-	Lowene Morgan	Yes	3936
245-012	26.8171	-	Lowene Morgan	Yes	3983
245-012	26.8171	-	Glenn Marie Cotton	Yes	3981
245-012	26.8171	-	Dale Bert Cotton	Yes	3922
245-012	26.8171	-	Condale Cotton and wife, Christine Cotton	Yes	3925
245-012	26.8171	-	Regina Lee Harris	Yes	3936
245-012	26.8171	-	Lora Christine Beard	Yes	3938
245-039	10.05	10.05	Pam K. Ross and husband, Walt Ross	Yes	2843
245-040	10.467	10.467	Pam K. Ross and husband, Walt Ross	Yes	2838
249-001m	30.78	30.78	Jon Hildebrand	No	3685
249-001m	30.78	-	Harry Vowell	No	3685
249-001m	30.78	-	Steven J. Hubbell	No	3685
249-001m	30.78	-	David J. Weber	No	3685
249-002m	26	26	Leroy Shafer	No	3990
250-003.1	210.923	210.923	RanchSales, LLC	Yes	0358
250-003.2	135	135	RanchSales, LLC	Yes	0782
250-003.2	135	-	Jodle R. Grubbs	Yes	0782
250-004	28.393	28.393	Leroy Freeman	Yes	0326
250-005	21.343	21.343	Cruz Pineda	Yes	2394
250-009	5.011	5.011	Larry H. Champion	Yes	2403
250-010.1	5	5	S & V Partnership	Yes	3056
250-010.2	5	5	S & V Partnership	Yes	3057
250-010.3	5	5	S & V Partnership	Yes	3058
250-011	5	5	Lena D. Pivonka	Yes	2436
250-012	4.993	4.993	Kenneth W. Lauderdale	Yes	2466
250-012	4.993	-	Cathy A. Lauderdale	Yes	2466
250-013	4.992	4.992	Jodle R. Grubbs	Yes	2430
250-014	4.993	4.993	Edward T. Newton	Yes	0451
250-015	5	5	Valenzuela	Yes	2398
250-016	5	5	James B. Hardin, Jr.	Yes	2412
250-017	5	5	Ruby Salas	Yes	2397
250-018	25.547	25.547	John A. Lopez, Jr.	Yes	2400
250-019	11.402	11.402	Lee Canon and wife, Debra L. Canon	Yes	2427
250-024.2	2.0216	2.0216	Patrick A. Bradshaw and Vala J. Monday	Yes	2424
250-025	5	5	Daniel W. Condon and wife, Sarah Louise Condon	Yes	2428
250-026	14.979	14.979	Stephenson	Yes	2417
250-027	5	5	Robert Peschel and wife, Glenda Peschel	Yes	2422
250-028	5	5	Jullan Bautista and wife, Maria S. Bautista	Yes	2418
250-029	5	5	Jerame Earl Aly	Yes	2416

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
250-030	5	5	James C. Holladay and wife, Goldie Holladay	Yes	2431
250-033	5	5	Otis Harris and wife, Nancy Kay Holladay Harris	Yes	2433
250-035	5	5	Oliver Magee	Yes	2434
250-036	5	5	Billie R. Knesek	Yes	2435
250-037	19.38	19.38	Wetterman	Yes	2414
250-037	19.38	-	RanchSales, LLC	Yes	2414
250-038	5	5	Ronald Pinter and wife, Stephanie Pinter	Yes	2437
254-1-1-089	0.2611	0.2611	Delores Faye Luksa	Yes	2671
254-1-1-090	0.2611	0.2611	Delores Faye Luksa	Yes	2671
254-1-1-091	0.2611	0.2611	Delores Faye Luksa	Yes	2671
255-002m	234.073	234.073	Jay Wise	No	3766
255-002m	234.073	-	Leroy Shafer	No	3766
255-004m	83.37	83.37	Harry Bolch and wife, Lucinda S. Bolch	No	3941
255-005m	196.39	196.39	JMM PTLP Farm & Ranch, LLC	No	1333
255-006m	364.696	364.696	David J. Weber	No	3687
255-006m	364.696	-	Harry Vowell	No	3687
255-006m	364.696	-	Jon Hildebrand	No	3687
255-006m	364.696	-	Steven J. Hubbell	No	3687
255-007m	72.669	72.669	Harry Vowell	No	3686
255-007m	72.669	-	David J. Weber	No	3686
255-007m	72.669	-	Steven J. Hubbell	No	3686
255-007m	72.669	-	Jon Hildebrand	No	3686
255-008m	18.8115	18.8115	Dexter	No	4526
269-001m	36.2158	36.2158	Operating Co.	No	2118
286-001m	125.887	125.887	Richard Jenkins Willingham	No	2040
286-001m	125.887	-	Janice Ann Wise	No	2029
286-001m	125.887	-	Richard Jenkins Willingham	No	2029
286-001m	125.887	-	Janice Ann Wise	No	2040
286-001m	125.887	-	Joe Charles Willingham	No	2040
286-001m	125.887	-	Joe Charles Willingham	No	2029
288-014m	131.328	131.328	person as Will Ferguson, and W.L. Ferguson and	Yes	4029
288-021m	96.6508	96.6508	Bill Foster	Yes	3905
288-023m	65.4	65.4	person as Will Ferguson, and W.L. Ferguson and	Yes	4030
288-024m	40	40	person as Will Ferguson, and W.L. Ferguson and	Yes	4031
288-025m	12	12	person as Will Ferguson, and W.L. Ferguson and	Yes	4032
288-026m	113	113	April 7, 1993	Yes	3948
288-027.1m	91	12.025	Albert Tovar	Yes	3962
288-027.1m	91	-	Esperanza Tovar Mendez	Yes	4010
288-027.2m	91	21.125	Esperanza Tovar Mendez	Yes	4009
288-027.2m	91	-	Albert Tovar	Yes	3963
288-036m	5	5	Wesley Michael Janak	Yes	3909
288-036m	5	-	Carol S. Pivonka	Yes	3909
288-036m	5	-	Chrystie Shea Janak Butler	Yes	3909
288-037m	119.789	119.789	Charlie J. Janak	Yes	3908
288-038m	36.9	36.9	Steven J. Hubbell	Yes	3856
288-038m	36.9	-	Harry Vowell	Yes	3856
288-038m	36.9	-	Jon Hildebrand	Yes	3856
288-038m	36.9	-	David J. Weber	Yes	3856
288-040m	77.501	77.501	Felipe AgustIn Ramirez Mora	Yes	3949
288-043m	176.171	176.171	Joseph Slusher and wife, Judith Slusher	No	3992
288-049m	1	1	RNR, LLC, a Texas Limited Liability Company	Yes	4489

**ARANGO**

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
288-050m	1	1	RNR, LLC, a Texas Limited Liability Company	Yes	4488
288-051m	50	50	Skinner Family Trust	Yes	3930
288-052m	10.28	10.28	Thomas W. Grabener and wife, Doris Grabener	Yes	4126
288-053m	10.25	10.25	Thomas W. Grabener and wife, Doris Grabener	Yes	4125
288-054m	10.28	10.28	Thomas W. Grabener and wife, Doris Grabener	Yes	4124
288-055m	10.27	10.27	Jackie W. Threadgill	Yes	4123
288-059m	10.93	10.93	Thomas W. Grabener and wife, Doris Grabener	Yes	4127
288-060m	10.12	10.12	John Santellano	Yes	4129
288-061m	138	138	Stanley J. Budnik	Yes	4263
288-061m	138	-	S & V Partnership	Yes	4263
288-062m	48	48	S & V Partnership	Yes	4266
288-065m	139	139	S & V Partnership	Yes	4262
288-066m	33.375	33.375	Della Fay Coleman	Yes	3947
291-004m	60.3	60.3	Rudolph Kenneth Schneebeli	Yes	3810
291-005m	43	43	Rudolph Kenneth Schneebeli	Yes	3811
291-006m	32.6	32.6	Rudolph Kenneth Schneebeli	Yes	3812
291-020m	75	75	Howard E. Ryan and wife, Joyce M. Ryan	Yes	2023
291-021m	3.45	3.45	Howard E. Ryan and wife, Joyce M. Ryan	Yes	2024
291-022m	150	150	Butler	Yes	3798
291-023m	5.2	5.2	Michael E. Winot	Yes	2033
291-024m	176.48	176.48	Michael E. Winot	Yes	2022
291-025m	5	5	Linda Keen Platt	Yes	2034
291-026m	101	101	Tommy Shriver and wife, Dawn Shriver	Yes	2019
291-026m	101	-	Linda Keen Platt	Yes	2019
291-026m	101	-	Glenna Keen Lynn	Yes	2019
291-026m	101	-	Michael E. Winot	Yes	2019
291-027m	48.66	48.66	Tommy Shriver and wife, Dawn Shriver	Yes	2021
291-027m	48.66	-	Michael E. Winot	Yes	2021
291-028m	46.375	46.375	Michael E. Winot	Yes	2020
291-029m	53.625	53.625	Curtis D. Kornegay and wife, Billie Jean Kornegay	Yes	1519
291-031m	51.223	51.223	Rudolph Kenneth Schneebeli	Yes	3813
291-032m	26.4	26.4	same person as Randy Simmons	Yes	3877
291-033m	66.2	66.2	same person as Randy Simmons	Yes	3878
291-034m	50	50	same person as Randy Simmons	Yes	3879
291-035m	18.67	18.67	same person as Randy Simmons	Yes	3880
291-036m	73.75	73.75	same person as Randy Simmons	Yes	3881
291-037m	50	50	same person as Randy Simmons	Yes	3882
291-039m	117.773	117.773	Judith A. Matula	Yes	1977
291-040m	19.332	19.332	Judith A. Matula	Yes	1987
291-041.1m	168.37	168.37	Judith A. Matula	Yes	1984
291-041.2m	1.56	1.56	Judith A. Matula	Yes	1978
291-041.3m	10.86	10.86	Judith A. Matula	Yes	1985
291-041.4m	0.113	0.113	Judith A. Matula	Yes	3838
291-045m	6.056	6.056	Cheri Teague	Yes	3802
291-045m	6.056	-	Pam Edwards	Yes	3802
291-045m	6.056	-	Joel Keith Hatcher	Yes	3802
291-046m	7.491	7.491	Joel Keith Hatcher	Yes	3803
291-046m	7.491	-	Cheri Teague	Yes	3803
291-046m	7.491	-	Pam Edwards	Yes	3803
291-063m	19.2	19.2	Michael Skrhak	Yes	3840
291-064m	57.293	57.293	Allen D. Wallace and wife, Cynthia Wallace	Yes	3843

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
291-065m	126.143	121.717	Sarah F. Shilow	Yes	4511
291-065m	126.143	-	Annie G. Croom	Yes	4512
291-065m	126.143	-	Michael A. Carter	Yes	4517
291-065m	126.143	-	Lawrence Cecil Richards, Trustee	Yes	4198
291-065m	126.143	-	Lawrence Cecil Richards	Yes	4197
291-065m	126.143	-	Helen Crayton Rhem	Yes	4199
291-065m	126.143	-	Annie Williams	Yes	4201
291-065m	126.143	-	Mary Esta Crayton	Yes	4388
291-065m	126.143	-	Myrtis Crayton	Yes	4202
291-065m	126.143	-	Frank Pierson	Yes	4200
291-067m	2	2	Michael Skrhak	Yes	3845
291-070m	48	48	Velma Young Trust	Yes	4145
291-071m	46.6	46.6	Velma Young Trust	Yes	4146
291-072m	69.9	69.9	Velma Young Trust	Yes	4147
291-078m	49.71	49.71	Daniel W. Griffin and wife, Nancy R. Griffin	Yes	4380
291-081m	32.568	32.568	Curtis D. Kornegay and wife, Billie Jean Kornegay	Yes	1520
301-001m	1.69	1.69	Cheryl Leigh Owens	No	4527
301-002m	86.709	86.709	Lenora Ann Krueger	No	3789.2
301-003m	82.324	82.324	Vaughn E. Owens and wife, Wilma Owens	No	3759
301-004m	16.708	16.708	Vaughn E. Owens and wife, Wilma Owens	No	3761
301-010m	1.773	1.773	Vaughn E. Owens and wife, Wilma Owens	No	3775
303-001m	12.161	12.161	Harry Vowell	Yes	3678
303-001m	12.161	-	Caleb J. Hildebrand	Yes	3678
303-001m	12.161	-	James F. Elsterhold and wife, Amy L. Elsterhold	Yes	3678
303-002m	293	293	Caleb J. Hildebrand	Yes	3680
303-002m	293	-	Harry Vowell	Yes	3680
303-002m	293	-	James F. Elsterhold and wife, Amy L. Elsterhold	Yes	3680
303-003m	136	136	James F. Elsterhold and wife, Amy L. Elsterhold	Yes	3679
303-003m	136	-	Harry Vowell	Yes	3679
303-003m	136	-	Caleb J. Hildebrand	Yes	3679
303-064m	14.87	14.87	Harry Vowell	Yes	0773
303-064m	14.87	-	Caleb J. Hildebrand	Yes	0773
303-065m	4.089	4.089	Harry Vowell	Yes	0644
303-065m	4.089	-	Caleb J. Hildebrand	Yes	0644
311-001m	100	100	Freddie Lee Debault	No	2190
311-002m	50	50	Freddie Lee Debault	No	2187
311-003m	19	19	Freddie Lee Debault	No	2186
311-004m	50	50	Harry Vowell	No	0810.6
311-004m	50	-	Ranch	No	0810.6
311-005m	65.76	31.5648	Vivian Westbrook Brewer	No	3244
311-005m	65.76	-	person as R.B. Westbrook	No	3200
311-005m	65.76	-	Vivian Westbrook Brewer	No	3198
311-005m	65.76	-	person as R.B. Westbrook	No	3179
311-006m	31.5	31.5	person as R.B. Westbrook	No	3180
311-007m	30.5	30.5	person as R.B. Westbrook	No	3181
311-008m	1	0.4	person as R.B. Westbrook	No	3199
311-008m	1	-	Vivian Westbrook Brewer	No	3245
312-001m	57.333	57.333	Freddie Lee Debault	No	2188
312-002m	47.83	47.83	Freddie Lee Debault	No	2189
312-003m	2	2	Freddie Lee Debault	No	2185
312-004m	0.89	0.89	George R. Ducote and wife, Bettye L. Ducote	No	2193

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
312-005m	183	183	George A. Spencer	No	3388
312-006m	22.753	22.753	Steven G. Seat and wife, Christine O. Seat	No	3503
312-007m	129.59	129.59	4-K Farm Trust	No	3387
313-001m	92.29	92.29	W.A. Whitley and wife, Sherry J. Whitley	No	3060
313-002m	102.99	102.99	Kenneth R. Cole and wife, Cortney R. Cole	No	3064
313-002m	102.99	-	Tina Louise Hall	No	3064
313-004m	41.84	41.84	S & V Partnership	No	5592
318-001m	1.767	1.767	Ranch	No	0813
318-001m	1.767	-	Harry Vowell	No	0813
318-002m	50	50	Harry Vowell	No	0812.5
318-002m	50	-	Ranch	No	0812.5
318-003m	25.5	25.5	Ranch	No	0810.4
318-003m	25.5	-	Harry Vowell	No	0810.4
318-004m	80	80	Harry Vowell	No	0811.1
318-004m	80	-	Ranch	No	0811.1
318-005m	100	100	Ranch	No	0810.5
318-005m	100	-	Harry Vowell	No	0810.5
318-006m	205	145.2076	Harry Vowell	No	0810.3
318-006m	205	-	Ranch	No	0810.3
318-007m	2	2	Westbrook	No	3196
318-008m	79	39.5	Westbrook	No	3197
318-009m	10.11	10.11	Thana Keen Kemper	No	1996
318-009m	10.11	-	James P. Keen	No	1996
318-010m	10.11	10.11	Thana Keen Kemper	No	1997
318-010m	10.11	-	James P. Keen	No	1997
318-011m	8.41	8.41	James P. Keen	No	1998
318-011m	8.41	-	Thana Keen Kemper	No	1998
318-012m	10.11	10.11	Thana Keen Kemper	No	1999
318-012m	10.11	-	James P. Keen	No	1999
318-013m	2.68	2.68	James P. Keen	No	2541
318-013m	2.68	-	Thana Keen Kemper	No	2541
318-014m	28.5	28.5	Tina Louise Wlningham-Mims	No	3219
318-014m	28.5	-	Traci Lynn Wlningham Wood	No	3220
318-014m	28.5	-	Anthony E. Carter and wife, Elma A. Carter	No	3218
318-015m	73.85	73.85	Hondo Land and Cattle Company, Ltd.	No	3666
318-020m	72.35	72.35	Harry Vowell	No	5977
323-002m	35.5	35.5	Len Evelyn Baird	No	3380
323-002m	35.5	-	Jay Bob Blackwell	No	3522
323-002m	35.5	-	Christopher D. Lay	No	3523
323-002m	35.5	-	Charles C. Blackwell, Jr.	No	3522
323-003m	122.08	122.08	Clarence R. Sims	No	3390
323-003m	122.08	-	Ronald A. Wall and wife, Karen D. Wall	No	3350
323-004.1m	96.097	96.097	Paul A. Zabor	No	3352
323-004.2m	6.42	6.42	Mark Petrosky and wife, Donna Petrosky	No	3528
323-005m	82.85	41.425	R. Stephen Rhodes	No	5467
323-006m	14.363	14.363	R. Stephen Rhodes	No	5466
323-007m	24.97	24.97	Crowe	No	0612
323-008m	26.068	26.068	Raul A. Ternate and wife, Yolanda A. Ternate	No	3460
323-009m	25.705	25.705	Raul A. Ternate and wife, Yolanda A. Ternate	No	3459
323-020m	48.875	48.875	K. McDonald	No	3379
323-022m	104.61	104.61	Betty Jo Nink	No	3433



Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
323-022m	104.61	-	Phyllis Kleinschmidt	No	3442
323-022m	104.61	-	Leslie Chudej	No	3441
323-024m	103.26	103.26	Trustees of The Clarence Theo Krenek and Lillian	No	3418
323-030m	24	6	Marie Nelson	No	3458
323-031m	24	6	Marie Nelson	No	3458
323-032m	24	6	Marie Nelson	No	3458
323-033m	24	6	Marie Nelson	No	3458
323-035m	200	200	Henry F. Kohut, II	No	3499
323-035m	200	-	Vicki Garbo	No	3402
323-035m	200	-	Elizabeth A. Arnold	No	3351
323-035m	200	-	Doris Kohut	No	3406
323-035m	200	-	Eleanor L. Rusnak	No	3407
323-035m	200	-	Rita Rubach Henderson	No	3408
323-036m	40	40	Roger Dale Sheffield	No	3462
323-037m	17.863	17.863	Jonathan C. Sootoo	No	3374
323-039m	29.9253	29.9253	Julie Ann Rodriguez	No	3463
323-040m	29.9887	29.9887	Julie Ann Rodriguez	No	3463
323-058m	56.002	56.002	James E. McNamara	No	2018
323-059m	22.849	22.849	James E. McNamara	No	2017
323-060m	100	100	James E. McNamara	No	2016
323-064m	178.0918	178.0918	Thelma Mae Williams	No	3414
323-066m	57.27	57.27	Leslie Chudej	No	3476
323-066m	57.27	-	Phyllis Kleinschmidt	No	3477
323-067m	74.754	74.754	Burnet R. Milligan	No	3068
323-092m	56	56	Jon Hildebrand and wife, Veronica Hildebrand	No	3248
323-093m	4	4	Richard D. Wells	No	3250
323-096m	22.219	22.219	Martyn Hafley	No	3457
323-098m	22.891	22.891	Michael D. Jones	No	3455
323-099m	29.065	29.065	E. Helen Enlow	No	3505
323-100m	14.61	14.61	E. Helen Enlow	No	3504
323-106m	37.5	37.5	Charlie Wayne Williams	No	3413
323-107m	6.43	6.43	Thelma Mae Williams	No	3412
323-110m	153	21.8571	Roy Lynn Huddleston	No	3409
323-111m	19.389	19.389	Accurate, Inc.	No	0403
323-112m	77.34	77.34	Accurate, Inc.	No	0402
323-113m	44.004	44.004	Triple H Land & Cattle Company, Inc.	No	0579
331-003m	97.6796	97.6796	Velma Young Trust	Yes	4148
331-004m	17.997	17.997	Velma Young Trust	Yes	4195
335-003m	49.451	49.451	Gonten	No	4438
335-004m	49.451	49.451	Robert Nathan Von Gonten	No	4494
350-001m	43	43	Harry Vowell	No	0811.5
350-001m	43	-	Ranch	No	0811.5
350-002m	43	43	Harry Vowell	No	0812.2
350-002m	43	-	Ranch	No	0812.2
350-003m	80.5	80.5	Ranch	No	0812.6
350-003m	80.5	-	Harry Vowell	No	0812.6
350-004m	11.5	11.5	Harry Vowell	No	0811.2
350-004m	11.5	-	Ranch	No	0811.2
350-005m	57.33	57.33	Harry Vowell	No	0811.3
350-005m	57.33	-	Ranch	No	0811.3
350-006m	28.66	28.66	Ranch	No	0811.4

Tract	Tract Acres	Net Acres	Owner	Permitted	Lease Number
350-006m	28.66	-	Harry Vowell	No	0811.4
350-007m	31.5	31.5	Harry Vowell	No	0811.6
350-007m	31.5	-	Ranch	No	0811.6
350-008m	43	43	Ranch	No	0812.1
350-008m	43	-	Harry Vowell	No	0812.1
351-001m	188.91	188.91	Theresa Armstrong	No	3762
378-001m	287	287	Shelby G. Smith, Jr. and wife, Ernestine Smith	No	3722
398-004m	73.11	73.11	Wesley D. Hicks and wife, Linda S. Hicks	No	2256
398-010m	58.75	58.75	Julius Henry Shooter, A/K/A J.H. Shooter	No	4287
398-010m	58.75	-	Julius Henry Shooter, A/K/A J.H. Shooter	No	4288
398-011m	69.5	69.5	Julius Henry Shooter, A/K/A J.H. Shooter	No	4293
398-011m	69.5	-	Julius Henry Shooter, A/K/A J.H. Shooter	No	4294
398-012m	105.35	105.35	Julius Henry Shooter, A/K/A J.H. Shooter	No	4289
398-013m	62.33	62.33	Julius Henry Shooter, A/K/A J.H. Shooter	No	3957
398-013m	62.33	-	Julius Henry Shooter, A/K/A J.H. Shooter	No	3958
398-013m	62.33	-	Julius Henry Shooter, A/K/A J.H. Shooter	No	4192
398-030m	16.501	16.501	Julius Henry Shooter, A/K/A J.H. Shooter	No	4290
398-031m	2.64	2.64	Julius Henry Shooter, A/K/A J.H. Shooter	No	4291

Exhibit "B"

Assignment- Permit Rights

## Assignment of Permit Rights

This Assignment of Permit Rights ("*Assignment*") is entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2014 (the "*Effective Date*"), by and between Blue Water Vista Ridge, LLC, a Texas limited liability company ("*Assignor*"), joined herein by Blue Water Systems LP, a Texas limited partnership ("*BWS*") and Abengoa Vista Ridge LLC ("*Assignee*").

### RECITALS

**WHEREAS**, Assignor is the permittee under (i) that certain Drilling and Operating Permit attached hereto as Exhibit "A", and (ii) that certain Permit to Transport Groundwater from within the Post Oak Savannah Groundwater Conservation District of the State of Texas attached hereto as Exhibit "B" (collectively referred to herein as the "*Permits*").

**WHEREAS**, pursuant to the terms of the Groundwater Lease Conveyance Agreement dated \_\_\_\_\_, 2014 ("*Groundwater Lease Conveyance Agreement*"), Assignor agreed to assign (and/or cause the assignment of) all of the rights in and to the Permits ("*Permit Rights*") to Assignee, on the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the covenants and obligations of the parties set forth herein, the receipt and sufficiency of which is hereby acknowledged, each of the undersigned parties hereby agree as follows:

1. Assignment. Assignor hereby assigns transfers and conveys the Permit Rights to Assignee, to have and to hold, all and singular, the Permit Rights unto Assignee, its successors and assigns, until the end of the Permit Assignment Term (as defined in the Groundwater Lease Conveyance Agreement) (the "*Term*"), when all of such interests shall revert to Assignor, or its successors and assigns, in accordance with the terms of the Groundwater Lease Conveyance Agreement. At the end of the Term, the rights of Assignee under the Permits relating to the Permit Assignment shall automatically revert to Assignor, it being the intent that the Permits shall no longer be the property of Assignee after the end of the said Term. Assignee (and its successors and assigns) agrees to execute and deliver to Assignor any documents necessary or appropriate to evidence and effect such reversion.
2. Assumption. Assignee hereby assumes all of Assignor's obligations under the Permit Rights accruing or arising from and after the Effective Date through the end of the Term.
3. Title. The Permit Rights are hereby assigned by Assignor to Assignee free and clear of any and all liens, claims, restrictions, encumbrances or other interests of any person or entity save and except for the Blue Water Permit Security Interest (as defined in the Groundwater Lease Conveyance Agreement) granted by Assignee in favor of Assignor in accordance with the terms of the Groundwater Lease Conveyance Agreement, as evidenced by that certain Security Agreement dated of even date herewith executed by Assignor and Assignee, granting a security interest in the Permits.
4. Representations and Warranties. Assignor hereby ratifies, confirms and approves all warranties and representations of Assignor as provided in Section 18 of the Groundwater Lease Conveyance Agreement ("*Warranties and Representations*"). Assignor hereby confirms that all the Warranties and Representations were at the time of execution of the Ground Lease Conveyance

Agreement and continue to be at the time of execution of this Assignment, true and correct in all respects, and Assignee may rely on same in accepting this Assignment.

5. Joinder of BWS. BWS is joined herein for purposes of compliance with the terms of the Groundwater Lease Conveyance Agreement and to evidence its consent to the assignment provided for herein.

6. Electronic Delivery. A telecopied facsimile or other electronically delivered copy of a duly executed counterpart of this Assignment shall be sufficient to evidence the binding assignment and release of each party to the terms hereof.

7. Multiple Counterparts. This Assignment may be simultaneously executed in a number of counterparts, each of which for all purposes shall be deemed an original and all of which, when taken together, shall constitute but one and the same instrument.

EXECUTED by the undersigned to be effective as of the Effective Date.

**ASSIGNOR:**

**BLUEWATER VISTA RIDGE, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**ABENGOA VISTA RIDGE LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Acknowledged and Consented to by:**

**BLUE WATER SYSTEMS LP,** a Texas  
limited partnership

By: Blue Water Systems GP, LLC,

a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

Operating Permit

This Exhibit will be the Operating Permit as re-issued to Blue Water Vista Ridge in the amount of 50,993 acre-feet per year.

**EXHIBIT "B"**

Transportation Permit

This Exhibit will be the Transportation Permit as re-issued to Blue Water Vista Ridge in the amount of 50,993 acre-feet per year.



Exhibit "C"

**[Intentionally Deleted]**

Exhibit "D"

Sublease

Exhibit "D"

Sublease

**Sublease and Partial Assignment**

This Sublease and Partial Assignment (the "**Sublease**") is entered into effective as of the \_\_\_ day of \_\_\_\_, 2014 (the "**Effective Date**"), by and between Blue Water Vista Ridge, LLC (the "**Sublessor**") and Abengoa Vista Ridge LLC (the "**Sublessee**") pursuant to that certain "Groundwater Lease Conveyance Agreement" dated \_\_\_\_\_, 2014 (the "Groundwater Lease Conveyance Agreement") by and among Sublessor, Sublessee, Blue Water Supply Project LP ("BWRSP") and the Bureson/Milam Master Lease Trust (the "Trust"). For purposes of this Sublease, terms not expressly defined herein shall have the same meaning ascribed to them in the Groundwater Lease Conveyance Agreement, or if not therein, then in that certain Vista Ridge Regional Supply Project Water Transmission And Purchase Agreement to be executed by and between Sublessee and the San Antonio Water System Board of Trustees, an agency of the City of San Antonio established pursuant to the provisions of City of San Antonio Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq., and Chapter 1502, as amended, Texas Government Code (the "**WPA**").

**RECITALS**

**WHEREAS**, Sublessor has acquired the right to install, operate and maintain a groundwater withdrawal, collection, treatment and transportation system over approximately 50,000 acres of land from landowners (each a "**Master Lessor**", and collectively "**Master Lessors**") as well the rights to the groundwater relating to such acreage, under the terms of "Groundwater Leases" described on Exhibit "A" (as may be amended, the "**Leases**"), which Leases provide for, among other things, the following rights: (i) the lease of certain land (the "**Land**") as described in the Leases, for purposes of construction, operation and maintenance of facilities such as those that will comprise the Project Improvements (the "**Land Infrastructure Lease Rights**"), (ii) the exclusive right to designate sanitary control easements on the Land (the "**Sanitary Control Easements**"), (iii) the exclusive right to obtain a conveyance of title to 10,000 square foot wellhead sites surrounding each groundwater well to be drilled upon the Land, in fee simple determinable (the "**Well Head Sites**"), (iv) the lease to the lessee of a right to lease 2.0 acre well sites ("**2 Acre Well Tracts**"), and (v) a conveyance of all rights to the groundwater relating to the Land (the "**Water Rights**"). For purposes of this Sublease, the rights described in (i)-(iv) above, together with any and all rights relating thereto granted to Sublessor under the terms of the Leases are collectively referred to herein as the "**Real Property Rights**";

**WHEREAS**, Sublessor desires to grant, convey, sublease and partially assign the Real Property Rights and the Water Rights (the Real Property Rights and the Water Rights are collectively referred to herein as the "**Subleased Property Rights**") to Sublessee upon the terms and conditions set forth in this Sublease and

**WHEREAS**, Sublessee desires to sublease and accept such grant, conveyance and partial assignment of the Subleased Property Rights from Sublessor, upon the terms and conditions set forth in this Sublease

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the covenants and obligations of the parties set forth herein, the receipt of which is acknowledged and stipulated by each of the undersigned hereby agree as follows:

1. Sublease and Partial Assignment. Sublessor does hereby grant, convey, sublease and/or partially assign (as applicable) the Subleased Property Rights to Sublessee, and Sublessee hereby subleases and accepts such grant, conveyance and partial assignment of the Subleased Property Rights for that time period which commences as of the Effective Date and terminates upon the later of the "Termination Date" (as defined in the WPA), or the date of payment in full of the "Senior Debt", as defined in the WPA ("the "***Sublease Term***") free and clear of all liens, encumbrances or conditions other than (i) those which the owner of the fee interest in the land that is the subject of the Leases (the "Land") may have placed against the Land prior to the Effective Date of the Groundwater Lease Conveyance Agreement, (ii) the Blue Water Lease Security Interest (as defined in the Groundwater Lease Conveyance Agreement) and (iii) those which may be approved by the Senior Debt Creditors as defined in the Groundwater Lease Conveyance Agreement (the "***Permitted Encumbrances***"). The foregoing condition subsequent and reversion is more specifically provided in Section 5 of this Sublease. At the end of the Sublease Term, the Real Property Rights and Water Rights under the Leases shall revert to the Trust (which shall distribute the Leases to Assignee pursuant to the terms of the Trust Agreement) and shall no longer be the property of Assignee after the end of the Sublease Term. Assignee (on behalf of itself and its successors and assigns) agrees to execute and deliver to the Trust any documents necessary or appropriate to evidence or effect such termination.

2. Sublease Rent. During the Sublease Term, the Sublessee shall pay Sublessor as rent for the Subleased Property Rights that sum which is equal to the "***Payment Period Consideration***" due for each "***Payment Period***", as defined in and required under the terms of the Groundwater Lease Conveyance Agreement ("***Sublease Rent***"). Sublease Rent shall be due and payable at the address for Sublessor designated for notices under Section 13 herein (or such other address as Sublessor may from time to time designate in writing to Sublessee).

3. Incorporation of the Leases.

a. Incorporation of Leases. To the extent the provisions of the Leases do not conflict with the specific provisions of this Sublease or the Groundwater Lease Conveyance Agreement (or any agreement executed in connection with the Groundwater Lease Conveyance Agreement), such provisions are incorporated by this reference into this Sublease as fully as if completely restated herein. Subject to the preceding sentence, Sublessee shall be bound by all the provisions of the Leases and shall perform all of the obligations and responsibilities that Sublessor is obligated to perform pursuant to the Leases which arise from and after the Effective Date for the benefit of both the Master Lessors and the Sublessor. Sublessor covenants and agrees that it will observe and perform all of its obligations under the terms of the Leases not assumed by Sublessee hereunder. Therefore, for the purposes of this Sublease, wherever in the Leases the word "Landlord" or "Lessor" is used, it shall mean Sublessor, and wherever in the Leases the word "Sublessor" or "Lessee" is used, it shall mean Sublessee.

b. Subject to Leases. This Sublease is expressly subject to and inferior to the Leases and Sublessor's rights thereunder, and no provision of this Sublease shall be construed in a manner that would constitute a breach of the Leases.

c. Modifications to Leases. Subject to the terms of the Groundwater Lease Conveyance Agreement, if an amendment to a Lease is required by the Senior Debt Creditors (as described in and subject to the limitations in the Groundwater Lease Conveyance Agreement) or any other "***Secured Lenders***" (as defined below), Sublessor shall cooperate with Sublessee in pursuing such amendment. At the time of any such amendment, this Sublease shall be deemed amended in a manner that is consistent with the terms of any such amendment.

d. Notices and Other Communications. Sublessor and Sublessee shall each provide the other Party with prompt written notice and copies of to of all written notices, correspondence and other

communications it receives from or delivers to a Master Lessor; and shall promptly deliver true and accurate copies of all such notices, correspondence and other communications to the other Party.

e. Cooperation. Sublessor and Sublessee covenant and agree to cooperate with each other in connection with the rights and obligations of Sublessor under the Leases. Subject to the terms of the Groundwater Lease Conveyance Agreement and the Asset Administration Agreement related to the Trust, Sublessor acknowledges and agrees that Sublessee may from time to time communicate with the Master Lessors under the Leases regarding the rights and obligations of Sublessor and Sublessee under the Leases and this Sublease, and Sublessor agrees to cooperate and to use commercially reasonable efforts to diligently pursue and facilitate such communication. Consistent with the terms of the Asset Administration Agreement related to the Trust, Sublessor shall also exercise due diligence in attempting to cause the Master Lessors to perform their obligations pursuant to the Leases for the benefit of Sublessee and Sublessor.

f. Calculation of Time Periods. Subject to the terms of the Asset Administration Agreement related to the Trust, (i) in any instance where a Master Lessor under a Lease has a certain period of time in which to notify Sublessor, as tenant under a Lease, whether such Master Lessor will or will not take any particular action, Sublessor, as landlord under this Sublease, shall have an additional ten (10) business day period after receiving such notice in which to notify Sublessee, and (ii) in any instance where Sublessor, as "Lessee" under a Lease, has a certain period of time in which to notify Master Lessor as "Lessor" under a Lease, whether Sublessor will or will not take any particular action, Sublessee, as lessee under this Sublease, must notify Sublessor, as lessor under this Sublease, at least ten (10) business days before the end of such period, but in no event shall Sublessee have a period of less than ten (10) days in which so to notify Sublessor.

g. Waiver of Sublessor's Lien. If and to the extent requested by a Senior Debt Creditors Sublessor will waive and release any and all constitutional and/or statutory landlord's lien rights it might have in connection with the Subleased Property Rights, and will execute any and all documents required by Sublessee to more fully evidence such waiver and release.

4. Representations and Warranties of Sublessor. Sublessor covenants, represents and warrants to Sublessee as follows:

a. Reaffirmation and Confirmation of Representations. All of the covenants, representations and warranties made by Sublessor with respect to the Leases, the Real Property Rights and/or the Water Rights in the Groundwater Lease Conveyance Agreement (including but not limited to those made in Section 11 and 16 thereof) are true and correct as of the Effective Date. The representations and warranties herein set forth shall survive the expiration or termination of this Sublease.

b. Entire Agreement. There are no agreements, understandings, warranties or representations between Sublessor and Sublessee with respect to the Subleased Property Rights, except as expressly set forth in this Sublease and the Groundwater Lease Conveyance Agreement (including any agreement executed in connection with the Groundwater Lease Conveyance Agreement).

c. Full Force and Effect. The Leases remain in full force and effect and there are no known existing defaults by Sublessor or the Master Lessors under the Leases, or to Sublessor's knowledge is there any event or condition that exists which, with notice or the passage of time (or both) would constitute a default by either Sublessor or the Master Lessors under the Leases.

d. No Amendments. As of the date hereof, the Leases have not been amended, modified, supplemented or superseded, except as expressly set forth on Exhibit "A" attached hereto.

e. Permitted Exceptions. Sublessor represents and warrants that the Subleased Property Rights are free and clear of all liens or other encumbrances except for "**Permitted Encumbrances**" (as defined in the Groundwater Lease Conveyance Agreement). Sublessor covenants that it shall not create, or acquiesce in the creation of, any restrictions, easements, liens or encumbrances, other than the Permitted Encumbrances, that affect the Subleased Property Rights at any time during the Sublease Term without the prior written consent of Sublessee, which consent may be withheld in Sublessee's sole discretion. Sublessor warrants, covenants and represents to Sublessee that, as of the Effective Date, Sublessor has not sublet any portion of the Subleased Property Rights or assigned, pledged, mortgaged or hypothecated any portion of the Subleased Property Rights or any interest of Sublessor thereunder.

f. No Actions. There are no actions, suits, proceedings or orders pending, or to the best of Sublessor's knowledge, threatened against Sublessor with respect to any portion of the Subleased Property Rights or affecting any portion of the Subleased Property Rights, at law or in equity, or before any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign other than as disclosed in the Groundwater Lease Conveyance Agreement.

g. Authority. The execution and consummation of this Sublease by Sublessor has been duly authorized and does not result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, agreement, instrument or obligation to which Sublessor is a party or by which the Subleased Property Rights or any portion thereof is bound.

5. Reversion of Subleased Property Rights. Upon the end of the Sublease Term, the Subleased Property Rights shall automatically revert to Sublessor in accordance with the provisions of the Groundwater Lease Conveyance Agreement. Upon such reversion the Subleased Property Rights will no longer be in the possession of the Sublessee under the terms of this Sublease. Sublessee (and its successors and assigns) agrees to execute and deliver to the Sublessor and Trustee any documents reasonably necessary or appropriate to evidence or effect such reversion

6. Waiver of Subrogation. Without affecting any other rights or remedies, Sublessor and Sublessee each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried, required or by any deductibles applicable hereto. Sublessor and Sublessee agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Sublessor or Sublessee, as the case may be, so long as the insurance is not invalidated thereby.

7. Assignment and Sublease. This Sublease may be assigned (or rights hereunder subleased) by Sublessee without the prior consent of Sublessor to (i) any person, firm, corporation or other entity at any time who is owned by or under the control of Vista Ridge or any party who is an affiliate of Vista Ridge, (ii) the "**Water Supply Corporation**" (as defined in the WPA), or (iii) to any person to whom Sublessee may assign its rights under the Groundwater Lease Conveyance Agreement; provided that Sublessee shall not be relieved of any obligations under this Sublease upon any such assignment. All other assignments shall be subject to the prior written consent of Sublessor, which approval will not be unreasonably withheld, conditioned or delayed. Any such assignee of the Sublease shall be required to be a single purpose entity that assumes in writing and agrees to be bound by the Groundwater Lease Conveyance Agreement and the Trust Agreement. Sublessee hereby consents to the assignment of Sublessor's interest in the Leases to the Burleson/Milam Master Lease Trust, in accordance with the terms of the Groundwater Lease Conveyance Agreement and the Trust Agreement.

8. Addition of Leases. Sublessor acknowledges that pursuant to the terms of the Groundwater Lease Conveyance Agreement it has a duty to maintain the "**Required Leased Acres**" (as defined in the WPA)

for the Sublease Term. If additional groundwater leases are obtained by Sublessor as substitutions for Leases pursuant to the Groundwater Lease Conveyance Agreement, the substitute lease shall be in a form which conforms to the material terms of the Leases, and Sublessor shall promptly provide a fully executed copy of the substitute groundwater lease to Sublessee, at which time it shall be deemed a Lease under the terms of this Agreement.

9. Defaults

a. Except as otherwise expressly set out in this Sublease, if (i) Sublessee fails to comply with any of the material provisions of this Sublease and such default continues for a period of thirty (30) days after receiving Notice of such default from Sublessor, then, subject to the limitations set out in this Sublease, Sublessor may exercise all rights which may be available to it at law or in equity, and (ii) if Sublessor fails to comply with any of the material provisions of this Sublease and such default continues for a period of thirty (30) days after receiving Notice of such default from Sublessee, then, subject to the limitations set out in this Sublease, Sublessee may exercise all rights which may be available to it at law or in equity. The above notwithstanding, in the case of a default that cannot reasonably be cured within such thirty (30) day period, no such default shall be deemed to exist if the party responsible to address such default is using due diligence to cure such default, continues to do so until the matter is cured and the matter is cured within ninety (90) days from the receipt of the Notice by such allegedly defaulting party.

b. Except as otherwise expressly set out in, and subject to the other provisions of, this Sublease, the parties do not intend to specify (and this Sublease shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be exercised by any party hereto, which remedies shall be cumulative. Recognizing, however, that in the performance of any party's obligations hereunder could not be adequately compensated in money damages alone, each party agrees in the event of any default (after any applicable cure period) on its part, the other party shall have available to it the equitable remedy of specific performance, in addition to any other legal or equitable remedies which also may be available to such party.

c. All other provisions of this Sublease notwithstanding, in the event of a default by a Sublessee, in no event will Sublessor have the right to seek or have the remedy of termination of this Sublease for such default by Sublessee, Sublessor further agrees to only seek a remedy of damages for any such default, and Sublessor does hereby waive any right that they may have to seek the remedy of termination of this Sublease for a default by Sublessee.

10. Subordination.

(a) Sublessor and Sublessee acknowledge and agree that any payment to be made to Sublessor shall only be paid by Sublessee to the extent, and at the times, permitted pursuant to the Senior Debt Financing Agreements (as that term is defined in the WPA). Sublessor further acknowledges and agrees that all payments to Sublessor shall be subordinate to all operation and maintenance expenses of Sublessee, all obligations with respect to interest and principal payments with respect to the Senior Debt, and all obligations with respect to reserve funds required pursuant to the Senior Debt Financing Agreements

(b) Notwithstanding any other provision of this Sublease to the contrary, Sublessee may from time to time, assign for security purposes, hypothecate, mortgage, pledge or alienate the rights and interests granted herein to Sublessee in favor of one or more lenders as security for payment of any indebtedness and/or the performance of any obligation for which Sublessee has liability. The holder of any such lien upon the rights and interests granted herein to Sublessee shall be referred to as a "Secured Lender." Without the further consent of Sublessor, a Secured Lender may enforce such lien and acquire title to the rights granted herein to Sublessee in any lawful way and, pending foreclosure of

such lien, the Secured Lender may take exclusive possession of the interests in this Sublease pledged to such Secured Lender. Further, upon foreclosure of such lien by power of sale, judicial foreclosure, or upon acquisition of the interests granted herein by assignment in lieu of foreclosure, the Secured Lender may, without the further consent, sell and assign interests granted herein by Sublessee. In the event a Senior Debt Creditor or other "*Secured Lenders*" shall require further modification to this Sublease, Sublessor shall cooperate with Sublessee in pursuing such amendment.

(c) Notwithstanding any provision of this Section 10 to the contrary, the rights and obligations of Sublessor under Section 23 of the Groundwater Lease Conveyance Agreement shall be controlling in the event of any conflict with Section 10.

11. Notice. All notices, consents, approvals or written communications given pursuant to the terms of this Sublease shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

- (i) if delivered in person during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (ii) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (iii) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and
- (iv) if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

Sublessee:

Abengoa Vista Ridge, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:  
[Name of Company]

\_\_\_\_\_  
\_\_\_\_\_



Sublessor:

Blue Water Vista Ridge LLC

\_\_\_\_\_  
Attention: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_

with a copy to:

[Name of Company]

\_\_\_\_\_  
\_\_\_\_\_

12. Miscellaneous

a. Waiver. Waiver of one breach of a term, condition, or covenant of this Sublease by either party hereto shall be limited to the particular instance and shall not be deemed to waive future breaches of the same or other terms, conditions, or covenants.

b. Litigation Costs. If any legal action is filed to enforce this Sublease, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney fees, to be fixed by the court, and costs of the action.

c. Successors and Assigns. This Sublease shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

d. Multiple Counterparts. This Sublease may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile or other electronic transmission shall be binding on the party or parties whose signatures appear thereon.

e. Applicable Law. The construction and validity of this Sublease and the rights and obligations of the respective parties hereunder shall be governed by, and interpreted and enforced in accordance with, the laws of Texas. All obligations of the parties created hereunder are performable in the county in which the applicable Property Rights are located.

f. Invalidity. If any one or more of the provisions contained in this Sublease is for any reason held to be invalid, illegal, or unenforceable in any respect, then such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Sublease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

g. Other Terms. The terms "herein," "hereof," "hereunder," "hereby," "this Sublease," and other similar references shall be construed to mean and include this Sublease and all amendments thereof and supplements thereto unless the context clearly indicates or requires otherwise. All references to "Articles" and "Sections" contained in this Sublease are, unless specifically indicated otherwise, references to articles, sections, subsections, and paragraphs of this Sublease. Whenever in this Sublease the singular number is used, the same shall include the plural where appropriate (and vice versa), and words of any gender shall include each other gender where appropriate. As used in this Sublease, the following words or phrases shall have the meanings indicated: (i) "or" shall mean "and/or"; (ii) "day" shall mean a calendar day; (iii) "including" or "include" shall mean "including without limitation"; (iv) "law" or "laws" shall mean statutes, regulations, rules, judicial orders, and other legal pronouncements having the effect of law; and (v) "persons" shall mean any

individual, corporation, partnership, limited liability company, government, or other entity. All references to "Exhibit(s)" and "Schedule(s)" are, unless specifically indicated otherwise, references to exhibits, schedules, and attachments to this Sublease, which are incorporated into this Sublease by each such reference.

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SIGNATURE PAGE(S) FOLLOWS.***

EXECUTED by the undersigned on the dates set forth below to be effective as of the Effective Date.

**SUBLESSOR:**

**BLUEWATER VISTA RIDGE LLC**

By: \_\_\_\_\_  
Ross M. Cummings, President

**SUBLEESSEE:**

**ABENGOA VISTA RIDGE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit "E"

Assignment of Leases

## Exhibit E

### **Assignment of Leases**

This Assignment of Leases ("**Assignment**") is entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2014 (the "**Effective Date**"), by and between Blue Water Vista Ridge, LLC ("**Assignor**") and \_\_\_\_\_, Trustee of the Burleson/Milam Master Lease Trust ("**Assignee**") pursuant to that certain "Groundwater Lease Conveyance Agreement" dated \_\_\_\_\_, 2014 (the "Groundwater Lease Conveyance Agreement") by and among Assignor, Assignee, Blue Water Supply Project LP ("BWRSP") and Abengoa Vista Ridge, LLC ("Vista Ridge").

### RECITALS

**WHEREAS**, Assignor is the "Lessee" under those certain leases described on Exhibit "A" attached hereto (as may be amended, the "**Leases**"); and

**WHEREAS**, pursuant to the terms of the Groundwater Lease Conveyance Agreement, Assignor desires to assign to Assignee, and Assignee desires to accept, the assignment of all of Assignor's interest in and to the Leases including its rights in its Sublease (as defined below) of such Leases ("**Lease Rights**") on the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the covenants and obligations of the parties set forth herein, the receipt of which is acknowledged and stipulated by each of the undersigned hereby agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys the Lease Rights to Assignee, to have and to hold, all and singular, the Leases unto Assignee, its successors and assigns, to be held by Assignee pursuant to the terms of that certain Burleson/Milam Master Lease Trust, and free and clear of all liens, encumbrances or conditions other than (i) those which the owner of the fee interest in the land that is the subject of the leases (the "Land") may have placed against the Land prior to the Effective Date of the Groundwater Lease Conveyance Agreement, (ii) the Blue Water Lease Security Interest (as defined in the Groundwater Lease Conveyance Agreement) granted by Assignee in favor of Assignor in accordance with the terms of the Groundwater Lease Conveyance Agreement; (iii) those which may be approved by the Senior Debt Creditors as defined in the Groundwater Lease Conveyance Agreement and (iv) the terms and provisions of that certain "Sublease and Partial Assignment" between Assignor and Vista Ridge dated contemporaneously herewith (the "**Sublease**") whereby Assignor subleased certain rights under the Leases to Vista Ridge (the "**Permitted Encumbrances**"). The Leases are assigned only for that time period which ends on the later of the end of the "Termination Date" of the WPA or the date of payment in full of the Senior Debt (the "**Assignment Term**") which shall be the same day as the end of the term of the Sublease. At the end of the Assignment Term, the Leases shall automatically be distributed from Assignee to Assignor and the Sublease shall terminate. Assignee agrees to execute any documents as reasonably necessary to evidence and effect such reversion.

2. Assumption. Assignee hereby assumes all of Assignor's obligations under the Leases accruing or arising from and after the Effective Date, including the duties under the Sublease.

3. Blue Water Security Interest. The Assignment made herein is made subject to the Blue Water Lease Security Interest (as defined in the Groundwater Lease Conveyance Agreement) granted by Assignee in favor of Assignor in accordance with the terms of the Groundwater Lease Conveyance

Agreement, as evidenced by that certain Security Agreement dated of even date herewith executed by Assignor and Assignee, granting a security interest in the Leases.

4. Representations and Warranties. Assignor hereby ratifies, confirms and approves all warranties and representations of Assignor as provided in Section 18 of the Groundwater Lease Conveyance Agreement ("Warranties and Representations). Assignor hereby confirms that all the Warranties and Representations were at the time of execution of the Ground Lease Conveyance Agreement and continue to be at the time of execution of this Assignment, true and correct in all respects, and Assignee may rely on same in accepting this Assignment.

5. Electronic Delivery. A telecopied facsimile or other electronically delivered copy of a duly executed counterpart of this Assignment shall be sufficient to evidence the binding assignment and release of each party to the terms hereof.

6. Multiple Counterparts. This Assignment may be simultaneously executed in a number of counterparts, each of which for all purposes shall be deemed an original and all of which, when taken together, shall constitute but one and the same instrument.

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***SIGNATURE PAGE(S) FOLLOWS.***

EXECUTED by the undersigned to be effective as of the Effective Date.

**ASSIGNOR:**

**BLUE WATER VISTA RIDGE, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

Burleson/Milam Master Lease Trust

By: Wilmington Trust, National Association, not in its  
individual capacity but solely in its capacity as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of Blue Water Vista Ridge, LLC,  
a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, in and for  
The State of Texas

STATE OF \_\_\_\_\_       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by  
\_\_\_\_\_, a \_\_\_\_\_ of Wilmington Trust, National  
Association, on behalf of Wilmington Trust, National Association in its capacity as the Trustee of the  
Burleson/Milam Master Lease Trust.

\_\_\_\_\_  
Notary Public, in and for  
The State of Texas

**EXHIBIT "A"**

LEASES

SEE ATTACHED LIST OF LEASES



Exhibit "F"

Trust

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**TRUST AGREEMENT**  
**FOR**  
**BURLESON/MILAM MASTER LEASE TRUST**

## PARTIES

### Settlor/Beneficiary:

Blue Water Vista Ridge  
Attn., Ross M. Cummings  
9606 N. Mopac  
Suite 125  
Austin, TX 78759  
United States of America

### Trustee:

Wilmington Trust, National Association  
19590 North Dallas Parkway  
Floor 05  
Dallas, TX 75248

### Vista Ridge:

Abengoa Vista Ridge  
Pedro Almagro Gavilan  
2600 Via Fortuna, Suite 220  
Austin TX 78746

## AGREEMENT

This Trust Agreement ("*Agreement*" or "*Trust Agreement*") for the Burluson/Milam Master Lease Trust ("*Trust*") is entered into by and among the Settlor/Beneficiary, the Trustee, and Vista Ridge, effective as of \_\_\_\_\_, 2014, pursuant to the terms of that certain "*Groundwater Lease and Conveyance Agreement*" dated \_\_\_\_\_, 2014, executed by and among Settlor/Beneficiary, the Trustee, Vista Ridge and Blue Water Regional Supply Project LP.

**WHEREAS**, Settlor/Beneficiary has acquired certain lease rights which provide the lessee with groundwater resources and the right to install, operate and maintain water system infrastructure over approximately 50,000 acres of land from landowners as described on Exhibit "A" (the "*Initial Leases*", and each singularly referred to as an "*Initial Lease*");

**WHEREAS**, the Initial Leases provide for, among other things, the following rights: (i) the lease to the lessee of certain land (the "*Land*") as described in the Initial Leases, for purposes of construction, operation and maintenance of facilities such as those that will comprise the Project Improvements (the "*Land Infrastructure Lease Rights*"), (ii) the assignment to the lessee of an exclusive right to designate sanitary control easements on the Land (the "*Sanitary*");

*Control Easements*”), (iii) the assignment to the lessee of the exclusive right to obtain a conveyance of title to 10,000 square foot wellhead sites surrounding each groundwater well to be drilled upon the Land, in fee simple determinable (the “*Well Head Sites*”), (iv) the lease to the lessee of a right to lease 2.0 acre well sites (“*2 Acre Well Tracts*”) and (v); a conveyance to the lessee of all rights to the groundwater relating to the Land (the “*Water Rights*”).

**WHEREAS**, Vista Ridge desires to use the Water Rights to provide groundwater to San Antonio Water System Board of Trustees, an agency of the City of San Antonio established pursuant to the provisions of City of San Antonio Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq., and Chapter 1502, as amended, Texas Government Code (“*SAWS*”) under the Vista Ridge Regional Supply Project Water Transmission And Purchase Agreement (the “*WPA*”) entered into between SAWS and Vista Ridge;

**WHEREAS**, to provide the Water Rights to Vista Ridge, Settlor/Beneficiary has agreed to sublease the Land Infrastructure Lease Rights, the Sanitary Control Easements, the Well Head Sites and the 2 Acre Well Tracts (being collectively referred to as the “*Real Property Rights*”) and the Water Rights to Vista Ridge pursuant to the terms of that certain Sublease and Partial Assignment, a copy of which is attached hereto as Exhibit “B” (“*Sublease*”) for the purpose of delivering groundwater from the Land situated in the Post Oak Savannah Groundwater Conservation District of the State of Texas (“*POSGCD*”) to a site in Bexar County, Texas owned by SAWS, through a system of groundwater wells, pumping stations, pumps, meters, storage tanks and transmission lines and other facilities, which make up the “*Project Improvements*” as defined in the WPA, for the term of the WPA;

**WHEREAS**, to preserve the Initial Leases in a manner which is beneficial to the interests of Vista Ridge and Settlor/Beneficiary, and to assist with the financing of the development of the Project Improvements by Vista Ridge, Settlor/Beneficiary has agreed to assign, immediately following the execution of the Sublease, all of its interest in the Initial Leases (subject to the terms of the Sublease), to the Trust, which Trust is to act as a custodial trust, created for the benefit of Settlor/Beneficiary, and administered by the “*Party Administrator*” as defined in, and pursuant to the terms of that certain Lease Administration Agreement, a copy of which is attached hereto as Exhibit “C” (“*Lease Administration Agreement*”);

**NOW, THEREFORE**, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the covenants and obligations of the parties set forth herein, the legal sufficiency and receipt of which is acknowledged and stipulated by each of the undersigned hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

**1.1 Instruction.** An “Instruction” to the Trustee is a written or electronic direction given in a form and manner reasonably required or accepted by the Trustee from Settlor/Beneficiary and/or Vista Ridge as set forth in this Trust Agreement. The Trustee may recognize standing requests, directions, or requisitions as Instructions.

**1.2 Leases.** “Leases” means the Initial Leases, together with any and all groundwater leases assigned to the Trust in the future in accordance with Settlor/Beneficiary’s obligations under Section 4(c) of the Groundwater Lease Conveyance Agreement, or otherwise.

**1.3 Person.** “Person” means an individual, committee of individuals, partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, mutual company, joint-stock company, non-profit or not-for-profit organization, trust, estate, unincorporated organization, association or employee organization.

**1.4 Transaction Documents** means this Trust Agreement, the Groundwater Lease Conveyance Agreement, the Lease Administration Agreement, the Assignment of Leases (including the Sublease), the Blue Water Lease Security Agreement (as such term is defined below), any Senior Debt Financing Agreement to which the Trust is a party, and any other documents, agreements, instruments and certificates relating to each of the foregoing.

Terms not expressly defined in this Trust Agreement shall have the same meaning ascribed to them in the Groundwater Lease Conveyance Agreement and the WPA, a copy of which has been provided to Trustee along with this Agreement, all of which are incorporated herein by reference

## ARTICLE 2 ESTABLISHMENT OF TRUST

**2.1 Establishment of Trust.** Settlor/Beneficiary hereby establishes the Burleson/Milam Master Lease Trust and designates Wilmington Trust, National Association to be the trustee thereof.

**2.2 Irrevocable Trust.** The Trust created by this Trust Agreement shall be irrevocable.

**2.3 Purpose of Trust.** Settlor/Beneficiary has delivered (or will be delivering) to the Trustee the Leases and the Sublease in accordance with the terms of the Groundwater Lease Conveyance Agreement. Settlor/Beneficiary hereby acknowledges and directs (i) that the Trustee hold the Leases and Sublease, together with any other such sums or property that may from time to time be delivered to the Trustee by or for the benefit of Settlor/Beneficiary (all of such funds, securities, and properties are herein referred to or sometimes called the “*Trust Estate*”) in trust, for the uses and purposes and upon the terms and conditions expressly set forth hereinafter, and (ii) that the Party Administrator shall administer the Leases in accordance with the terms and conditions of the Lease Administration Agreement. Notwithstanding the above, Settlor/Beneficiary will not be delivering, nor will the Trustee be holding, physical possession of the Leases to Trustee; provided, however that Settlor/Beneficiary and Vista Ridge shall provide Trustee with electronic access to the Leases and shall have the right to physically inspect the same upon request.

**2.4 Document Execution and Performance.** The Trustee is hereby authorized on behalf of the Trust, to cause the Trust, in accordance with the express terms of this Trust Agreement, to: (i) enter into and perform its obligations under the Transaction Documents; (ii) take action as it shall be directed in writing by the Settlor/Beneficiary or Vista Ridge; and (iii) enter into any and all agreements or instruments affecting all or any portion of the Trust

Estate or affecting any other provision hereof; *provided, however*, that the Trustee may, but shall not be obligated to, cause the Trust to enter into any agreement or instrument that adversely affects the rights, duties or obligations of the Trustee hereunder or under any other Transaction Document, or that creates any additional duties or obligations on the Trustee other than those expressly set forth herein.

**2.5 Limited Recourse of Trustee.** Notwithstanding any provision of this Trust Agreement, the Transaction Documents, or any other agreement, document or instrument to the contrary, it is expressly understood and agreed by the parties hereto that (i) the Transaction Documents executed by the Trustee on behalf of the Trust are executed and delivered by Wilmington Trust, National Association not individually or personally but solely as Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it under this Trust Agreement, (ii) each of the representations, warranties, undertakings, covenants, obligations and other agreements therein made on the part of the Trust is made and intended not as a personal representation, warranty, undertaking, covenant, obligation or other agreement by Wilmington Trust, National Association but is made and intended for the purpose of binding only the Trust, (iii) in no event shall Wilmington Trust, National Association have any obligation in its individual capacity to perform any of the obligations and covenants of the Trust under the Transaction Documents or any related documents, and (iv) under no circumstances will Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under the Transaction Documents or any related documents.

### ARTICLE 3

#### APPOINTMENT, ACCEPTANCE AND ROLE OF TRUSTEE

**3.1 Appointment: Acceptance.** The Trustee hereby agrees to act as trustee of Leases on the terms and conditions of this Trust Agreement. Trustee acknowledges and consents to the administration of the Trust Estate in accordance with the terms of this Trust Agreement and the Leases by the Party Administrator in accordance with the terms of the Lease Administration Agreement.

**3.2 Role of Trustee.** The role of the Trustee with respect to the Trust and the Trust Estate is limited to the following roles:

(a) Trustee shall take and hold the Leases in accordance with the terms of this Agreement;

(b) Each "**Payment Period**" (as defined in the Groundwater Lease Conveyance Agreement) the Trustee shall receive the "**Payment Period Consideration**" (as defined in the Groundwater Lease Conveyance Agreement) payments made by Vista Ridge to the Trust, which shall be deemed by the Trust as payment in full of any applicable "**Sublease Rent**" (as defined in the Sublease), and which funds shall not be invested by the Trustee;

(c) The Trustee shall disburse such Payment Period Consideration to

Settlor/Beneficiary in accordance with the terms of this Agreement as well as any other instructions provided by Settlor/Beneficiary to Trustee from time to time, which payments will be made by Trustee to Settlor/Beneficiary (or their designee by way of Instruction, as provided from time to time) within three (3) Business Days following the date the Payment Period Consideration is received by the Trustee on behalf of the Trust;

(d) Upon a written request by Vista Ridge, Trustee and Settlor/Beneficiary agree to execute all documents to carry out and collaterally pledge its interest in the Leases and the Sublease for the benefit of the Senior Debt Creditors under the Senior Debt Financing Agreements (all as defined in the WPA), or to secure any loans from the Vista Ridge to the Central Texas Regional Water Supply Corporation, on such terms as may be determined by Vista Ridge pursuant to Section 23 of the Groundwater Lease Conveyance Agreement; *and provided, however*, that the Trustee may, but shall not be obligated to, enter into any agreement or instrument that adversely affects the rights, duties or obligations of the Trustee hereunder, or that creates any additional duties or obligations on the Trustee other than those expressly set forth herein;

(e) Consistent with the terms of the Groundwater Lease Conveyance Agreement, including without limitation Section 3 and 23 thereof, the rights of Settlor/Beneficiary in and to the Leases will be conveyed to the Trust, and the Sublease of the Leases will be conveyed to Vista Ridge, subject to (i) the terms of a security agreement (the "**Blue Water Lease Security Agreement**"), to be executed by the Trust and Vista Ridge to Settlor/Beneficiary at the time of the assignment of the Leases to the Trust, which Blue Water Lease Security Agreement will provide a collateral pledge of the Leases and the Sublease (the "**Blue Water Lease Security Interest**") to secure (a) the payment obligations of Vista Ridge to the Trust or Settlor/Beneficiary under the Groundwater Lease Conveyance Agreement, and (b) the payment obligations of the Trust under this Agreement, (ii) the termination of the term of the Sublease at the end of the Term of the WPA and (iii) no other liens other than those made by the landowner and expressly approved pursuant to Section 3 and 23 of the Groundwater Lease Conveyance Agreement. The Blue Water Lease Security Agreement will provide that no action may be taken by the secured party thereunder to enforce such security interest unless and until there is an uncured default by Vista Ridge as to its payment obligations relating to the payment obligation due by Vista Ridge to the Trust or Settlor/Beneficiary under the Groundwater Lease Conveyance Agreement or by the Trust to Settlor/Beneficiary under the terms of this Trust Agreement and thirty (30) days have passed from the end of the Term of the WPA. All other provisions of this Trust Agreement notwithstanding, the Blue Water Lease Security Agreement will provide that the Blue Water Lease Security Interest will be and at all times will remain subordinate to any and all interests of the Senior Debt Creditors on such terms and condition as the Senior Debt Creditors may require. At Financial Close (as defined in the WPA), the Blue Water Lease Security Interest in the Leases shall terminate and be released; provided however, Vista Ridge will, concurrently therewith, provide as substitute collateral, a pledge of a portion of the sums due from SAWS to Vista Ridge under the terms of the WPA after the payment of all sums due from Vista Ridge to third parties in connection with the Project (as defined in the WPA) excluding sums due to Settlor/Beneficiary, (that is; an amount which is equal to the amounts in dispute), but not a security interest in any sums greater than such

amount in dispute. Trustee is hereby authorized to execute any such form of Blue Water Lease Security Agreement in the form approved by the Settlor/Beneficiary and Vista Ridge. The Trustee may incur such reasonable expenses or charges in the management of the Trust Estate and the protection of the Trust Estate for Settlor/ Beneficiary as are deemed appropriate, and, subject to its rights, protections and immunities hereunder, shall take any and all actions which Vista Ridge or Settlor/Beneficiary deems necessary to protect and preserve the Trust's ownership of the Trust Estate, or which must be taken in the ordinary course in connection with the Trust's ownership thereof, including but not limited to tax reporting or payments or other governmental compliance; provided, however, in no event shall the Trustee have the right to encumber, assign, transfer, or otherwise convey any interest in the Trust Estate, except as otherwise expressly provided for in this Trust Agreement and/or the Groundwater Lease Conveyance Agreement.

(f) Vista Ridge shall pay all expenses incurred by the Trustee pursuant to the terms of Section 24(e) of the Groundwater Lease Conveyance Agreement, which costs the Settlor/Beneficiary agrees shall be subject to reimbursement or indemnity under the terms of the Groundwater Lease Conveyance Agreement or Lease Administration Agreement, as the case may be. Trustee shall take no further actions with respect to the Trust Estate without the prior written approval of Vista Ridge and Settlor/Beneficiary. The Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Trust Agreement. The Trustee shall not have any duty or obligation to manage, control, prepare, file or maintain any report, license or registration, use, sell, dispose of or otherwise deal with the Trust Estate, or otherwise to take or refrain from taking any action under or in connection with this Trust Agreement or the Transaction Documents except as expressly required hereby; and no implied duties or obligations shall be read into this Trust Agreement against the Trustee.

**3.3 Trust Not a Taxable Trust.** The parties hereto agree that the Trust is not intended to be a taxable trust. In the event that the Trust is ever determined, treated as, or otherwise deemed to be a taxable trust, then the parties hereto agree to immediately take any and all action and execute any and all documentation which is necessary or desirable to provide that the Trust will not be treated as a taxable trust.

**3.4 Reliance on Instructions.** Settlor/Beneficiary and Vista Ridge agree (i) that the Trustee may rely on Instructions from the Settlor/Beneficiary and Vista Ridge under this Agreement and from the Party Administrator under the Lease Administration Agreement, and (ii) that the Trustee shall be under no duty to make an investigation with respect to any Instructions received from such parties under this Agreement or the Lease Administration Agreement, as the case may be. The Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken in good faith in accordance with the provisions of this Trust Agreement or the express written direction of the Settlor/Beneficiary, Vista Ridge or the Party Administrator.

**3.5 Compliance.** Subject to the limitations of Section 10.2(c), Settlor/Beneficiary agrees that the Trustee may execute, as trustee, any declarations or certificates pertaining to the Trust Estate that may be required under any tax law(s) or governmental regulation(s) now or hereafter without prior approval of the Settlor/Beneficiary, and may withhold from any



distribution, all income taxes required by law to be withheld, and pay such withheld amounts to the appropriate taxing authorities. Settlor/Beneficiary shall provide the Trustee with all information necessary for the Trustee to file all required returns, reports, or other documents to the applicable taxing authorities with respect to distributions or other actions by the Trustee. If the Settlor/Beneficiary directs the Trustee in writing to arrange for the preparation of tax forms or returns for the Trust, the Trustee shall retain, at the expense of the Settlor/Beneficiary, a firm of independent public accountants (the "Accountants") which shall be responsible for preparing all such forms or returns. In the event that applicable law requires the Trustee to sign such tax forms or returns on behalf of the Trust the sole obligation of the Trustee with respect to such tax forms or returns shall be to execute such tax forms or returns presented to the Trustee for execution by the Accountants or the Settlor/Beneficiary in the form presented to the Trustee, it being understood that the Trustee shall have no duty to review or confirm the accuracy of any information set forth on such tax forms or returns. For the avoidance of any doubt, the Trustee shall have no liability with respect to the negligence or misconduct of the Accountants or the Settlor/Beneficiary.

**3.6 Waiver Of Bond.** Trustee shall not be required to furnish any bond or other security in any jurisdiction, or if a bond be required, the Trustee shall not be required to furnish any sureties thereon.

**3.7 Resignation.** Trustee may resign by giving at least thirty (30) days prior written notice thereof to the Settlor/Beneficiary and Vista Ridge; provided, however, that notwithstanding the above, such resignation shall not be effective until a successor Trustee has been appointed by Settlor/Beneficiary and Vista Ridge. If no successor shall be appointed and approved within thirty (30) days after the date of expiration of the aforesaid notice of resignation, the Trustee, at the Trust's, Vista Ridge's and Settlor/Beneficiary's joint and several cost and expense, may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. Any such successor so appointed by such court shall immediately and without further act be superseded by any successor appointed by the Settlor/Beneficiary and Vista Ridge as aforesaid.

**3.8 Right To Remove Trustee.** Vista Ridge, with the approval of Settlor/Beneficiary (not to be unreasonably withheld, delayed or conditioned) shall have the right to remove a Trustee with or without cause. Any such removal shall be accomplished by delivering a written notice of such removal to all then-acting Trustees. For purposes of this Section 3.8, a request to remove a Trustee by any Secured Creditor or Senior Debt Creditor shall be deemed reasonable and shall be expressly permitted hereunder without further approval, provided, however, that such removed Trustee may only be replaced with a trustee that is not affiliated with removing Secured Creditor or removing Senior Debt Creditor, shall have a net worth at least comparable to Trustee and shall have principal offices in the continental United States .

**3.9 Right To Replace Trustee.** Vista Ridge, with the approval of Settlor/Beneficiary (not to be unreasonably withheld, delayed or conditioned), shall have the right to appoint a replacement Trustee which shall be accomplished by delivering a written notice of such appointment to Settlor/Beneficiary, accompanied by a statement of willingness to accept the trust signed by the selected successor Trustee. The parties agree that any such replacement shall be a

bank not affiliated with Vista Ridge and must have a net worth at least comparable to Trustee and shall have principal offices in the continental United States.

#### ARTICLE 4

#### APPOINTMENT, ACCEPTANCE AND ROLE OF PARTY ADMINISTRATOR

**4.1 Lease Administration Agreement.** Settlor/Beneficiary and Trustee hereby acknowledge and agree that the Trust Estate will be administered by Vista Ridge and Settlor/Beneficiary pursuant to the terms and conditions of the Lease Administration Agreement. The Trustee shall have no duty to supervise or monitor the performance by Vista Ridge and the Settlor/Beneficiary under the Lease Administration Agreement or any other Transaction Document.

#### ARTICLE 5

#### ADMINISTRATIVE MATTERS

**5.1 Records; Inspection and Audit.** The Trustee will keep accurate and detailed records and accounts of all receipts, investments, disbursements received or made by it as required by law with respect to the Trust Estate. All records, books and accounts relating to the Trust Estate maintained by the Trustee will be open to inspection by Settlor/Beneficiary and Vista Ridge during normal business hours and subject to reasonable prior written notice, provided that the Settlor/Beneficiary, Vista Ridge and/or their representatives, attorneys or auditors of the Trust shall not interfere with the normal business operations of the Trustee when the Trustee makes such books, records and accounts available.

**5.2 Accounting.** On written direction of Vista Ridge, the Trustee will provide to both Vista Ridge and Settlor/Beneficiary, annual, monthly and other interim accountings and reports regarding the receipts and disbursements received or made by the Trustee on behalf of the Trust. The Trustee will also furnish to the Settlor/Beneficiary and Vista Ridge upon their request such other information as the Trustee possesses and which is necessary for Settlor/Beneficiary and/or Vista Ridge to comply with reporting or other compliance requirements.

**5.3 Record Retention.** The Trustee will retain its records relating to the Trust Estate as long as necessary for the proper administration of the Trust Estate and at least for any period required by applicable law. Writing, photostating, photographing, micro-filming, magnetic media, mechanical or electrical recording, or other forms of data retention will be acceptable means of record retention.

**5.4 Action by the Trustee.** Subject to the limitations of Section 10.2(c), the Trustee may delegate ministerial acts (not otherwise delegated to Vista Ridge or Settlor/Beneficiary under the Lease Administration Agreement), specifically including, but not limited to, the signing and mailing of checks, the printing and mailing of statements, execution documents and

the signing of tax returns and governmental reports to be done by any agent of the Trustee. In addition, The Trustee may execute any of the powers or perform any duties under this Trust Agreement either directly or by or through agents, attorneys or custodians and shall not be liable for the negligence or willful misconduct of such agents, attorneys or custodians appointed in good faith; provided, however, that the Trustee shall remain liable for its grossly negligent action, its breach of its duties set out in this Agreement (as determined by a final, non-appealable order from a court of competent jurisdiction) resulting from gross negligence or willful misconduct of the Trustee on the part of the Trustee, grossly negligent failure to act, bad faith or willful misconduct as set forth in Section 9.1 of this Agreement.

## ARTICLE 6

### COMPENSATION AND EXPENSES

The Trustee will be entitled to receive compensation from Vista Ridge for its services provided hereunder in accordance with that certain proposal attached hereto as Exhibit "D". In addition, except as expressly set out in this Agreement, the Trustee will be entitled to reimbursement from Vista Ridge for all costs, expenses, and disbursements incurred by Trustee in the performance of such services, including, without limitation, reasonable attorneys' fees; provided, however, that Trustee must get prior written approval of Vista Ridge for all expenses to be incurred by it in excess of \$15,000.00, which approval shall not be unreasonably withheld or delayed. For the avoidance of doubt, notwithstanding the foregoing proviso, the Trustee shall be entitled to be indemnified in accordance with Article 8 hereof for any costs and expenses incurred by it in connection with any litigation or proceeding to which the Trustee may be subject. Except as expressly set out in this Agreement, such compensation and reimbursements will not be paid from the Trust Estate.

## ARTICLE 7

### AMENDMENT, ASSIGNMENT AND TERMINATION

**7.1 Amendment.** This Trust Agreement may not be amended without the joinder of Trustee, Settlor/Beneficiary and Vista Ridge.

**7.2 Assignment.** This Trust Agreement may not be assigned by the Trustee without the consent of Settlor/Beneficiary and Vista Ridge. Notwithstanding the foregoing, any entity into which the Trustee may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which the Trustee shall be a party, or any entity which succeeds to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Trust Agreement without the execution, delivery or filing of any paper or instrument or further act to be done on the part of the parties hereto, except as may be required by applicable law.

**7.3 Termination.** This Trust Agreement shall remain in force until the end of the Sublease Term (as defined in the Sublease), at which time the Leases and any interest in the

Sublease remaining will revert automatically to Settlor/Beneficiary in accordance with the written direction of the Settlor/Beneficiary.

## ARTICLE 8

### INDEMNIFICATION

Settlor/Beneficiary and Vista Ridge hereby agree to, jointly and severally, indemnify, defend and hold the Trustee and any parent, subsidiary, related corporation, or affiliates of the Trustee, including their respective directors, managers, officers, employees and agents ("*Indemnified Party*"), harmless from and against any and all loss, costs, damages, liability, expenses or claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, and costs of investigation, including appeals thereof ("*Loss*"), arising, directly or indirectly therefrom related to, or incurred in connection with this Trust Agreement, any Transaction Document or any matter contemplated by this Trust Agreement or any Transaction Document, including, without limitation, the acceptance or performance by the Trustee of the duties contained in this Trust Agreement; provided, however, that no Indemnified Party shall be indemnified or held harmless hereunder as to any Loss incurred as a direct result of such Indemnified Party's willful misconduct, bad faith or gross negligence. The terms of this Section shall survive the termination of this Trust Agreement, the termination of the Trust and the resignation or removal of the Trustee.

## ARTICLE 9

### PROVISIONS RELATED TO THE TRUSTEE

**9.1 Gross Negligence.** The Trustee shall not be answerable or accountable hereunder except for its grossly negligent action, grossly negligent failure to act, bad faith or willful misconduct; provided, however, that notwithstanding any provision of this Trust Agreement to the contrary, the Trustee shall not be personally liable for any action taken, suffered or omitted by it or any error of judgment, in each case made in good faith by Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts. To the extent that, at law (common or statutory) or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Settlor/Beneficiary or any other Person such duties are hereby eliminated, and it is hereby agreed that the Trustee shall not be liable to the Trust or the Settlor/Beneficiary for its good faith reliance on the provisions of this Trust Agreement. It is hereby agreed that to the fullest extent permitted by applicable law the standards set forth in this Trust Agreement hereby supersede any duties (including fiduciary duties) that might otherwise exist at law (common or statutory) or in equity.

**9.2 Trustee's Funds.** The Trustee shall not be required to expend or risk its own funds or otherwise incur liability in the performance of any of its duties under this Trust Agreement, or in the exercise of any of its rights or powers, if there shall be reasonable grounds

for believing that the repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

**9.3 No Further Actions.** Except as otherwise expressly authorized by the Trust Agreement, the Trustee shall take no action as to which it has been notified in writing by Vista Ridge or Settlor/Beneficiary that such action would impair the beneficial interests of Settlor/Beneficiary in the Trust, or Vista Ridge's or Settlor/Beneficiary's rights under the Lease Administration Agreement. In addition, the Trustee shall not be required to take any action hereunder if it shall have reasonably determined, or has been advised by counsel, that such action is contrary to the terms hereof, is otherwise contrary to law, or would subject it to personal liability.

**9.4 No Personal Liability.** The Trustee shall not be personally responsible for or in respect of the validity or sufficiency of the form, character, genuineness, sufficiency, value or validity of any of the Trust Estate, this Trust Agreement or any Transaction Document, and the Trustee shall in no event assume or incur any personal liability (except to the extent provided for in Section 9.1 above), duty, or obligation to the Settlor/Beneficiary or Vista Ridge. The Trustee shall not be personally liable for the default or misconduct of the Settlor/Beneficiary, Vista Ridge, or any other Person under this Trust Agreement, any Transaction Document, and any other document or otherwise. The Trustee shall have no obligation or personal liability to perform the obligations of the Trust under the Trust Documents that are required to be performed by the Party Administrator or any other Person under any other Transaction Document. The Trustee shall be deemed to have discharged its duties hereunder to the extent that any other Person has agreed under any Transaction Document to perform the duties and obligations of the Trustee or the Trust.

**9.5 Request for Clarification.** In the event that the Trustee is unsure as to the application of any provision of this Trust Agreement or any such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or in the event that this Trust Agreement permits a determination by the Trustee or is silent or is incomplete as to the course of action that the Trustee is required to take with respect to a particular set of facts, the Trustee may give notice (in such form as shall be appropriate under the circumstances) to the Settlor/Beneficiary and Vista Ridge requesting instruction and, to the extent that the Trustee acts or refrains from acting in good faith in accordance with any such instruction received, the Trustee shall not be personally liable, on account of such action or inaction, to any Person. If the Trustee shall not have received appropriate instruction within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action, not in violation of this Trust Agreement, as it shall deem to be in the best interests of the Settlor/Beneficiary, and shall have no personal liability to any Person for such action or inaction.

**9.6 Litigation Costs.** Except as otherwise set out herein, the Trustee shall be under no obligation to institute, conduct or defend any litigation hereunder or in relation hereto or thereto, but the Trustee may do so at the request, order or direction of the Settlor/Beneficiary or Vista Ridge. If only one such party requests, orders or directs the Trustee to take such actions they shall be responsible for the payment of all costs incurred by the Trustee in connection

therewith, but will be subject to reimbursement from the other party hereto based upon the parties' ultimately responsibility for the payment based upon the terms and conditions of the Lease Administration Agreement and the Groundwater Lease Conveyance Agreement and the terms of this Agreement. If neither Vista Ridge nor Settlor/Beneficiary requests or orders or directs the Trustee to institute, conduct or defend any such litigation, and the Trustee elects to institute, conduct or defend any such litigation as a part of its duties as a Trustee under the terms of this Agreement, the Trustee may do so and the reasonable costs associated therewith will be the responsibility of Vista Ridge, which costs the Settlor/Beneficiary agrees may be subject to reimbursement from Settlor/Beneficiary based upon the parties' ultimately responsible for the payment of such costs based upon the terms and conditions of the Lease Administration Agreement and the Groundwater Lease Conveyance Agreement and the terms of this Agreement. If Trustee institutes, conducts or defends any litigation hereunder or in relation hereto or thereto, at the request, order or direction of the Settlor/Beneficiary or Vista Ridge or at its election as a part of its duties as a Trustee under the terms of this Agreement, the selection of legal counsel will be a nationally recognized law firm with an office situated in Texas and otherwise subject to the reasonable approval of Settlor/Beneficiary or Vista Ridge which approval shall not be unreasonably withheld or delayed.

**9.7 Consequential Damages.** The Trustee shall not be responsible or liable for special, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit).

**9.8 Force Majeure.** The Trustee shall incur no liability if, by reason of any provision of any present or future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, war, interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or other circumstances beyond its reasonable control, the Trustee shall be prevented or forbidden from doing or performing any act or thing which the terms of this Trust Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Trust Agreement.

**9.9 Reliance on Certificates.** The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, officer's certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties; provided that it shall be obligated to examine each such item specifically required to be furnished to it pursuant to the this Trust Agreement to determine whether they conform to the requirements of this Trust Agreement. In particular, whenever this Trust Agreement provides that the Trustee shall receive or may rely upon the Instructions or directions of the Settlor/Beneficiary, Vista Ridge or any other Person, any written instruction or direction purporting to bear the signature of any authorized signatory of the Settlor/Beneficiary, Vista Ridge or other Person reasonably believed by the Trustee to be genuine may be deemed by the Trustee to have been signed or presented by the proper party.

**9.10 Discretionary Rights.** The Trustee shall be under no obligation to exercise any of the discretionary rights or powers vested in it by this Trust Agreement or by any other Transaction Document at the request, order or direction of the Settlor/Beneficiary or Vista Ridge

pursuant to this Trust Agreement or any other Transaction Document. The permissive rights, powers and authority of the Trustee set forth in this Trust Agreement shall not be construed as duties.

**9.11 Consult with Counsel and Skilled Professionals.** The Trustee may consult with counsel, accountants and other skilled professionals to be selected in good faith and employed by it, at the expense of Vista Ridge. To the extent such expense is the responsibility of Settlor/Beneficiary hereunder, the Groundwater Lease Conveyance Agreement, or under the terms of the Lease Administration Agreement, the Settlor/Beneficiary shall reimburse Vista Ridge for such expenses paid to the Trustee. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountants or other such Persons. The parties agree that any professionals so engaged shall be fully qualified and compensated on a fair and reasonable basis. Any such expense is subject to the approval of Vista Ridge, which approval shall not be unreasonably withheld or delayed.

**9.12 Communications Relating to Trust Assets.** Trustee agrees to provide to Vista Ridge and to Settlor/Beneficiary and, upon request of Vista Ridge, any Secured Creditor and any Senior Debt Creditor under a Senior Debt Financing Agreement, copies of all communications received by Trustee relating to the Trust Assets, from time to time, and will use reasonable business efforts to provide copies of such communication to each such person within five (5) business days after receipt of the communication.

## ARTICLE 10

### MISCELLANEOUS

**10.1 Duty to Defend.** Subject to its rights, protections and immunities under this Trust Agreement, the Trustee shall defend any legal action or engage in any legal proceedings with respect to the Trust Estate or with respect to any property held in the Trust Estate as directed in writing by the Settlor/Beneficiary or Vista Ridge and all legal fees, costs, and expenses so incurred shall be paid in the manner set out in Section 9.6, above. Without limiting the generality of the foregoing, the Trustee will not settle any action taken as set forth herein, without the prior written consent of the Settlor/Beneficiary and Vista Ridge.

**10.2 Applicable Law; Taxation.**

(a) **Choice of Law.** This Trust Agreement shall be construed and interpreted according to the laws of the State of Texas to the extent that such laws are not preempted by the laws of the United States of America. All contributions to, and payments from, the Trust Account (an "Account") shall be deemed to take place in the State of Texas.

(b) **Choice of Venue.** Each of the parties hereby consents, for itself and its property, to the non-exclusive jurisdiction of the Texas State courts located in Harris County, and the federal courts in the Eastern District of Texas, for purposes of aid in support of arbitration and the enforcement of any arbitral award made under the

provisions of this Section, and hereby irrevocably and unconditionally agrees that any claims in respect of any such action or proceeding may be heard and determined in said courts. Each party hereby irrevocably consents to the service of any and all process in any action or proceeding by delivery of copies of such process by commercial courier to it at its address as specified in this Agreement.

(c) **Place of Performance.** All contributions to, and payments from, the Account shall be deemed to take place in the State of Texas and no Account shall be opened in the name of the Trust or the Trust Estate except in the State of Texas. The Trust Estate shall be held and administered within the State of Texas and all performances of the parties shall be due and shall be performed solely in the State of Texas. It is the intention of Settlor/Beneficiary and Vista Ridge that the tax laws of the United States and the State of Texas shall solely and exclusively govern the taxation of all payments received or paid under this Agreement, the Groundwater Lease Conveyance Agreement or the Lease Administration Agreement.

(d) **Tax Reporting Matters.** It is the intention of Settlor/Beneficiary and Vista Ridge that the Trust be a custodial trust that is not taxable for federal income tax purposes under federal law. In the event that the Trustee is notified by the Accountants engaged pursuant to Section 3.5 of this Agreement that any federal or state tax returns are required to be filed for the Trust, the Trustee shall provide to Settlor/Beneficiary and to Vista Ridge a draft of any such tax return prepared by such Accountants for review and approval not less than thirty (30) days prior to the filing deadline (as it may be extended) for such return.

**10.3 Counterparts.** This Trust Agreement shall be executed in any number of counterparts, each one of which shall be deemed to be the original although the others shall not be produced.

**10.4 Notices.** The address of the Settlor/Beneficiary, Trustee and Vista Ridge shall be as set forth below, but may be changed by providing written notice to the Trustee sent by certified mail, return receipt requested.

**TO THE TRUST**

Wilmington Trust, National Association  
19590 North Dallas Parkway  
Floor 05  
Dallas, TX 75248

With a copy to:

Wilmington Trust Company  
1100 North Market Street  
Wilmington, DE 19890

**TO THE SETTLOR/BENEFICIARY**



Blue Water Vista Ridge  
Attn.. Ross M. Cummings  
9606 N. Mopac  
Suite 125  
Austin, TX 78759  
United States of America

With Copy to:

Paul M. Terrill  
The Terrill Firm P.C.  
810 W. 10<sup>th</sup> St.  
Austin, Texas 78701  
(512) 474-9100

**TO VISTA RIDGE**

Abengoa Vista Ridge  
Pedro Almagro Gavilan  
2600 Via Fortuna, Suite 220  
Austin TX 78746

With Copy To:

Frank Z. Rутtenberg  
Haynes and Boone  
112 E Pecan suite 1200  
San Antonio, Texas 78205

Legal Counsel  
Abengoa Water  
2600 Via Fortuna, Suite 220  
Austin TX 78746

**10.5 Arbitration.** The parties acknowledge that this Trust Agreement evidences a transaction involving interstate commerce. The parties agree that any misunderstandings, controversies or disputes arising from this Trust Agreement shall be decided by binding arbitration which shall be conducted, upon request by such party, in accordance with the terms and conditions of Section 20 of the Groundwater Lease Conveyance Agreement.

**10.6 USA Patriot Act Notification.** The following notification is provided to Settlor/Beneficiary pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 53 18:

To help the government fight the funding of terrorism and money-laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Settlor/Beneficiary: When Settlor/Beneficiary opens an account, if Settlor/Beneficiary is an individual, The Trustee will ask for Settlor/Beneficiary's name, taxpayer identification number, residential address, date of birth, and other information that will allow The Trustee to identify Settlor/Beneficiary, and, if Settlor/Beneficiary is not an individual, The Trustee will ask for Settlor/Beneficiary's name, taxpayer identification number, business address, and other information that will allow The Trustee to identify Settlor/Beneficiary. The Trustee may also ask, if Settlor/Beneficiary is an individual, to see Settlor/Beneficiary's driver's license or other identifying documents, and, if Settlor/Beneficiary is not an individual, to see Settlor/Beneficiary's legal organizational documents or other identifying documents.

**10.7 Further Assurances.** The parties hereto will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Trust Agreement. Trustee and Settlor/Beneficiary do hereby agree to amend this Trust Agreement as may be requested by Vista Ridge, from time to time, to allow Vista Ridge to comply with the requirements of SAWS under the terms of the WPA, or any Secured Creditor or Senior Debt Creditor, as described in the WPA.

**10.8 Legal Holidays and Business Days.** If any date set forth in this Trust Agreement for the performance of any obligation by a party hereunder, or if the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be deemed extended to the next business day following such Saturday, Sunday, or legal holiday. As used in this Agreement, the term "legal holiday" means any federal holiday for which financial institutions or post offices in Texas, are generally closed for observance thereof, and the term "Business Day or Business Days" shall mean a day or days that is not a Saturday, Sunday or legal holiday.

**10.9 Headings.** The headings in this Trust Agreement are for reference only and shall not affect the interpretation of this Trust Agreement.

**10.10 Severability.** If any term or provision of this Trust Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Trust Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Trust Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**10.11 Successors and Assigns.** This Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**10.12 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**10.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**[signature pages to follow]**

**SIGNATURES:**

**ABENGOA VISTA RIDGE LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BLUE WATER VISTA RIDGE LLC**  
**a Texas limited liability company**

By: \_\_\_\_\_

Ross M. Cummings, President

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name:

Title:

Exhibit "G"

Water Quality Standards

## Exhibit G

### Water Quality Standards

Constituent	Units	Water Quality Standard
Chloride	mg/L	≤300
Dissolved Iron	mg/L	≤0.3
Dissolved Manganese	mg/L	≤0.05
Fluoride	mg/L	≤4.0
Nitrate-N	mg/L	≤10.0
pH	units	>7.0
Sulfate	mg/L	≤300
Total Dissolved Solids	mg/L	≤1,000

For the purpose of making a determination as to whether the Raw Groundwater fails to meet the Water Quality standards set out above, Vista Ridge may, from time to time, cause a third party testing service to take a representative "grab" sample of Raw Groundwater before any physical or chemical treatment process, provided that such sample is fully blended and representative of Raw Groundwater from the entire well field, for analysis of the constituents identified above. Vista Ridge shall promptly report the results of any such test to Blue Water VR in writing. If any of the constituent levels exceed the specified Water Quality Standards identified above, Vista Ridge shall cause the third party testing service to take another representative grab sample for analysis of the constituents identified above. Vista Ridge shall provide notice to Blue Water VR of the date and time of such additional test and allow Blue Water VR the right to attend and witness such additional test at such time. If any of the constituent levels exceed the specified Water Quality Standards identified above in the second sampling, Vista Ridge shall appoint a technical representative to make a determination why the specified exceedance occurred, whether it is a result of the raw underground water, and whether blending or other groundwater production methods can be used to achieve the Water Quality Standards set forth above. The representatives shall develop a written sampling plan and undertake appropriate studies to make such a determination and shall provide the results in a written report to Vista Ridge and Blue Water VR. All water quality analytical methods used to determine compliance with the Water Quality Standards set forth above shall be performed according to methods approved by TCEQ. In the event Blue Water VR is not satisfied with the determinations of Vista Ridge or its representative, Blue Water VR shall be entitled to retain a second technical representative, at its sole cost and expense, to make a determination why the specified exceedance occurred, whether it is a result of the raw underground water, who shall also develop a written sampling plan and undertake appropriate studies to make such a determination and shall provide the results in a written report to Vista Ridge and Blue Water VR, which report shall be considered by Vista Ridge, but shall not be binding upon Vista Ridge as a part of its determination as to how to address the need to address the fact that the constituent levels exceed the specified Water Quality Standards identified above.

Exhibit "H"

Lease Administration Agreement

## LEASE ADMINISTRATION AGREEMENT

This Lease Administration Agreement (the "**Agreement**") is entered into effective as of the date set out below as the "Effective Date", between Abengoa Vista Ridge LLC ("**Vista Ridge**"), Blue Water Vista Ridge, LLC ("**Blue Water VR**"), and the Burluson/Milam Master Lease Trust (the "**Trust**") (each also referred to individually herein as "**Party**", or in the plural, the "**Parties**"). Capitalized terms used herein shall have the same meaning as provided in the "WPA" (as hereafter defined), unless the context clearly indicates otherwise.

### RECITALS

**WHEREAS**, pursuant to the terms of that one certain "Groundwater Lease Conveyance Agreement" dated \_\_\_\_\_, 2014, entered into between Blue Water VR, Vista Ridge, Blue Water Regional Supply Project LP and the Trust (the "**GLCA**") the Trust has acquired or will acquire from Blue Water VR, and holds or will hold in trust on behalf of Blue Water VR, as the sole beneficiary of the Trust, the interest of the lessee under the terms of each of those Groundwater Leases (the "**Leases**", and each singularly referred to as a "**Lease**") described on Exhibit "A", as that Exhibit may be modified from time to time under the terms of this Agreement.

**WHEREAS**, Blue Water VR and Vista Ridge desire that the Trust hold the Leases pursuant to the trust agreement executed by and among the Parties hereto and the Trustee named therein (the "**Trust Agreement**") which has been created for the benefit of Blue Water VR, and desire that the Leases within the Trust shall be administered in part by Vista Ridge and in part by Blue Water VR.

**WHEREAS**, the pursuant to the Sublease, Blue Water VR has or will sublease the rights under the Leases to Vista Ridge for the purpose of the development of the "Project" by Vista Ridge, as contemplated under the terms and conditions of that certain "Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement" (the "**WPA**") dated \_\_\_\_\_ entered into between Vista Ridge and the City of San Antonio acting by and through the San Antonio Water System Board of Trustees, an agency of the City of San Antonio established pursuant to the provisions of City of San Antonio Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq., and Chapter 1502, as amended, Texas Government Code ("**SAWS**").

**WHEREAS**, the Leases have been or will be contributed to the Trust by Blue Water VR subject to the Sublease and Partial Assignment of the Leases to Vista Ridge (the "**Sublease**").

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1. Delegation of Authority.** Under this Agreement, the Trust delegates to either Blue Water VR or Vista Ridge the power and the duty to administer the Leases in the Trust, all as provided herein. The party to whom such power and duty is delegated shall be referred to as the "Party Administrator" and the other party shall be referred to as the "Other Party."
- 2. Blue Water VR Lease Administration Powers and Duties.** Consistent with Section 8 of the GLCA, but subject to the other limitations and provisions as set out herein, the Trust does hereby delegate to Blue Water VR as Party Administrator the rights to carry out the day to day administration and maintenance of the Leases and authority to act on behalf of the Trust for the sole purpose of carrying out all of the obligations of the Lessees under the terms of the Leases on behalf of the Trust, and in its name, as an administrative agent of the Trust, for the purpose of assuring the Leases all remain in full



force and effect. The lease administration rights and responsibilities will include but are not limited to the rights and responsibilities to:

(i) upon a reasonable request by Vista Ridge, to execute all documents necessary to implement a collateral pledge of the Leases to or for the benefit of the Senior Debt Creditors under the Senior Debt Financing Agreements, on such terms as may be determined by Vista Ridge consistent with the terms of the GLCA;

(ii) subject to the availability of funds to be provided to the Trust by Vista Ridge, as set out below, to hold the Leases and pay costs owed to the lessors thereunder consistent with the terms of the GLCA;

(iii) to exercise all rights and to enjoy all privileges, powers, and appurtenances incident to the ownership of the Leases, including but not limited to amendments or modifications, provided such amendments or modifications are consistent with the terms of the GLCA and have been approved by the Other Party, which approval will not be unreasonably withheld, conditioned or delayed so long as such changes are consistent with the terms of the GLCA;

(iv) use reasonable commercial efforts to use those key persons set out on Schedule 1 of the GLCA in the roles indicated thereon;

(v) maintain the Leases such that the Land is one contiguous area of land for the purpose of the Operating Permit to allow the Required Groundwater to be produced from the Land and transported to SAWS in accordance with the terms of the WPA;

(vi) cause the Leases to be amended in the manner set out in the GLCA;

(vii) maintain the Leases in good standing and in a fully enforceable condition;

(viii) to engage in any other activity and to exercise any powers which are incidental to, or connected with, the ownership of the Leases and consistent with the terms of the GLCA.

### 3. **Vista Ridge Lease Administration Powers and Duties.**

(a) General Delegation of Authority to Vista Ridge as Party Administrator. After the Sublease is executed, unless otherwise expressly agreed between Vista Ridge and Blue Water VR, the Lease administration duties of Blue Water RV will not include the responsibility to carry out the administrative task of making the payment of royalties or other rent due under the terms of the Leases, all of which duties will be delegated to Vista Ridge as the Party Administrator, consistent with the terms of Section 8 of the GLCA.

(b) Right to Adjust Party Administrator's Administration. From time to time during the term of this Agreement, the Other Party, if a Lease Administration Default Event should occur, may elect to instruct the Trust to withdraw all or a part of the authority delegated to the Party Administrator under the terms of this Agreement, by delivery of notice of the revocation of such delegated powers to the

Trust and the Party Administrator. Upon the withdrawal of any authority to administer the Leases from the Party Administrator, the Other Party may retain such powers for itself or delegate all or any portion of such powers to a third person at the sole cost and expense of the Other Party. At such time, for all events thereafter under the terms of this Agreement, the Other Party will become the Party Administrator and the Party Administrator will become the Other Party. If (i) Blue Water VR is removed from its position of Party Administrator due to a Lease Administrative Default, and (ii) it later cures the Lease Administrative Default at its sole cost and expense, and (iii) Vista Ridge has recovered any loss it has incurred due to such Lease Administration Default, upon written request from Blue Water VR, it may be restored as the Party Administrator thirty (30) days after such request for all events relating to this Agreement following the date of such restoration, and Vista Ridge, shall be restored as the Other Party thirty (30) days after such request for all events relating to this Agreement following the date of such restoration.

#### 4. **General.**

(a) Lease Administration Default Event. A Lease Administration Default Event shall be deemed to have occurred if, and only if, one or more of the Leases is in default for a reason other than a failure to pay royalty payments or delay rentals due thereunder after the Party Administrator has provided notice to Vista Ridge to make such payment on a timely basis as set out in this Agreement and such default (i) causes Vista Ridge to be unable to obtain Raw Groundwater (as defined in the WPA) from the Leases in order to be able to deliver to SAWS the amount of Product Water required under the WPA during that Contract Year and (ii) causes a reduction in the revenue to Vista Ridge under the WPA during that Contract Year that is in excess of amounts otherwise owed (but not paid) to Blue Water VR under the terms of the GLCA during such Contract Year if such default had not occurred, it being the intent that if Vista Ridge receives the revenues in the Contract Year to which it is entitled under the WPA, no Event of Default shall have occurred.

(b) Retention of Assistance. The Party Administrator shall have the right to retain the services of a third person to assist in carrying out these functions, at the sole cost and expense of the Party Administrator.

(c) Curative Rights. Vista Ridge and Blue Water VR shall have, and retain, all curative rights to which they are entitled under the GLCA.

#### 5. **Payments of Sums Due to Lessors of Leases.**

(a) Rental/Royalty Payments Reports. For the purpose of this Agreement, from and after its Effective Date, the Party Administrator will provide to Other Party notice of any and all sums due under the terms of the Leases at least fifty (50) days in advance of the date such sums are due or such lesser time that the obligation to pay such payment first accrues, which notice will be certified to the Other Party as true, correct and accurate in all respect, the amount of the sums due under the terms of each such Lease, the place for payment of such sums, and a calculation of how the payment amount was derived (the "*Rental Payment Report*").

(b) Rental/Royalty Payments. Vista Ridge will pay, or cause to be paid, to each of the lessors under the terms of the Leases, directly, the sums due as set out by the Party Administrator in its Rental Payment Report, on or before that date which is forty five (45) days after the delivery of the Rental Payment Report by the Party Administrator to the Other Party (but in any event on a timely basis under the terms of the Leases, if possible), which payments will be made to those persons and at the address for payment as set out in the Rental Payment Report. Vista Ridge will provide Blue Water VR with a copy of a report setting out the payments made for each calendar month during the term of this

Agreement, which report will be delivered by Vista Ridge to Blue Water VR within twenty (20) days following the end of each calendar month.

(c) **Other Party Audit Right.** All such Rental Payment Reports shall be accompanied by such supporting information as the Other Party may reasonably require. The Party Administrator shall keep at its offices in Texas a complete and accurate set of books and records of rental calculations for each of the Leases together with all supporting records, which shall be preserved for at least 60 months after the end of the Contract Year to which they relate. The Other Party and its agents may, at the expense of the Other-Party, and at any reasonable time, inspect, copy and/or audit any or all of the Party Administrator's books and accounts, documents, records, papers and files, which shall in any manner relate to the Leases and the groundwater withdrawn under the terms of the Leases, and at the request of the other Party, the Party-Administrator shall make all such data available for such examination at such reasonable times as the Other-Party shall specify. If it is determined by any such audit that any statement previously delivered to the Other Party by the Party Administrator was not accurate, an adjustment shall be made and the Party Administrator will be required to pay any additional cost or -penalty due to the lessor under such Lease (but Vista Ridge shall pay the original amount owed).

6. **Term and Termination.** This Agreement will continue in full force until the dissolution of the Trust and the distribution of the Leases in the manner set out in the Trust Agreement.

7. **Vista Ridge Indemnity.**

(a) Vista Ridge will use professional diligence to carry out its duties and responsibilities under the terms of this Agreement, but will not, in the absence of negligence or willful misconduct be liable to Blue Water VR or any third person for any act or omission in the course of, or in connection with such duties or responsibilities or for any Loss (as defined below), that Blue Water VR or such third person may sustain or suffer as the result of or in connection with the discharge by Vista Ridge of its duties hereunder or its failure to do so.

(b) Vista Ridge will not be liable for any delay or failure in the performance of its obligations hereunder as a result of events beyond its reasonable control ("**Force Majeure Events**"). Force Majeure Events include, without limitation, acts of God, strikes, lockouts, riots, insurrections, civil disturbances, terrorist actions, sabotage, embargoes, blockades, acts of war, acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing. If a Force Majeure Event occurs, Vista Ridge will give prompt notice thereof to Blue Water VR, and will use its commercially reasonable efforts to minimize any interruption in carrying out such duties.

(c) Vista Ridge shall indemnify and hold harmless Blue Water VR and its affiliates, and their members, partners, shareholders, managers, directors, officers, employees, representatives, delegates and agents (collectively, the "**Blue Water Indemnitees**") from and against any and all claims, demands, actions, suits, judgments, liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character (collectively, "**Losses**") arising out of or in any way relating to Vista Ridge's performance of its obligations hereunder,

provided that this indemnification will not apply to the extent any such Losses result from Blue Water VR's negligence, gross negligence or willful misconduct.

(d) **In no event will Vista Ridge be liable for special, punitive, indirect or consequential damages regardless of whether such damages were foreseeable or whether either party was advised of the possibility of such damages.**

#### 8. **Blue Water VR Indemnity.**

(a) Blue Water VR will use professional diligence to carry out its duties and responsibilities under the terms of this Agreement, but will not, in the absence of negligence or willful misconduct be liable to Vista Ridge or any third person for any act or omission in the course of, or in connection with such duties or responsibilities or for any Loss (as defined below), that Vista Ridge or such third person may sustain or suffer as the result of or in connection with the discharge by Blue Water VR of its duties hereunder.

(b) Blue Water VR will not be liable for any delay or failure in the performance of its obligations hereunder as a result of Force Majeure Events. If a Force Majeure Event occurs, Blue Water VR will give prompt notice thereof to Vista Ridge, and will use its commercially reasonable efforts to minimize any interruption in carrying out such duties.

(c) Blue Water VR shall indemnify and hold harmless Vista Ridge and its affiliates, and their members, partners, shareholders, managers, directors, officers, employees, representatives, delegates and agents (collectively, the "*Vista Ridge Indemnitees*") from and against any and all claims, demands, actions, suits, judgments, liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character (collectively, "**Losses**") arising out of or in any way relating to Blue Water VR's performance of its obligations hereunder, provided that this indemnification will not apply to the extent any such Losses result from Vista Ridge's negligence, gross negligence or willful misconduct.

(d) **In no event will Blue Water VR, be liable for special, punitive, indirect or consequential damages regardless of whether such damages were foreseeable or whether either Party was advised of the possibility of such damages.**

#### 9. **Defaults**

(a) Except as otherwise expressly set out in this Agreement, if (i) Vista Ridge fails to comply with any of the material provisions of this Agreement and such default continues for a period of thirty (30) days after receiving Notice of such default from Blue Water VR, then, subject to the limitations set out in this Agreement, Blue Water VR may exercise all rights which may be available to it at law or in equity, and (ii) if Blue Water VR fails to comply with any of the material provisions of this Agreement and such default continues for a period of thirty (30) days after receiving Notice of such default from Vista Ridge, then, subject to the limitations set out in this Agreement, Vista Ridge may exercise all rights which may be available to it at law or in equity. The above notwithstanding, in the case of a default that cannot reasonably be cured within such thirty (30) day period, no such default shall be deemed to exist if the Party

responsible to address such default is using due diligence to cure such default, continues to do so until the matter is cured and the matter is cured within ninety (90) days from the receipt of the Notice by such allegedly defaulting Party. Notwithstanding the above, no such notice and right to cure period shall apply in the case of a default that is incapable of being cured, including but not limited to a default of a representation or warranty made hereunder.

(b) Except as otherwise expressly set out in, and subject to the other provisions of, this Agreement, the parties do not intend to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be exercised by any Party hereto, which remedies shall be cumulative. Recognizing, however, that in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default (after any applicable cure period) on its part, the other Party shall have available to it the equitable remedy of specific performance, in addition to any other legal or equitable remedies which also may be available to such Party.

(c) All other provisions of this Agreement notwithstanding, in the event of a default by Vista Ridge or Blue Water VR in no event will Vista Ridge or Blue Water VR have the right to seek or have the remedy of termination of this Agreement for such default, and both Vista Ridge and Blue Water VR do hereby waive any right that they may have to seek such remedy for such default.

(d) In the event of any claim, dispute or controversy arising out of or relating to this Agreement or the breach hereof (a "**Dispute**") which the parties have been unable to settle or agree upon, any Party may request by written notice, and if so requested each Party shall, nominate a senior officer of its management to meet within five (5) Business Days of the notice at the offices of Vista Ridge or such other location as the senior officers shall agree.

(e) Should a resolution of such Dispute by such senior officers not be obtained within 15 Business Days after such Party's notice for whatever reason (including as a result of any Party to nominate its senior officer or any of a senior officer to schedule or attend), then, upon the written request of any Party, the Dispute shall be finally settled by submitting a request for arbitration pursuant to the Rules of Arbitration of the American Arbitration Association (the "**AAA**") or such equivalent arbitration rules of the AAA then in effect (the "**AAA Rules**"), provided that nothing in this Water Transmission and Purchase Agreement shall prevent or delay either Party from applying for interim or conservatory measures pursuant to the AAA Rules. Notwithstanding anything to the contrary contained in this Section, if, due to a material breach or default or threatened material breach or default, a Party is suffering irreparable harm for which monetary damages are inadequate, such Party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief. The arbitration shall be conducted in the English language and held in Travis County, Texas before a panel of three arbitrators, as follows:

(f) Each Party shall appoint one arbitrator. The three arbitrators so appointed shall appoint one of the three arbitrators to serve as the chairman of the arbitral panel.

(g) If a Party fails to appoint its arbitrator within a period of 10 days after the submittal of the request for arbitration, or if the two) arbitrators appointed cannot agree on the third arbitrator within a period of 10 days after appointment of the second arbitrator, then such arbitrator shall be appointed by the AAA in accordance with the AAA Rules.

(h) No arbitrator shall be a past or present employee or agent of, or consultant or counsel to, a Party or any Affiliate of a Party, unless such restriction has been waived in writing by the other Party to the proceeding.

(i) The substantive law governing the Dispute shall be the laws of the State of Texas.

(j) The arbitrators shall decide the dispute by majority of the arbitration panel and shall state in writing the reasons for its decision.

(k) If Vista Ridge determines that the Dispute between the parties involves issues substantially identical under the Project Contracts, Blue Water VR will not object to the joinder of the counterparties under such Project Contracts for consolidated resolution of such issues.

(l) The parties shall bear their own expenses and shall share equally the costs of arbitration during the course of arbitration; *provided, however*, that any arbitration award may provide that the losing party must reimburse the winning party for all or a portion of its expenses incurred in connection with such arbitration (including the costs of arbitration and reasonable attorneys' fees), as the arbitration panel determines appropriate.

(m) The award of the arbitration panel may be enforced in any court of competent jurisdiction

(n) The arbitration panel shall have the sole power and authority to determine the arbitrability of any Dispute or the subject matter hereof. Subject to any other relevant limitations set forth elsewhere herein, the arbitration panel will have the power to award any type of relief that is just and appropriate in the panel's discretion, including compensatory damages, injunctive orders, orders for specific performance and declarations of rights. IF EITHER PARTY FAILS TO TIMELY PAY ITS SHARE OF THE COSTS OF THE ARBITRATION FOR ANY REASON, THE OTHER PARTY SHALL BE ENTITLED TO PAY ALL OF SUCH COSTS ON BEHALF OF SUCH PARTY, AND IN SUCH CASE THE ARBITRAL AWARD MAY PROVIDE FOR REIMBURSEMENT TO SUCH OTHER PARTY OF SUCH COSTS WITH INTEREST AT THE OVERDUE RATE

(o) Each of the parties hereby consents, for itself and its property, to the non-exclusive jurisdiction of the Texas State courts located in Harris County, and the federal courts in the Eastern District of Texas, for purposes of aid in support of arbitration and the enforcement of any arbitral award made under the provisions of this Section, and hereby irrevocably and unconditionally agrees that any claims in respect of any such action or proceeding may be heard and determined in said courts. Each Party hereby irrevocably consents to the service of any and all process in any action or proceeding by delivery of copies of such process by commercial courier to it at its address as specified in this Agreement.

(p) THE PARTIES HEREBY WAIVE ALL RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS CONTRACT. FOR THE AVOIDANCE OF DOUBT, NEITHER PARTY SHALL HAVE THE RIGHT TO FILE ANY LEGAL ACTION REQUESTING THE RESOLUTION OF A DISPUTE BY ANY MEANS OTHER THAN BY ARBITRATION UNLESS EXPRESSLY AGREED TO BY THE OTHER PARTY IN ITS SOLE DISCRETION AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION.

(q) Pending a final resolution of any Dispute, the parties shall continue to fulfill their respective obligations hereunder.

10. **Ownership and Delivery of Documents.**

All books and records received or prepared by the Party Administrator in connection with its duties under the terms of this Agreement (“**Books and Records**”) will be the exclusive property of the Trust and available to the Other Party. Each Party Administrator will hold such Books and Records on behalf of the Trust and shall make such Books and Records available for review by the Trust and the Other Party hereto. All such Books and Records will be retained by each Party Administrator for at least 6 years from the year to which they relate.

11. **Representations, Warranties and Covenants.** Each Party represents, warrants and covenants to the other Party that (i) it is duly formed, validly existing and, to the extent applicable, in good standing under the laws of the jurisdiction of its formation and has the power necessary to carry on its business as now being conducted; (ii) its execution, delivery and performance of this Agreement has been duly authorized and neither its execution and delivery of this Agreement nor its performance hereunder violates or will violate any law or regulation applicable to it; (iii) it has obtained (or will obtain prior to the start of work under this Agreement) all licenses, consents, registrations and other authorizations necessary for the conduct of its business; and (iv) it has full authority to enter into this Agreement and to consummate the transactions contemplated hereby and that this Agreement is not in conflict with its certificate of formation, limited liability company agreement or other constituent documents, or with any other agreement to which it is a party or by which it may be bound.

12. **Independent Contractor.** Vista Ridge and Blue Water VR are each acting hereunder in their capacities as a Party Administrator as agents for the Trust in the capacity of an independent contractor; and each of the parties hereto do hereby confirm that neither Vista Ridge, nor Blue Water VR has a fiduciary duty to the other or to the Trust by virtue of its involvement in the Trust or the terms of this Agreement, and any such obligations and liabilities to the Trust or each other are hereby waived to the fullest extent allowed by law except to the extent expressly set out above. No Party or any partner, member, shareholder, manager, director, officer, agent, representative or employee of any Party will be deemed for any purpose an employee, joint venturer or partner of the other, nor will either Party be responsible to the other or to any governing or taxing body for any income or payroll-related taxes related to the employees of the other.

13. **Notices, Consents And Approvals.** All notices, consents, approvals or written communications given pursuant to the terms of this Agreement shall be in writing and will be

considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each Party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any Party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(a) if delivered in person during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(b) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(c) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(d) if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

Abengoa Vista Ridge, LLC  
Attn.: Pedro Almagro Gavilan

\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:

Haynes and Boone  
Attn: Frank Z. Ruttenberg  
112 E Pecan Suite 1200  
San Antonio, Texas 78205

Blue Water Vista Ridge LLC  
attn: Ross M. Cummings  
Stonebridge Plaza One  
9606 N. MOPAC Suite 125



Austin, Texas 78758

with copy to:

Paul Terrill  
The Terrill Firm P.C.  
810 W. 10<sup>th</sup> St  
Austin, Texas 78701  
(512) 474-9100 (phone)

Master Lease Trust

\_\_\_\_\_  
\_\_\_\_\_  
Attention: Trustee

Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_

with a copy to:

[Name of Company]

\_\_\_\_\_  
\_\_\_\_\_

14. **Further Assurances.** The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement. Blue Water VR does hereby agree to amend this Agreement as may be requested by Vista Ridge, from time to time, to allow Vista Ridge to comply with the requirements of SAWS under the terms of the WPA, or any Secured Creditor or Senior Debt Creditor, as described in the WPA. The obligations of Blue Water VR under this Section 14 are subject to, and limited by, the provisions of Section 23 of the GLCA.

15. **Legal Holidays and Business Days.** If any date set forth in this Agreement for the performance of any obligation by Seller or Purchaser or for the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used in this Agreement, the term "legal holiday" means any federal holiday for which financial institutions or post offices in South Carolina, are generally closed for observance thereof and the term "Business Day or Business Days" shall mean a day or days that is not a Saturday, Sunday or legal holiday.

16. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

17. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. No oral statements or prior written material not specifically incorporated in this Agreement shall be of any force and effect. Each of Vista Ridge and Blue Water VR represent and acknowledge that in executing this Agreement, it does not rely, has not relied, and specifically disavows any reliance, upon any communications, promises, statements, inducements, or representation(s), oral or written, by the other parties or their agents except as expressly contained in this Agreement. Each of Vista Ridge or Blue Water VR agrees that it has used its own judgment in executing this Agreement.

19. **Assignability.** This Agreement may not be assigned by (i) Vista Ridge, without the prior consent of Blue Water VR, which approval will not be unreasonably withheld, conditioned or delayed; provided such assignment shall not relieve Vista Ridge of any of its obligations hereunder, or (ii) Blue Water VR, without the prior consent of Vista Ridge, which approval will not be unreasonably withheld, conditioned or delayed; provided such assignment shall not relieve Blue Water VR of any of its obligations hereunder.

20. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver and shall not preclude injunctive relief. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof or preclude injunctive relief or any other remedy or right; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

22. **Limited Recourse of Trustee.** Notwithstanding any provision of this Agreement, or any other agreement, document or instrument to the contrary, it is expressly understood and agreed by the parties hereto that (i) this Agreement executed by the Trustee on

behalf of the Trust is executed and delivered by Wilmington Trust, National Association not individually or personally but solely as Trustee of the Trust, in the exercise of the powers and authority conferred and vested in it under the trust agreement of the Trust, (ii) each of the representations, warranties, undertakings, covenants, obligations and other agreements therein made on the part of the Trust is made and intended not as a personal representation, warranty, undertaking, covenant, obligation or other agreement by Wilmington Trust, National Association but is made and intended for the purpose of binding only the Trust, (iii) in no event shall Wilmington Trust, National Association have any obligation in its individual capacity to perform any of the obligations and covenants of the Trust under this Agreement or any related documents, and (iv) under no circumstances will Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any related documents, unless attributable to the breach of an agreement made herein by the Trustee or due to the acts of the gross negligence or willful misconduct of the Trustee.

23. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**ABENGOA VISTA RIDGE LLC**

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

**BLUE WATER VISTA RIDGE LLC**  
**a Texas limited liability company**

By: \_\_\_\_\_  
Ross M. Cummings, President

**Burleson/Milam Master Lease Trust**

By: Wilmington Trust, National Association, not in its individual capacity but solely in its capacity as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

**Leases**



Exhibit "I"  
Existing Permits

**Amended and Restated Drilling & Operating Permit  
Issued By Direction of the Board of Directors of the  
Post Oak Savannah Groundwater Conservation District**

This Amended and Restated Drilling and Operating Permit ("Permit") is granted to Blue Water Systems, L.P., ("Permittee"), successor to Layne Water Development of Texas, LLC ("Layne"), to authorize Permittee to drill and operate forty-one (41) water wells within the Post Oak Savannah Groundwater Conservation District ("District"), for the purpose of producing water for Municipal Use. The name, location, maximum annual production and maximum gallons of production permitted per minute for each of the forty-one wells is listed in Exhibit "A". The individual wells listed in Exhibit "A" are referred to herein as the "Well" or "Wells" and the forty-one Wells are collectively referred to as the "Well System". This Permit is conditioned upon and subject to Permittee complying with the Rules of the District ("Rules"), the orders of the Board, the Management Plan of the District, as amended, and the laws, rules and regulations of the State of Texas, as amended, applicable to drilling, operating and maintaining water wells within the District. This Permit confers only the right to drill and operate the Wells and Well System in compliance with and subject to the Rules and requirements of this Permit. The terms, conditions and authorizations of this Permit may be modified or amended under the Rules.

The Wells are registered with the District and the State of Texas. The Wells are approved for production in the aggregate as a Well System. The Permittee is authorized to drill and operate the Wells at the locations and maximum GPM production set forth in Exhibit "A", and the maximum annual production of the Well System shall not exceed 70,993 acre feet per year.

The Rules are incorporated herein in their entirety by reference, as if set forth herein verbatim, including but not limited to the Rules providing for reducing permitted production,. The Permittee shall comply with the Rules and each requirement thereof in operating, maintaining, repairing and altering each of the Wells and the Well System. All application(s) pursuant to which the related original permits and prior amended permits, and this Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Permit. This Permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s), agreements and acknowledgments on file with the District. A finding that false information was supplied to the District in the permitting process for the Wells is grounds for revocation of this Permit.

The issuance of this Permit does not grant Permittee the right to use any public or private property, interfere with any personal or property rights, or violate any federal, state, or local law, rule or regulation. The District makes no representations and has no responsibility with respect to the availability or quality of the water authorized to be produced under this permit.

The term of the Permit, both the Drilling and the Operating Permit, is for a period of forty years from the original issuance date of September 11, 2004, subject to review every fifth year and modification during any such review to conform this Permit with intervening changes in the Management Plan or state law. Unless waived by the Board of the District for a specific review period, applications for review shall be submitted to the District 90 days prior to the fifth anniversary of the issuance date and each subsequent scheduled review date following the fifth anniversary date, until the date of expiration of this Permit. The Board may waive any review if no material change has been made to the Management Plan, or if the changes made do not require modification of this Permit.

The Permit is issued and effective as of January 13, 2009.

**Post Oak Savannah Groundwater Conservation District**

By: \_\_\_\_\_

Name: Gary Westbrook

Title: General Manager

Permit No. POS-D&O/A & M-0001





Exhibit "A"  
Blue Water, L.P. Permitted Water Wells  
List for Permit issued January 13, 2009

Well Designation	Location		Max. GPM
CW-1	30.44108N	96.81247W	1200gpm
CW-2	30.43564N	96.80366W	1200gpm
CW-3	30.42803N	96.80739W	1200gpm
CW-4	30.43169N	96.81623W	1200gpm
CW-5	30.43037N	96.82592W	1200gpm
CW-6	30.42724N	96.83412W	1200gpm
CW-7	30.41233N	96.81705W	1200gpm
CW-8	30.42325N	96.81969W	1200gpm
CW-9	30.42052N	96.81123W	975gpm
CW-10	30.41916N	96.80507W	750gpm
CW-11	30.41392N	96.7928W	750gpm
CW-12	30.41116N	96.79682W	750gpm
CW-13	30.44583N	96.76865W	1200gpm
CW-14	30.40421N	96.7786W	750gpm
CW-15	30.41001N	96.78026W	750gpm
CW-16	30.40794N	96.77606W	750gpm
CW-17	30.41709N	96.77139W	750gpm
CW-18	30.42121N	96.77545W	975gpm
CW-19	30.41838N	96.7668W	750gpm
CW-20	30.43605N	96.76393W	1200gpm
CW-21	30.43899N	96.77173W	1200gpm
PW-1	30.5069N	96.82059W	2800gpm
PW-2	30.5032N	96.8128W	2800gpm
PW-3	30.51464N	96.81067W	2800gpm
PW-4	30.49953N	96.80459W	2800gpm
PW-5	30.508N	96.8054W	2800gpm
PW-6	30.49522N	96.79645W	2900gpm
PW-7	30.51578 N	96.79897W	3000gpm
PW-8	30.50739N	96.79584W	3000gpm
PW-9	30.44138N	96.801233W	3000gpm
PW-10	30.43638N	96.80358W	3000gpm
PW-11	30.42851N	96.80668W	3000gpm
PW-12	30.42113N	96.811W	3000gpm
PW-13	30.42394N	96.82004W	3000gpm
PW-14	30.41266N	96.81705W	2500gpm
PW-15	30.42723N	96.83449W	3000gpm
PW-16	30.43059N	96.82576W	3000gpm
PW-17	30.43181n	96.981632w	3000gpm
PW-18	30.41998N	96.7752W	3000gpm
PW-19	30.41001N	96.77979W	3000gpm
PW-20	30.41145N	96.79644W	1800gpm



**Amended Permit to Transport Groundwater From within the  
Post Oak Savannah Groundwater Conservation District  
Of the State of Texas**

**By Direction of the Board of Directors of the  
Post Oak Savannah Groundwater Conservation District**

This amended permit is granted to: Blue Water Systems, LP (Permittee), c/o Ross Cummings, Stonebridge Plaza 1, 9606 N. Macap, Suite 125, Austin, Travis County, Texas 78759, successor to Layne Water Development of Texas, LLC ("Layne"), for the purpose of transporting groundwater from a system of water wells (wells) within the Post Oak Savannah Groundwater Conservation District (District), to locations outside the District for the non-wasteful purposes of Municipal Use in the counties of Bastrop, Bell, Burnet, Caldwell, Hays, Lee, Travis, Williamson, Comal, Guadalupe, and Bexar, in the State of Texas ("Amended Permit"). The groundwater permitted herein must be put to beneficial use at all times.

The location of each well from which water is authorized to be transported under this Amended Permit is listed in Exhibit "A". The Permittee has leased the water rights that will be produced. In addition, the names and mailing addresses of the owners of the land from which the wells are authorized to produce water are set forth in the application filed by Permittee for this Amended Permit, and otherwise in the records of the District.

Upon issuance of this Amended Permit, the Permittee agrees to abide by the Rules, orders of the Board and Management Plan of the District, as amended, and the Laws and Rules of the State of Texas, as amended, in transporting groundwater from the water wells to locations outside the District. This permit confers only the right to use the permit under the provisions of the District rules and according to its terms. The permit terms may be modified or amended as provided in the District rules.

***These wells are registered with the District and the State of Texas. The amount of groundwater to be transported from the District shall not exceed 63.374148 million gallons during any 24 hour period. The total amount of groundwater to be transported from the District on an annual basis shall not exceed 70,993 acre feet.***

This Amended Permit confers only the right to transport groundwater and its terms may be modified or amended. The operation of the wells for the authorized withdrawal must be conducted in a non-wasteful manner.

All transport and storage facilities must be accessible to District representatives for inspection, and the Permittee agrees to cooperate fully in any reasonable inspection of these facilities by the District representatives.

All application(s) pursuant to which the related original permits and the prior amended permits, and this Amended Permit, have been issued, and all written agreements and acknowledgments executed by the Permittee, and/or by Layne, are incorporated into this Amended Permit, which is granted on the basis of, and contingent upon, the accuracy of the information supplied in the application(s). A finding that false information as been supplied is grounds for revocation of the Amended Permit.

Violation of the terms, conditions, requirements, or special provisions of this Amended Permit is punishable by civil penalties as provided by the District Rules and by law.

On or before February 15 of each year, the owner of this Amended Permit must submit an annual report to the District describing the amount of groundwater transported under this Amended Permit. This report shall be filed on a form provided by the District, stating the following: (1) the name of the Permittee; (2) the well numbers of each well for which the Permittee holds a transport permit; (3) the total amount of groundwater transported from each well and well system during the immediately preceding calendar year; (4) the total amount of groundwater transported from each well and well system during each month of the immediately preceding calendar year; (5) the purpose for which the water was transported; (6) any other information related to the operation and production of the wells or transport of water requested by the District.

The issuance of this Amended Permit does not grant to the Permittee the right to use private property, or public property, for the production or conveyance of water. Neither does this Amended Permit authorize the invasion of any personal rights nor the violation of federal, state, or local laws, or any regulations.

The District makes no representations and shall have no responsibility with respect to the availability or quality of water authorized to be transported under this Amended Permit.

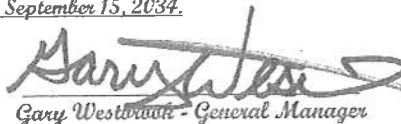
**Special Terms:**

**This Amended Permit expires on September 15, 2034.** This Amended Permit is subject to review every fifth year, and during any such review may be modified to conform with intervening changes in the Management Plan of the District or state law. Permittee shall submit to the District 90 days prior to the fifth anniversary of the issuance and each subsequent review, and the date of expiration of the operating permit a full and complete report describing its groundwater transportation system, volumes of water delivered by customer, and the delivery points of groundwater transported, together with such other information that will assist the District's review. The Board may waive any five year review if no material change has been made to the Management Plan, or if the changes made do not require modification of such permits. Despite the term of duration listed in this Amended Permit, the Permittee is authorized to transport groundwater under this Amended Permit only as long as the Permittee holds a valid operating permit issued by the District for the wells listed in this Amended Permit.

*This amended permit issued September 14, 2004 is hereby amended effective September 14, 2010.*

*This permit expires September 15, 2034.*



  
Gary Westbrook - General Manager

Schedule 1  
Key Persons

Ross Cummings

## Schedule 2

1. Cause No. 26,694; *Ausley v. Blue Water Systems LP*; In the District Court of Burleson County, Texas; 21<sup>st</sup> Judicial District (suit by landowner/lessor regarding rights under groundwater lease assigned to Blue Water Systems LP; landowner/lessor's suit asserts claims for breach of contract and declaratory judgment seeking, inter alia, access to water from transmission pipeline crossing landowner's property under theory that groundwater lease provides landowner with access to water from pooled wells)

**REFERENCE DOCUMENT 3**  
**PROJECT REAL PROPERTY CONVEYANCE AGREEMENT**

**FIRST AMENDMENT TO VISTA RIDGE  
PROJECT REAL PROPERTY CONVEYANCE AGREEMENT**

This **FIRST AMENDMENT TO VISTA RIDGE PROJECT REAL PROPERTY CONVEYANCE AGREEMENT** (this “**Amendment**”) is entered into effective on the 5th day of April, 2017 (the “**Effective Date**”), between the City of San Antonio, Texas (the “**City**”), acting by and through the San Antonio Water System Board of Trustees (“**SAWS**”), a component unit of the City established pursuant to the provisions of City Ordinance Number 75686, Chapter 552, as amended, Texas Local Government Code, and Chapter 1502, as amended, Texas Government Code, and Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation (the “**Water Supply Corporation**”), and acknowledged, consented to and joined by Vista Ridge LLC, a Delaware limited liability company (“**Project Company**”).

**RECITALS**

WHEREAS, SAWS and the Water Supply Corporation, joined by the Project Company, entered into that certain Vista Ridge Project Real Property Conveyance Agreement (the “**Agreement**”) dated effective June 10, 2016;

WHEREAS, contemporaneously herewith, SAWS and the Project Company are entering into an amendment to the WTPA (as defined in the Agreement), which, among other things, contains revisions to real estate provisions, the subject matter of which is contained in the Agreement; and

WHEREAS, SAWS and the Water Supply Corporation desire to make certain conforming changes to the Agreement to bring it into accord with the WTPA, as amended;

**NOW THEREFORE**, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. Definitions.

- a. The definition of “WTPA”, as set forth in Section 1.2 of the Agreement, is hereby amended and restated to read as follows:

“WTPA” means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement execution on November 4, 2014 (as amended on June 10, 2016, as further amended on November 2, 2016, and as further amended on April 5, 2017), by and between Vista Ridge LLC (f/k/a Abengoa Vista Ridge, LLC), and includes all attached Transaction Documents and appendices as they exist on April 5, 2017.

- b. The defined terms “Project”, “Project Company Portion of the Transmission Pipeline Terminus Site”, “Project Company Storage Tank”, “SAWS Distribution System”, “Transmission Pipeline”, “Transmission Pipeline System” and “Transmission

Pipeline Terminus Site” are hereby amended to be defined as such terms are defined the WTPA (as such term has been amended hereinabove).

2. Acquisition of Transmission Pipeline System Real Property Interests. Section 3.1 of the Agreement is hereby amended and restated to read as follows:

**3.1** Acquisition of Transmission Pipeline System Real Property Interests. The Project Company has made an election under the WTPA that the Water Supply Corporation (rather than Project Company) shall acquire the Project Real Property Interests, including the Transmission Pipeline System Real Property Interests, in accordance with the terms of the WTPA. The Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests pursuant to and in accordance with the term of the WTPA. Without limiting the foregoing, in acquiring easements, the Water Supply Corporation shall comply with Section 26.1(G) (Right-of-Way Easements). As between the Project Company and the Water Supply Corporation, the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements. Nothing contained herein shall be construed to relieve the Project Company from its obligations to SAWS under the WTPA to cause the acquisition of the Project Real Property to occur under the time frames, terms and conditions set forth in the WTPA nor shall any provision of this Agreement be construed to relieve the Project Company from any other obligations under the WTPA, except to the extent such obligations have been modified, clarified or extrapolated in greater detail in this Agreement (but not to the extent any obligations have been delegated to the Water Supply Corporation pursuant to the Project Company’s election under the WTPA)

3. Acquisition of Well Field Facilities Real Property Interests. Section 3.3 of the Agreement is hereby amended and restated to read as follows:

**3.3** Acquisition of Well Field Facilities Site Real Property Interests. Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation shall acquire the Well Field Facilities Site Real Property Interests pursuant to and in accordance terms of the WTPA including, but not limited to: (i) fee simple absolute title to all Well Sites acquired by the Water Supply Corporation, if any, (ii) fee simple absolute title to the High Service Pump Station Site; and (iii) permanent easements for the Collection Pipeline Rights-of-Way from Collection Pipeline Rights-of-Way grantors conforming to Section 3.4 below.

The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire infeasible, fee simple absolute title in all Well Sites that it acquires and in the High Service Pump Station Site pursuant to and in accordance with the terms of the WTPA.

4. Terminus Site Conveyances and Reciprocal Easement Agreement. The Water Supply Corporation hereby agrees to comply with the provisions of Sections 26.1(D), (E) and (F) of the WTPA, and without limiting the foregoing, to provide such diligence materials, comply with platting obligations, convey to SAWS certain portions of the Transmission Pipeline Terminus Site, and enter into a Reciprocal Easement Agreement with SAWS, pursuant to and in accordance with said Sections 26.1(D), (E) and (F).
5. Exceptions to Title Upon Conveyance to SAWS. Section 4.1 of the Agreement is hereby revised to delete and remove the following text, being duplicative of Permitted Encumbrance number 10 in the Agreement and the WTPA: “and (b) such additional exceptions to title, of record, listed in a Title Insurance Policy, being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used”. Permitted Encumbrance number 10 in the Agreement is hereby amended to add the phrase “or title commitment” after the term “Title Insurance Policy”.
6. Other Terms. All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the Effective Date, except as expressly modified hereby.
7. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

*Signatures on following pages*



THE CITY OF SAN ANTONIO, TEXAS  
acting by and through the  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By: 

Name: Robert R. Puente

Title: President and CEO

Date: 4-21-17

CENTRAL TEXAS REGIONAL WATER  
SUPPLY CORPORATION,  
a Texas non-profit water supply corporation

By: 

Name: Weir Labatt III

Title: President

Date: 4/11/17

**CONSENT AND JOINDER OF  
PROJECT COMPANY**

By its execution of this Consent and Joinder, Project Company hereby approves this Amendment, and consents to its terms, and agrees that, to the extent Project Company is the party acquiring any Project Assets instead of the Water Supply Corporation, Project Company shall acquire, hold, convey, convey in trust and assign such Project Assets in the manner set forth in the Agreement as amended by this Amendment, and the applicable terms, provision and conditions of this Amendment pertaining thereto shall be interpreted as if written to apply to the Project Company.

**PROJECT COMPANY:**

VISTA RIDGE LLC,  
a Delaware limited liability company

By: 

Name: Scott A. Parrish

Title: President

**VISTA RIDGE  
PROJECT REAL PROPERTY CONVEYANCE AGREEMENT**

This **PROJECT REAL PROPERTY CONVEYANCE AGREEMENT** (this "**Project Real Property Conveyance Agreement**") is entered into on the 10<sup>th</sup> day of June, 2016 (the "Effective Date"), between the City of San Antonio, Texas, acting by and through the San Antonio Water System Board of Trustees, an agency of the City established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("**SAWS**"), and Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation (the "**Water Supply Corporation**"), and acknowledged, consented to and joined by Project Company.

**RECITALS**

WHEREAS, SAWS and the Project Company have entered into the WTPA (as hereinafter defined) for the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, which WTPA provides, in part, that the Project Assets will be assigned and conveyed to SAWS (subject to certain exclusions as provided in Appendix 12 to the WTPA) upon the Termination Date or Expiration Date (as hereinafter defined);

WHEREAS, the Water Supply Corporation has been duly formed to participate with the Project Company in the development and operation of a regional water supply system, and has contracted with the Project Company to transport groundwater from certain groundwater wells to SAWS for use by SAWS as a portion of its water supply for the public;

WHEREAS, the Water Supply Corporation and the Project Company entered into a Water Transportation Agreement pursuant to Section 67.010 of the Texas Water Code (the "Transportation Agreement") that requires the Water Supply Corporation, in part, to acquire certain easements and real property, and to construct infrastructure and other facilities necessary to enable the Water Supply Corporation to transport water supplied by the Project Company for use by SAWS in accordance with the provisions of the WTPA;

WHEREAS, as part of the consideration received by the Water Supply Corporation from the Project Company under the Transportation Agreement and as further inducement for SAWS to enter into the WTPA with Project Company, the Water Supply Corporation has agreed with the Project Company to convey to SAWS the Project Assets owned by the Water Supply Corporation on the earlier of the Expiration Date or Termination Date when the Project Company is required to assign and convey the Project Assets to SAWS under the WTPA; and

WHEREAS, SAWS has requested confirmation from the Water Supply Corporation that it has agreed with the Project Company in the Transportation Agreement to perform the acquisition, construction, transportation obligations under the WTPA and further assurances pursuant to Section 13.2 of the WTPA that the Water Supply Corporation will perform the conveyance obligations under the WTPA, and in further elaboration of such conveyance obligations, and the Water Supply Corporation has agreed to enter into this Project Real Property Conveyance Agreement with SAWS pursuant to Section 67.010 of the Texas Water Code.

NOW THEREFORE, in consideration of the mutual covenants herein, the sum of \$100.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

1.1 Recitals. The Recitals set forth above are fully incorporated into this Project Real Property Conveyance Agreement as if fully set forth herein.

1.2 Definitions. As used in this Project Real Property Conveyance Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are also defined within the body of this Project Real Property Conveyance Agreement. Defined terms not otherwise defined in this Project Real Property Conveyance Agreement shall have the meanings ascribed to them in the WTPA.

**“Business Day”** means a day other than a Saturday, Sunday or an official SAWS holiday.

**“City”** means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

**“Collection Pipelines”** means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project) of the WTPA.

**“Collection Pipeline Rights-of-Way”** means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

**“Encumbrance”** means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

**“Expiration Date”** means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.7 (Extension of Term) of the WTPA.

**“Financial Closing Date”** has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date) of the WTPA.

**“High Service Pump Station”** means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project) to the WTPA.

**“High Service Pump Station Site”** means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

**“Other Project Assets”** has the meaning set forth in Section 12.4 of Appendix 12 (Project Assets and Liabilities) of the WTPA.

“**Permitted Encumbrances**” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves in accordance with GAAP;

(2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or the Water Supply Corporation to construct the Project or operate the Project;

(3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(4) Those items which (i) are servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements, or (ii) any other Encumbrance arising (a) in the ordinary course of business during construction, (b) in connection with worker’s compensation or unemployment insurance or social security or pension obligations, (iii) the Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) any liens or other encumbrances subordinate to the Water Transmission and Purchase Agreement, (vi) any statutory landlord’s liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or the Water Supply Corporation;

(5) Applicable zoning and building bylaws and ordinances, and municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(6) Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;

(7) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or the Water Supply Corporation has established appropriate reserves or bonded

against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or the Water Supply Corporation established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(10) Exceptions to title, of record, listed in a Title Insurance Policy being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(11) Encumbrances granted under any Senior Debt Financing Agreements, including the rights of the Senior Debt Creditors or to secure obligations owed by the Water Supply Corporation to the Project Company;

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness; and

(13) Encumbrances created as a result of a Change-in-Law.

**"Project"** means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, Project Improvements, and Other Project Assets, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System or the SAWS Interconnection Improvements.

**"Project Assets"** means the Project Real Property, Project Improvements and the Other Project Assets.

**"Project Assets Purchase Price"** means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options) of the WTPA.

**"Project Company"** means Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

**“Project Company Portion of the Transmission Pipeline Terminus Site”** has the meaning set forth in Section 4.1(B)(10)(conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site) of the WTPA.

**“Project Company Storage Tank”** means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Transmission Pipeline Terminus Site for the storage of Product Water prior to SAWS taking delivery, as more particularly described in the Design Requirements. The Project Company Storage Tank includes the pipe between the Project Company Storage Tank and the SAWS Storage Tanks up to the Product Water Delivery Point; the portion of such pipe between the Product Water Delivery Point and the SAWS Storage Tanks shall constitute part of the SAWS Storage Tanks. The Project Flow Meter and related totalizer shall be located on the Project Company Storage Tank side of the Product Water Delivery Point and constitute part of the Project Company Storage Tank.

**“Project Improvements”** means the Well Field Facilities and the Transmission Pipeline System.

**“Project Real Property”** means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is ancillary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Project Real Property Conveyance Agreement”** means this Project Real Property Conveyance Agreement entered into by and between SAWS and the Water Supply Corporation.

**“Project Site Conveyance Instruments”** means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

**“Project Sites”** means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

**“Right-Of-Way Easement Form”** means the form set forth in Transaction Form D (Right-Of-Way Easement Form) in the WTPA.

**“SAWS”** means the San Antonio Water System, an agency of the City established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

**“SAWS Distribution System”** means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project.

**“State”** means the State of Texas.

“**TCEQ**” means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

“**Term**” has the meaning set forth in Section 3.1 (Effective Date and Term) of the WTPA.

“**Termination Date**” means the date of termination of the WTPA provided in Sections 21.3, 22.1(D), 23.1, or 23.2 (Termination Date) of that agreement.

“**Transaction Form**” means any of the Transaction Forms appended to the WTPA or to this Project Real Property Conveyance Agreement and identified as such in the Table of Contents.

“**Transmission Pipeline**” means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Project Company Storage Tank, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications) of the WTPA. The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

“**Transmission Pipeline Alignment**” means the real property over or within which the Transmission Pipeline is to be constructed.

“**Transmission Pipeline Easements**” means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

“**Transmission Pipeline Pumping Stations**” means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project) of the WTPA, including, but not limited to, the High Service Pump Station.

“**Transmission Pipeline System**” means the Transmission Pipeline and the Project Company Storage Tank.

“**Transmission Pipeline System Real Property Interests**” means (1) a fee simple absolute in the Project Company Portion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

“**Transmission Pipeline Terminus Site**” means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline on which the Project Company Storage Tank is to be constructed as part of the Project and SAWS Storage Tanks are to be constructed as part of the SAWS Interconnection Improvements, as described in Appendix 1 (Description of the Project) of the WTPA.

“**Water Supply Corporation**” means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code, and its permitted successors and assigns.

“**Water Supply Corporation Other Project Assets**” means the Other Project Assets owned by the Water Supply Corporation.



**“Water Supply Corporation Project Improvements”** means the Project Improvements owned by the Water Supply Corporation, including without limitation, Water Supply Corporation Well Field Facilities and the Transmission Pipeline System.

**“Water Supply Corporation Project Assets”** means the Water Supply Corporation Project Real Property, Water Supply Corporation Project Improvements and the Water Supply Corporation Other Project Assets.

**“Water Supply Corporation Project Real Property”** means the Project Real Property owned by the Water Supply Corporation, including without limitation, (1) the Water Supply Corporation Well Field Facilities Site Real Property Interests, and (2) the Transmission Pipeline System Real Property Interests. Water Supply Corporation Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Water Supply Corporation Well Field Facilities”** means the facilities and roads on the Well Field Facilities Site owned by the Water Supply Corporation for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Collection Pipelines and the High Service Pump Station.

**“Water Supply Corporation Well Field Facilities Sites”** means the real property owned by the Water Supply Corporation upon which the Water Supply Corporation Well Field Facilities are to be constructed, within the area of approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project) of the WTPA.

**“Water Supply Corporation Well Field Facilities Site Real Property Interests”** means (1) a fee simple absolute interest in the Well Sites owned by the Water Supply Corporation (if any), (2) permanent easements for the Collection Pipelines Right-of-Way, and (3) a fee simple absolute interest in the High Service Pump Station Site.

**“Wells”** means wells, casings, related pumping equipment and appurtenant facilities to be constructed in the Well Field for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project) of the WTPA.

**“Well Sites”** means each of the sites of approximately two-acres upon which the Wells are to be constructed, owned by the Water Supply Corporation (if any).

**“WTPA”** means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement executed on November 4, 2014 (as amended effective on ~~May~~ <sup>June 10</sup>, 2016), by and between SAWS and Abengoa Vista Ridge, LLC and includes all attached Transaction Forms and Appendices as it exists on the Effective Date hereof.

1.3 Interpretation. This Project Real Property Conveyance Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Real Property Conveyance Agreement otherwise require.

(1.) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(2.) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3.) Headings. The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Project Real Property Conveyance Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4.) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Project Real Property Conveyance Agreement.

(5.) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(6.) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(7.) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(8.) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(9.) References to All Reasonable Efforts. The expression “commercially reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(10.) Entire Agreement. This Project Real Property Conveyance Agreement contains the entire agreement, as between SAWS and the Water Supply Corporation, with respect to the transactions contemplated hereby and thereby. There are no other agreements, oral or written, prior or contemporaneous, as between the Water Supply Corporation and SAWS.

(11.) Assignment. This Project Real Property Conveyance Agreement shall not be assigned, hypothecated or transferred in any manner whatsoever, directly or indirectly, by the Water Supply Corporation without the prior written consent of SAWS, except to secure any Permitted Debt or indebtedness owed by the Water Supply Corporation to the Project Company.

(12.) Counterparts. This Project Real Property Conveyance Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Real Property Conveyance Agreement.

(13.) Governing Law. This Project Real Property Conveyance Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas (“Applicable Law”).

(14.) Severability. Each provision of this Project Real Property Conveyance Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Real Property Conveyance Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this as nearly as possible to its original intent and effect.

(15.) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Real Property Conveyance Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(16.) Delivery of Documents in Digital Format. In this Project Real Property Conveyance Agreement, the Water Supply Corporation may be obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Water Supply Corporation agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS’ request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Project Real Property Conveyance Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(17.) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Real Property Conveyance Agreement. When a party does not have “discretion” it means that the party shall act reasonably.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES.

2.1 Representations and Warranties: The Water Supply Corporation hereby represents and warrants to the City and SAWS, as follows:

(1.) The Water Supply Corporation is a Texas non-profit water supply corporation and was duly formed on September 25, 2014, pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code (“BOC”) and is a validly existing Texas non-profit water supply corporation in good standing under the laws of the State of Texas. The Water Supply Corporation has the authority to do business in the State of Texas, with the full legal right, power and authority to undertake, carry out and perform all of the obligations anticipated to be undertaken, carried out and performed by the Water Supply Corporation as described in and provided under this Project Real Property Conveyance Agreement and under the applicable provisions of the WTPA.

(2.) The Restated Certificate of Formation with New Amendments of the Water Supply Corporation in the form attached hereto as Schedule A, and the bylaws of the Water Supply Corporation, in the form attached hereto as Schedule B, all in the form thereof approved by SAWS, constitute the “Governing Documents” of the Water Supply Corporation as of the Effective Date of this Project Real Property Conveyance Agreement, and there are no other documents governing the formation, organization, operation, and dissolution of the Water Supply Corporation.

(3.) The Water Supply Corporation is governed by a board of directors duly designated or elected in accordance with its Governing Documents.

(4.) The Water Supply Corporation, acting by and through its board of directors, has the authority to enter into this Project Real Property Conveyance Agreement.

(5.) This Project Real Property Conveyance Agreement has been duly authorized, executed and delivered by all necessary action of the Board of Directors of the Water Supply Corporation and constitutes a legal, valid and binding obligation of the Water Supply Corporation, enforceable against the Water Supply Corporation in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect and equitable principles of general application.

(6.) The Water Supply Corporation may encumber any project or improvement, and encumber any income, fees, rents and other charges derived from the operation of the Project or, as well as issue bonds, notes or warrants to secure payment of funds received in accordance with the provisions of Section 67.010 of the Texas Water Code.

(7.) The Water Supply Corporation is authorized and has full power and authority, under Texas law, to acquire, by purchase or other lawful means, and to own the Water Supply Corporation Project Real Property, and to acquire property by eminent domain in accordance with the provisions of Section 49.222 of the Texas Water Code and Chapter 21 of the Texas Property Code.

(8.) The Water Supply Corporation has the full power and authority to mortgage and pledge the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets as security for the Senior Debt, Water Transportation Agreement and Project Construction Loan

Agreement.

(9.) The Water Supply Corporation has the full power and authority to assign and convey the Water Supply Corporation Project Assets to SAWS upon the Expiration Date or upon the Termination Date of the WTPA, as applicable.

(10.) Based on the Water Supply Corporation's status as a not-for-profit water supply corporation and owner of the Water Supply Corporation Project Real Property, no *ad valorem* property tax will be payable on the Water Supply Corporation Project Real Property and Water Supply Corporation Project Improvements thereon because conforming dissolution provisions are included in the Water Supply Corporation's Governing Documents in accordance with the provisions of Texas Tax Code Section 11.30.

(11.) Subject to (i) obtaining a certification from the TCEQ or SAWS pursuant to Texas Tax Code Section 151.355(5) or 151.355(6), respectively, or (ii) to obtaining a private letter ruling from the Texas Comptroller regarding qualification for exemption under Texas Tax Code Section 151.311, no Texas state sales tax will be payable by or on behalf of the Water Supply Corporation on the cost of constructing the Water Supply Corporation Project Improvements. Nothing in this paragraph shall be construed to obligate SAWS to make such tax certification.

(12.) Neither the execution nor delivery by the Water Supply Corporation of this Project Real Property Conveyance Agreement nor the performance by the Water Supply Corporation of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Water Supply Corporation of the terms or conditions hereof:

(a) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of formation applicable to the Water Supply Corporation; or

(b) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Water Supply Corporation is a party or by which the Water Supply Corporation or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(13.) No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Real Property Conveyance Agreement by the Water Supply Corporation except as such have been duly obtained or made.

2.2 Breach of Representation or Warranty. If, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation becomes aware of any material change or inaccuracy in any of the matters referred to in the representations and warranties of the Water Supply Corporation under this Project Real Property Conveyance Agreement, then the Water Supply Corporation will have the same obligation to notify SAWS of the event, as the Project Company has to notify SAWS under the WTPA with regard to the Project Company's representations and warranties. In the event that (a) the Water Supply Corporation notifies SAWS of such a change or inaccuracy or (b) SAWS discovers that any representation or warranty of Water Supply Corporation made in this Project Real Property Conveyance Agreement has changed or is inaccurate and notifies Water Supply Corporation of the same, and such change or inaccuracy would constitute a remediable breach under Section 20.1 (b)(5) of the WTPA, then the Water Supply Corporation shall have all of the rights to notice and cure, and SAWS shall have all of the remedies as are provided in Section 20.3 of the WTPA.

## ARTICLE 3

### PROJECT REAL PROPERTY OBLIGATIONS DURING THE TERM.

**3.1 Acquisition of Transmission Pipeline System Real Property Interests.** The Project Company has made an election under the WTPA that the Water Supply Corporation (rather than Project Company) shall acquire the Project Real Property Interests, including the Transmission Pipeline System Real Property Interests, in accordance with the terms of the WTPA. On or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests (or binding and enforceable options to acquire such Transmission Pipeline System Real Property Interests) sufficient to commence construction of substantially all of the Transmission Pipeline System. In acquiring easements, the Water Supply Corporation shall comply with Section 26.1(A) (Right-of-Way Easements). For any other parcels, the Water Supply Corporation shall (except as SAWS may otherwise approve, acting reasonably) have acquired a valid right-of-way entry to construct, shall have initiated an eminent domain proceeding, or shall have obtained a right of entry if the acquisition of such parcel is not material to the completion of the Transmission Pipeline System within the Project Schedule. As between the Project Company and the Water Supply Corporation, the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements. The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire indefeasible, fee simple absolute title in the Project Company Portion of the Transmission Pipeline Terminus Site, and Transmission Pipeline Pumping Stations pursuant to and in accordance with the provisions of the WTPA. Nothing contained herein shall be construed to relieve the Project Company from its obligations to SAWS under the WTPA to cause the acquisition of the Project Real Property to occur under the time frames, terms and conditions set forth in the WTPA nor shall any provision of this Agreement be construed to relieve the Project Company from any other obligations under the WTPA, except to the extent such obligations have been modified, clarified or extrapolated in greater detail in this Agreement (but not to the extent any obligations have been delegated to the Water Supply Corporation pursuant to the Project Company's election under the WTPA).

**3.2 Terms of Transmission Pipeline Easements.** The Water Supply Corporation has agreed under the terms of the Transportation Agreement, and hereby agrees to SAWS, to acquire Transmission Pipeline Easements pursuant to and in accordance with the provisions of the WTPA.

**3.3 Acquisition of Well Field Facilities Site Real Property Interests.** Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation shall acquire the Well Field Facilities Site Real Property Interests pursuant to and in accordance terms of the WTPA. Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed that on or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Water Supply Corporation Well Field Facilities Site Real Property Interests, including, but not limited to: (i) fee simple absolute title to all Well Sites acquired by the Water Supply Corporation, if any, (ii) fee simple absolute title to the High Service Pump Station Site; and (iii) permanent easements for the Collection Pipeline Rights-of-Way from Collection Pipeline Rights-of-Way grantors conforming to Section 3.4 below.

The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire indefeasible, fee simple absolute title in all Well Sites that it acquires and in

the High Service Pump Station Site pursuant to and in accordance with the terms of the WTPA.

**3.4 Terms of Easements for Collection Pipelines.** Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire easements for the Collection Pipeline Rights of Way, pursuant to and in accordance with the WTPA. Without limiting the foregoing, all easements for the Collection Pipeline Rights-of-Way shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof as more particularly set forth in Article 4 below, and shall not contain any indemnity provisions that would apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements.

**3.5 Acquisition of Other Project Real Property.** Under the Transportation Agreement, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire any other Project Real Property Interests required to be acquired pursuant to and in accordance with the WTPA. The vesting instruments for such other Project Real Property Interests shall not contain any indemnity provisions that would apply to SAWS, if acquired in fee simple shall be acquired in indefeasible, fee simple absolute, and shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof.

**3.6 SAWS' Rights to Tie-In to Transmission Pipeline.** The Water Supply Corporation shall grant and convey to SAWS from time to time during the Term of the WTPA such permanent easement, temporary construction easements and other rights as necessary to allow for the interconnection of pipelines into the Transmission Pipeline as necessary to allow SAWS to convey Product Water to any other person, in accordance with and as necessary to effectuate the intent of and purposes of Section 26.5 (Opportunities Expressly Reserved) of the WTPA. All of the rights of SAWS to interconnect with the pipelines into the Transmission Pipeline, as set out in this Section shall be subject to all of the obligations and limitations relating to SAWS undertaking or the Project Company or Water Supply Corporation undertaking any such interconnection activities, set out in the WTPA, including but not limited to those set out in Section 12.3 in the WTPA for a SAWS-Requested Capital Modification.

**3.7 Covenant Against Sale or Encumbrance of the Water Supply Corporation Project Assets.** During the Term of the WTPA, the Water Supply Corporation shall not (i) sell, assign, convey, move or otherwise transfer its ownership or other interests in the Water Supply Corporation Project Assets without the consent of SAWS given in its sole discretion (except in the event of a final, non-appealable judgment of condemnation by an unrelated third party entity with the power of eminent domain; provided, however, that Water Supply Corporation shall use good faith and diligent efforts to contest such condemnation and/or harmonize the interests in the Water Supply Corporation Project Assets with the condemned interest such that both interests may co-exist), or (ii) lease, sublease or license any interest in the Water Supply Corporation Project Assets in a manner which would materially and adversely affect the operations of the Project or SAWS' rights to obtain a conveyance of the Water Supply Corporation Project Assets in the manner set out in Article 4 below. During the term of this Project Real Property Conveyance Agreement, there shall be no Encumbrances registered or recorded on the Water Supply Corporation Project Assets which are in violation of the terms of the WTPA. Notwithstanding the above, the Water Supply Corporation shall have the right to mortgage or pledge any Water Supply Corporation Project Assets, provided that such mortgage or pledge is allowed (as to the Water Supply Corporation or the Project Assets) under the terms of the WTPA, or under Section 3.12 of this Project Real Property Conveyance Agreement.

**3.8 Single-Purpose Entity Covenant.** During the Term of the WTPA, the Water Supply Corporation shall not engage in any other business or activity other than the businesses or activities conducted for the purposes of the Project without the consent of SAWS, given (or withheld) in its sole discretion.

**3.9 Independence of Water Supply Corporation.** During the Term of the WTPA, the Water Supply Corporation shall not take or cause to be taken, or omit to take or omit to cause to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, the execution by the Water Supply Corporation (of the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, the EPC Agreement, or the Operating Service Agreement), or the exercise or failure to exercise of any of its rights or powers under any such agreement), the effect of which, individually or as a whole, is or would be to cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, this Project Real Property Conveyance Agreement, or the WTPA.

**3.10 Governing Documents.** During the Term of the WTPA, the Water Supply Corporation (i) shall provide to SAWS advanced written notice of all modifications to its Governing Documents (sufficient for SAWS to make a determination of whether or not SAWS' consent pursuant to subclause (ii) below is required), and (ii) shall not modify its Governing Documents, without the prior written consent of SAWS, given (or withheld) in its sole discretion, in a manner that will change its purpose, or adversely affect SAWS' rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents. The above notwithstanding, to the extent SAWS determines that any such modification to the Governing Documents does not change the purpose of the Water Supply Corporation or adversely affect SAWS' rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents, SAWS will not unreasonably withhold its consent. If the Water Supply Corporation makes a written request for consent from SAWS hereunder and SAWS does not raise an objection to the matter for which the consent is requested within twenty (20) days after receipt of the written request for the consent by SAWS, the consent shall be deemed given by SAWS.

**3.11 Performance of Contract Obligations.** Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed to (i) acquire the Project Real Property, (ii) construct the Project Improvements, (iii) operate and maintain all of the Water Supply Corporation Project Assets, (iv) transport the Product Water, and (v) maintain Required Insurance, all in compliance with the provisions of the WTPA. The foregoing responsibilities may be further delegated by the Water Supply Corporation to the Project Company or other entity pursuant to the terms of the Transportation Agreement and the WTPA; provided, however, that the Water Supply Corporation shall remain responsible for the performance of such responsibilities. In addition, the Water Supply Corporation shall indemnify SAWS with respect to the Water Supply Corporation Project Assets owned by it in the same manner and upon the same terms, provisions and conditions as the Project Company is obligated to indemnify SAWS as set forth in Article 25 (Indemnification) of the WTPA. Notwithstanding anything contained in this Project Real Property Conveyance Agreement to the contrary, SAWS' remedies with respect to the Water Supply Corporation's indemnity shall be limited to those afforded to it under the terms of Article 25 of the WTPA, and shall be exercisable against the Water Supply Corporation only if the Project Company has also failed to respond to the applicable claim or otherwise cause the Contract Obligations to have been met.

**3.12 Obligation to Mortgage.**

(1) During the Term of the WTPA, the Water Supply Corporation shall provide to Project Company a deed of trust mortgage establishing a lien on the Water Supply Corporation Project Assets, securing the Water Supply Corporation's payment obligations under the Water Transportation Agreement (as defined in the WTPA) and the Water Supply Corporation's performance obligations with respect to the conveyance of the Water Supply Corporation Project Assets, upon dissolution, which such deed of



trust mortgage shall be subordinate to the mortgage securing the Senior Debt, and subordinate to the Standby Deed of Trust (hereinafter defined).

(2) In addition, on or before the Financial Closing Date, the Water Supply Corporation shall provide a deed of trust mortgage to SAWS (or, if required by the Creditors Remedies Agreement, to the Project Company with a collateral assignment to SAWS), establishing a lien on the Water Supply Corporation Project Assets, as an accommodating pledge of the Water Supply Corporation Project Assets (the "Standby Deed of Trust") to further assure the Water Supply Corporation's obligations to convey the Water Supply Corporation Project Assets to SAWS as required in this Real Property Conveyance Agreement. The Standby Deed of Trust shall also provide that in the event the Project Company and the Water Supply Corporation fail to timely convey the Water Supply Corporation Project Assets in accordance with the WTPA and this Agreement then SAWS shall have such step-in rights, cure rights and other interim rights as are reasonably necessary to allow SAWS to protect the Water Supply Corporation Project Assets and SAWS' interests under the WTPA prior to any conveyance of the Water Supply Corporation Project Assets. The Standby Deed of Trust shall provide that the beneficiary's right to exercise its non-judicial right to foreclose on the Water Supply Corporation Project Assets under the terms of the Standby Deed of Trust would arise only at such time as:

(a) the Water Supply Corporation Project Assets are required to be conveyed to SAWS under the terms of the WTPA, and SAWS shall have tendered to, or on behalf of, the Project Company all sums payable to the Project Company (if any) and the Senior Debt Creditors under the WTPA in connection with such conveyance;

(b) SAWS has filed a suit against the Water Supply Corporation and the Project Company for breach of the provisions of this Agreement and the WTPA, respectively, requiring such conveyance in which suit the Project Company and Water Supply Corporation have each been properly served at least thirty (30) days prior to any exercise of its non-judicial right to foreclose (the "Conveyance Litigation"), provided, however, that if a Project Company Bankruptcy-Related Event shall have occurred then upon SAWS' submission to the jurisdiction of the applicable court and assertion of a breach as described above in a manner sufficient to preserve the court's jurisdiction for a Project Company claim pursuant to subsection 6 below, the Conveyance Litigation shall be deemed to have been filed; and

(c) the Project Company or Water Supply Company have failed to timely convey (or cause the conveyance of) the Water Supply Corporation Project Assets to SAWS in accordance with the WTPA.

(3) The Stand-By Deed of Trust shall:

(a) secure liquidated damages for failure to convey the Water Supply Corporation Project Assets in an amount equal to (i) if such foreclosure occurs prior to the earlier of the Commercial Operations Date (as defined in the WTPA) or the end of thirty six (36) months from the Effective Date, a sum equal to the following: \$225,000,000 if such foreclosure occurs between the Effective Date and twelve (12) months thereafter; \$450,000,000 if such foreclosure occurs following twelve (12) months from the Effective Date through twenty four (24) months from the Effective Date; and \$675,000,000 if such foreclosure occurs following twenty four (24) months from the Effective Date through thirty six (36) months from the Effective Date, or (ii) if such foreclosure occurs after the earlier of the Commercial Operations Date or thirty six (36) months from the Effective Date, the amount of \$900,000,000, which amount shall be increased by the increase in CPI from the earlier of such two dates to the date of foreclosure; and

(b) provide that recourse to the Water Supply Company and the Project Company for payment of the amount secured and any damages for a failure to convey shall be limited to the recovery of the Water Supply Corporation Project Assets obtained pursuant to such foreclosure and no further recovery or damages shall be obtainable from the Water Supply Company or the Project Company for the failure to so convey, provided, however, that such limitation shall not apply to or affect such other claims as SAWS may have under the WTPA or this Agreement relating to alleged breaches or defaults thereunder other than a failure to convey Water Supply Corporation Project Assets and SAWS shall be entitled to assert any such claims in the Conveyance Litigation or otherwise in its sole discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(4) The parties agree that the liquidated damage amounts to be secured by the Standby Deed of Trust are a reasonable estimate, solely for purposes of the Standby Deed of Trust, of SAWS' actual damages for failure to timely convey the Water Supply Corporation Project Assets as required under the WTPA and this Agreement, given the difficulty, inconvenience and uncertainty of ascertaining actual damages, and such liquidated damage amounts are not and shall not be construed as a penalty.

(5) In the event the Water Supply Corporation or the Project Company disputes that the Water Supply Corporation Project Assets were required to be conveyed to SAWS as asserted in the Conveyance Litigation then the Water Supply Corporation and the Project Company reserve their rights in respect of such dispute and assert a claim under the terms of this Agreement or the WTPA, as the case may be, against SAWS in the Conveyance Litigation and each does hereby preserve their claims in respect of such dispute and to litigate such claims.

(6) In the event the Water Supply Corporation or the Project Company obtains a final unappealable judgment determining that the Water Supply Corporation Project Assets were not required to be conveyed to SAWS under the terms of the WTPA at the time of the foreclosure, then such foreclosure shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 of the WTPA, and the Project Company shall be entitled as its sole and exclusive remedy and damages to (i) the payment of the difference between (A) the amount payable to the Project Company pursuant to Section 23.1(B) of the WTPA (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (B) any amounts previously paid by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company's behalf in respect of the Senior Debt) plus (ii) interest on the amount in clause (i) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate for pre-judgment interest. In no event shall the Water Supply Corporation be entitled to any further or additional claim in connection with its conveyance of the Water Supply Corporation Project Assets and upon payment of the amount set forth above to the Project Company all liability of SAWS to the Project Company and the Water Supply Corporation in respect of the conveyance shall be discharged.

(7) The Standby Deed of Trust shall survive foreclosure of any lien securing the Senior Debt but shall remain subject to payment of the Senior Debt. The applicable provisions of the Standby Deed of Trust and the priority of the lien created thereunder and of the exercise of the parties' respective step-in rights and other interim remedies will be more specifically addressed in that certain Creditors' Remedies Agreement to be executed by and between the Project Company, SAWS and the Senior Debt Creditors.

(8) The parties agree that under the WTPA SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of the WTPA and payment of the amounts provided for thereunder, which amounts are to be determined solely as provided in the WTPA. Accordingly, the parties further agree that any disputes relating to any conveyance are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance

Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company or the Water Supply Corporation seeks an injunction or other judicial action to prevent foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Subsection 3(b) above against the party taking such action shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.

**3.13 Reporting Requirements.** On or before the Financial Closing Date, the Water Supply Corporation shall provide to SAWS (i) a report of all Project Assets acquired or held by the Water Supply Corporation and copies of the contracts, agreements, and modifications or amendments thereto entered into by the Water Supply Corporation with respect to the Project and (ii) copies of all documents in the Water Supply Corporation's possession which are of a material nature to the use and operation of that tract of land for the Project, including but not limited to title policies, surveys, soils reports; feasibility studies; environmental reports, studies, assessment; engineering studies, all of which shall be delivered without representation or warranty as to the content set out therein. After the Financial Closing Date, the Water Supply Corporation shall provide SAWS with a report on all of the Project Assets acquired by the Water Supply Corporation for which acquisition was pending but not completed on the Financial Closing Date. Thereafter, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation will report to SAWS the acquisition of any Project Assets, which report shall be due to SAWS within 90 days after acquisition of such Project Assets. At the request of the SAWS, the Water Supply Corporation shall provide copies of any contracts or agreements, and modifications and amendments thereto, with respect to the Project and copies of all documents described in (ii) above to the extent not previously provided to SAWS. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall also provide SAWS with not less than seventy-two (72) hours' advanced written notice of the date and location of the meetings of its Board of Directors, and, promptly following any such meetings, shall provide to SAWS copies of all resolutions or other indicia of Board action or consent (and upon request, all contracts, agreements or other documents approved or authorized at such Board meetings). Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall annually provide to SAWS an audited financial statement for the Water Supply Corporation, beginning with the financial audit for 2015. Additionally, throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall promptly provide written notice to SAWS of all events which, in Water Supply Corporation's reasonable determination, have a materially adverse effect on Water Supply Corporation's ability to perform its obligations under this Agreement, or which, through the passage of time, would have such materially adverse effect, to the same extent that the Project Company is required to do so under the WTPA. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall also provide to SAWS copies of such additional information as reasonably requested by SAWS to enable SAWS to monitor the Water Supply Corporation's compliance with the terms, provisions and conditions of this Real Property Conveyance Agreement. Except as may be required by Applicable Law, SAWS agrees not to disclose information provided to SAWS by the Water Supply Corporation and specifically identified by written notation as "Confidential and Proprietary" at the time provided to SAWS. If a request is received by SAWS for such Water Supply Corporation information, SAWS shall request an opinion from the Texas Attorney General and promptly provide the Water Supply Corporation with notice pursuant to Texas Government Code Section 552.305 so that the Water Supply Corporation at its own expense may present its legal position regarding confidentiality of its information to the Texas Attorney General. If a decision of the Attorney General is received indicating that the requested

information is required by law to be released, SAWS will refrain from releasing the information for seven (7) calendar days to afford the Water Supply Corporation the opportunity to file suit pursuant to Section 552.325 of the Texas Government Code, and will not release the requested information during the pendency of such litigation, provided however, that SAWS, by this Real Property Conveyance Agreement, will not be precluded from complying with any order of the court of competent jurisdiction.

**3.14 Notice of Defaults.** In the event of a material default by any party under the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, or any other agreement between Water Supply Corporation and Project Company, including, without limitation, the EPC Agreement and/or the Operating Service Agreement, or any other agreement to which the Water Supply Corporation is a party, the Water Supply Corporation shall notify SAWS of the occurrence, and details, of any such default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a material default, in either case promptly on the Water Supply Corporation becoming aware of its occurrence, to the same extent that the Project Company is required to provide this information under the terms of the WTPA. It shall not be a violation of this Section if the Water Supply Corporation fails to provide this notice, however, if SAWS has received notice of the default from the Project Company or another person.

**3.15 Uncontrollable Circumstances.** In the event that the Water Supply Corporation is unable to fulfill its obligations, in whole or in part, as described in this Real Property Conveyance Agreement, including those described in Sections 3.1 through 3.6 and/or 3.11, but expressly excluding, except as otherwise expressly provided in Section 4.8 hereinbelow, all obligations under Article 4 of this Real Property Conveyance Agreement, due to Uncontrollable Circumstances (as defined in the WTPA, but as if written to apply to the Water Supply Corporation rather than the Project Company), then the Water Supply Corporation shall have the same rights and defenses as are provided to the Project Company in the WTPA under Article 16 (Uncontrollable Circumstances) of the WTPA, as if written to apply to the Water Supply Corporation rather than the Project Company.

#### ARTICLE 4

#### ASSIGNMENT AND CONVEYANCE OF THE WATER SUPPLY CORPORATION PROJECT ASSETS

**4.1 Obligation to Assign and Convey.** The Water Supply Corporation shall assign and convey to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in the Water Supply Corporation Project Assets when, and to the same extent, that the Project Company is obligated to convey or cause to be conveyed the Project Assets to SAWS under the WTPA upon either (i) the termination date as provided in Section 22.1(A) of the WTPA resulting from the exercise by SAWS of its rights under Article 23 (SAWS Project Assets Purchase Options) of the WTPA, (ii) the termination date as provided in Section 22.1(B) in the event that the Project Company terminates the WTPA for cause prior to the Expiration Date, and requires purchase of the Project Assets by SAWS as provided in Article 21 of the WTPA, or (iii) the Expiration Date of the WTPA. Such assignment and conveyance shall assign and convey to SAWS the Water Supply Corporation Project Real Property and the Water Supply Corporation Other Project Assets, free and clear of all Encumbrances, other than (a) the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances and (b) such additional exceptions to title, of record, listed in a Title Insurance Policy or Title Commitment, being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used (collectively, the "Permitted Encumbrances on Conveyance"). Notwithstanding the foregoing or the other provisions of this Article 4, the Water Supply Corporation

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shall also convey to SAWS the Water Supply Corporation Project Assets as required by and pursuant to the terms of Section 4.4(B) of the WTPA.

4.2 Notice of Exercise of Project Asset Purchase Option. In the event that SAWS exercises its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, then, SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the terms of the WTPA.

4.3 Project Asset Conveyance on Expiration Date. SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the WTPA.

4.4 Due Diligence by SAWS prior to Assignment and Conveyance. Promptly following the Water Supply Corporation's receipt of a written notice from SAWS to exercise its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, as provided in Section 4.2 above, or, at least 180 days prior to the Expiration Date, as applicable, the Water Supply Corporation shall, at its expense, provide to SAWS, with respect to each tract of land comprising a portion of the Water Supply Corporation Project Real Property the following items (collectively, the "Due Diligence Materials"):

(1) the Water Supply Corporation's existing surveys of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, which shall have been prepared by a registered professional land surveyor licensed in the State of Texas, and certified to SAWS when such surveys are obtained by the Water Supply Corporation (or, if and to the extent such surveys were previously obtained by the Water Supply Corporation prior to the Effective Date, such previously obtained surveys shall be accompanied by a certificate from the surveyor certifying to SAWS those matters which were certified to the Water Supply Corporation in such surveys) (collectively, the "Surveys");

(2) All environmental reports in the possession of the Water Supply Corporation for the Water Supply Corporation Project Real Property;

(3) A title commitment for each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites, the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site, from Chicago Title Insurance Company or such other reputable title company selected by SAWS (the "Title Company") to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Water Supply Corporation's purchase price (on a per square foot allocation), free and clear of all Encumbrances other than the Permitted Encumbrances on Conveyance, provided that SAWS shall be solely responsible for paying for all policies of title insurance that it obtains; and

(4) Copies of all documents in the Water Supply Corporation's possession pertaining to the development, ownership, or operation of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including but not limited to soils reports; feasibility studies; environmental reports, studies, assessments, and notices; any documentation regarding water, sanitary sewer, gas and other utilities serving each such tract of land; utility information pertaining to each such tract of land; engineering studies; and ad valorem tax notices and receipts for the prior three calendar

years.

(5) The Water Supply Corporation shall, prior to the assignment and conveyance described in Section 4.6 below, cure and cause to be removed from the title commitment those title defects which would be deemed to be Encumbrances, other than those which are the standard printed exceptions for a Texas form of Title Insurance and Permitted Encumbrances on Conveyance, which such items the Water Supply Corporation shall have no obligation to cure. In the event that an environmental report recommends that further action be taken, then the Water Supply Corporation shall, as a condition precedent to closing of the assignment and conveyance to SAWS, cause all such necessary remediation to be performed such that SAWS can qualify as an “innocent landowner” or “bona fide prospective purchaser”; provided, however, that notwithstanding the above, the Water Supply Corporation shall only be responsible for remediating environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow for the continued use of the Water Supply Corporation Project Assets in the manner contemplated, and not otherwise.

4.5 Notice in Event of Conveyance due to SAWS Default. In the event that the Project Company terminates the WTPA due to a default by SAWS and requires SAWS to purchase the Project Assets in accordance with Article 21 of the WTPA, the Water Supply Corporation, at the request of either the Project Company or SAWS shall provide to SAWS, or cause to be provided to SAWS, the Project Assets Purchase Price for the Project Assets owned by the Water Supply Corporation that will be assigned and conveyed to SAWS. SAWS will provide the Water Supply Corporation with notice of the closing date for the assignment and conveyance of the Project Assets by the Water Supply Corporation in accordance with the provisions of Section 21.3 of the WTPA, and the provisions of Section 21.3 of the WTPA shall apply to the procedures for closing, provided that payment of the Project Asset Purchase Price shall be payable to the Project Company as provided in the WTPA.

4.6 Assignment and Conveyance Requirements. Each assignment and conveyance provided for under this Project Real Property Conveyance Agreement shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument in accordance with the provisions of the WTPA, including but not limited to Section 23.4 of the WTPA, and said instrument shall be recordable and shall be otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Water Supply Corporation shall indemnify and defend SAWS. The Water Supply Corporation shall pay all Taxes required to be paid by any party in connection with any such transfers, including any recording fees. The assignment and conveyance documents shall include the following:

(1) Assignment of Easements. All easements comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, the permanent easements for the Collection Pipeline Rights-of-Way, the Transmission Pipeline Easements (including those obtained via the Cross Country Easement Agreement), shall be assigned by the Water Supply Corporation to SAWS in accordance with the provisions of the WTPA and this Agreement.

(2) Conveyance of Land. All land owned by the Water Supply Corporation (other than the easement interests addressed in Section 4.6(1) above) comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites (if any), the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site (together with any and all Water Supply Corporation Project Improvements and all other rights and benefits attributable to such land, shall each be conveyed

by the Water Supply Corporation to SAWS, in the manner provided in the WTPA and this Agreement.

(3) Conveyance of Water Supply Corporation Other Project Assets. All other interests in the Water Supply Corporation Project Assets, including, but not limited to, the Project Improvements, which include the Well Field Facilities and the Transmission Pipeline System, to the extent the same do not convey as a fixture to the Water Supply Corporation Project Real Property, shall be conveyed by the Water Supply Corporation to SAWS via a bill of sale, in the manner provided in the WTPA and this Agreement.

(4) Non-Foreign Affidavit. The Water Supply Corporation shall provide a non-withholding statement that will satisfy the requirements of Section 1445 of the Internal Revenue Code on such form as may be required by the IRS.

(5) Affidavit as to Debts, Liens and Possession and Other Title Company Documents. If SAWS elects in its sole discretion to obtain an Owner's Policy of Title Insurance ("Title Policy"), then the Water Supply Corporation shall provide (a) an affidavit certifying that there are no debts or liens affecting the Water Supply Corporation Project Real Property that will not be released prior to conveyance, nor any rights of parties or tenants in possession except for the Permitted Encumbrances on Conveyance, in a form reasonably acceptable to SAWS, the Water Supply Corporation and the Title Company, and (b) such other documents and miscellaneous forms as are reasonably necessary for the Title Company to issue a Title Policy on the standard form in use in Texas as long as the same do not impose any additional cost or liability upon the Water Supply Corporation beyond its obligations under this Project Real Property Conveyance Agreement.

(6) Evidence of Authority. The Water Supply Corporation shall provide such evidence or other documents as may be reasonably required by SAWS or the Title Company evidencing the status and capacity of the Water Supply Corporation and the authority of the person or persons who are executing the various documents on behalf of the Water Supply Corporation in connection with the assignment and conveyance of the Water Supply Corporation Project Real Property.

(8) Other Documents. The Water Supply Corporation shall provide such other documents as the Title Company and SAWS may reasonably require to consummate the assignment and conveyance contemplated by this Project Real Property Conveyance Agreement.

4.7 Further Assurances. The Water Supply Corporation shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for herein, including executing and delivering such further documents or instruments giving or filing such notices, as SAWS may reasonably request.

4.8 Applicability of Related Provisions. The provisions of Sections 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS made pursuant to a purchase option occurring upon the termination of the Water Purchase and Transmission Agreement prior to the Expiration Date. The provisions of Section 11.7 (Project Asset Transfer Condition) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation

upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS. Additionally, to the extent applicable, Article 15 of the WTPA shall apply to the Water Supply Corporation's obligations to convey Project improvements and tangible personal property in the manner required herein and in the WTPA.

4.9 Indemnity for Prior Activities. The Water Supply Corporation hereby agrees to indemnify, defend and hold harmless SAWS from and against any cost or liability asserted against SAWS, as grantee arising out of or resulting from the Water Supply Corporation's failure to perform any duty, responsibility or obligation under this Real Property Conveyance Agreement prior to the effective date of the assignment or conveyance to SAWS of the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets, and/or any environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow the for the continued use of the Water Supply Corporation Project Assets in the manner contemplated. This paragraph 4.9 shall survive the termination or expiration of this Project Real Property Conveyance Agreement.

## ARTICLE 5

### REMEDIES OF THE PARTIES

5.1 Dispute Resolution. The provisions of Article 18 (Dispute Resolution) of the WTPA shall apply to any dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to any such dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, rather than to a dispute between the Project Company and SAWS pursuant to the WTPA.

5.2 Remedies for Breach. Subject to the provisions of Sections 2.2. and 3.12 of this Real Property Conveyance Agreement, the parties agree that in the event that either party breaches this Project Real Property Conveyance Agreement, the other party may exercise any legal rights it may have under this Project Real Property Conveyance Agreement or under Applicable Law to recover damages or to secure specific performance, subject to the waiver of special, consequential or punitive damages set out in Section 19.6 of the WTPA (which is made applicable herein) and the duty to mitigate damages set out in Section 26.4 of the WTPA, and that such rights to recover damages and to secure specific performance shall constitute the sole and exclusive remedies for any such breach. Notwithstanding the foregoing, neither party shall have the right to terminate this Project Real Property Conveyance Agreement.

5.3 Waiver of Remedies. No failure to exercise, and no delay in exercising, any right or remedy under this Project Real Property Conveyance Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Real Property Conveyance Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

5.4 Exercise of Remedies.

(1) Remedies Cumulative. The rights and remedies of the parties are described in Section 5.2 of this Agreement and this Section 5.4.



(2) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(3) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.5 No Duplicative Recovery or Claims Outside Contract. Every right to claim compensation, indemnification or reimbursement under this Project Real Property Conveyance Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Real Property Conveyance Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Real Property Conveyance Agreement.

## ARTICLE 6

### MISCELLANEOUS

6.1 Recording. Upon the Effective Date, a memorandum of this Project Real Property Conveyance Agreement shall be recorded in the land records of the Counties in which Water Supply Corporation Project Real Property is located in order to (i) make of public record the limitations and restrictions on the Water Supply Corporation's ownership and operation of the Water Supply Corporation Project Real Property during the term of this Project Real Property Conveyance Agreement, and (ii) preserve SAWS' assignment and conveyance rights under Article 4 and make the same of public record. Notwithstanding the foregoing, (a) as reasonably promptly following the Effective Date upon the availability of specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement, (b) upon the Financial Closing Date, and (c) thereafter from time-to-time, at SAWS cost and expense, upon written request from SAWS to the Water Supply Corporation, the Water Supply Corporation shall execute and record in the land records of the Counties in which Water Supply Corporation Project Real Property is located, further memorandums hereof or amendments thereto to attach specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement.

6.2 Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate this Project Real Property Conveyance Agreement or any portion or provision hereof, or would limit the time during which this Project Real Property Conveyance Agreement or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty one (21) years after the death of the last survivor of the now living descendants of the members of Congress of the United States of America (including the House of Representatives and the Senate) who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

6.3 Relationship of the Parties. The Water Supply Corporation is an independent contractor of SAWS with regard to the obligations owed to SAWS under this Real Property Conveyance Agreement, and a subcontractor with regard to the obligations owed by the Water Supply Corporation to the Project Company under the terms of the Transportation Agreement, and the relationship between SAWS and the

Water Supply Corporation shall be limited to performance of this Project Real Property Conveyance Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Real Property Conveyance Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Real Property Conveyance Agreement or the performance thereof.

6.4 No Other Business; No Public Utility.

(1) No Other Business. The Water Supply Corporation shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder without the prior consent of SAWS.

(2) No Public Utility Regulation. The Water Supply Corporation is not and will not by reason of this Project Real Property Conveyance Agreement be providing "retail water utility service" as that term is defined by Section 13.002(20) of the Texas Water Code. This Project Real Property Conveyance Agreement is not a "wholesale water service" agreement as that term is defined by Section 13.002(25) of the Texas Water Code.

6.5 Binding Effect; Term. This Project Real Property Conveyance Agreement shall inure to the benefit of and shall be binding upon SAWS and the Water Supply Corporation and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control) of the WTPA. The term of this Project Real Property Conveyance Agreement shall commence on the Effective Date and shall expire upon the full assignment and conveyance of the Project Assets to SAWS as contemplated herein, except for such provisions as expressly survive such assignment and conveyance..

6.6 Notices, Consents and Approvals.

(1) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Project Real Property Conveyance Agreement shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(a) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(b) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(c) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon

the commencement of business hours on the next Business Day following confirmation of the transmission; and

(d) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(2) SAWS Notice Address. Notices required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(3) Water Supply Corporation Notice Address. Notices required to be given to the Water Supply Corporation shall be addressed as follows:

Central Texas Regional Water Supply Corporation  
P.O. Box 160573  
Austin, Texas 78716  
Attention: President  
Fax No.: 512 732-2252  
Email: secretary@ctrwsc.org

with a copy to:

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway, Building One, Suite 300  
Austin, TX 78746  
Attention: Manuel Mendez  
Fax No.: 512-320-5638  
Email: mmendez@bickerstaff.com  
Phone: 512 472-8021

Section 26.8 of the WTPA is incorporated herein, as applicable, to apply to approvals and consents requested by the Water Supply Corporation in the same manner as requests made by the Project Company under said Section 26.8.

6.7 Notice of Litigation. In the event the Water Supply Corporation or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

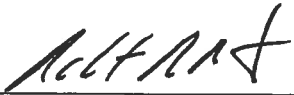
6.8 Further Assurances. The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Real Property Conveyance Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Real Property Conveyance Agreement.

6.9 Commissions. Each party hereby represents and warrants that it has not entered into any agreements which could give rise to a real estate commission being owed as a result of this Project Real Property Conveyance Agreement, and each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost or expense (including reasonable attorneys' fees) resulting to the other party by reason of any brokerage fees or claims by brokers, arising out of any agreement entered into by such party in connection with the Water Supply Corporation Project Real Property.


[Signature Page Follows]


This Project Real Property Conveyance Agreement is executed by the parties below to be effective as of the Effective Date.

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By:   
Name: Robert R. Puente  
Title: President and CEO  
Date: 6/10/16

Central Texas Regional Water Supply Corporation,  
a Texas non-profit water supply corporation

By:   
Name: \_\_\_\_\_  
Title: President  
Date: 5/13/16

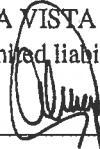
By:   
Name: Joaquin Abaur  
Title: Secretary  
Date: 5/13/16

**CONSENT AND JOINDER OF  
PROJECT COMPANY**

By its execution of this Consent and Joinder, Project Company hereby approves this Project Real Property Conveyance Agreement, and consents to its terms, including but not limited to the provisions of Section 3.12, and agrees that, to the extent Project Company is the party acquiring any Project Assets instead of the Water Supply Corporation, Project Company shall acquire, hold, convey, convey in trust and assign such Project Assets in the manner set forth in this Project Real Property Conveyance Agreement, and the applicable terms, provision and conditions of this Project Real Property Conveyance Agreement pertaining thereto shall be interpreted as if written to apply to the Project Company.

**PROJECT COMPANY:**

ABENGOA VISTA RIDGE, LLC,  
a Texas limited liability company

By:   
Name: Pedro Amego  
Title: President

**SCHEDULE A**

**WATER SUPPLY CORPORATION FORMATION DOCUMENTS**

*See attached*

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Carlos H. Cascos  
Secretary of State

## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Central Texas Regional Water Supply Corporation  
802071610

The undersigned, as Secretary of State of Texas, hereby certifies that a Restated Certificate of Formation for the above named domestic nonprofit corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 09/18/2015

Effective: 09/18/2015



A handwritten signature in black ink, appearing to read "Cascos".

Carlos H. Cascos  
Secretary of State



**Form 414  
(Revised 09/13)**

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709

**Filing Fee: See instructions**



**Restated Certificate of  
Formation  
With New Amendments**

This space reserved for office use.

**FILED**  
In the Office of the  
Secretary of State of Texas

SEP 18 2015

**Corporations Section**

**Entity Information**

The name of the filing entity is:

Central Texas Regional Water Supply Corporation

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- |   |   |
|---|---|
| <input type="checkbox"/> For-profit Corporation           | <input type="checkbox"/> Professional Corporation               |
| <input checked="" type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association          | <input type="checkbox"/> Professional Association               |
| <input type="checkbox"/> Limited Liability Company        | <input type="checkbox"/> Limited Partnership                    |

The file number issued to the filing entity by the secretary of state is: 802071610

The date of formation of the filing entity is: 09/25/2014

**Statement of Approval**

Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the certificate of formation and the restated certificate of formation have been approved in the manner required by the Code and by the governing documents of the entity.

**Required Statements**

The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, and as further amended by the restated certificate of formation. The attached restated certificate of formation does not contain any other change in the certificate of formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity.

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:


**Execution**

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: 9/18, 2015

Central Texas Regional Water Supply Corporation

Name of entity (see Execution instructions)



Signature of authorized individual (see instructions)

Michael Irbeck, President

Printed or typed name of authorized individual

Attach the text of the amended and restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

**RESTATED CERTIFICATE OF FORMATION  
OF  
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION  
(WITH NEW AMENDMENTS)**

1. The Corporation's Certificate of Formation as amended is hereby restated in its entirety and reads as set forth below:

**ARTICLE ONE**

The name of the Corporation is Central Texas Regional Water Supply Corporation (the "Corporation").

**ARTICLE TWO**

The Corporation is a non-profit corporation organized and operating under Chapters 67 and 49 of the Texas Water Code and Chapter 22, Texas Business Organizations Code, as amended (collectively, the "Acts"). The Corporation is authorized to exercise all powers, privileges and rights conferred on a corporation by the Acts for the purpose of providing water supply, and all powers and rights incidental in carrying out the water supply purpose for which the Corporation is formed, including acquiring, producing, treating, transporting, storing and distributing water, except such powers and rights as are inconsistent with the express provisions of the Acts.

**ARTICLE THREE**

The period of the Corporation's duration is perpetual.

**ARTICLE FOUR**

The Corporation is organized for the exclusive purposes of providing, acquiring, constructing, reconstructing, replacing, extending, improving, expanding, owning, operating, repairing and maintaining water supply pumping, transportation and storage facilities, and appurtenances thereto or property interests related thereto, which may be used for the delivery of water to the San Antonio Water System and its customers, as well as the central Texas region, being a service area of at least four counties, and all matters relating thereto as may be determined by the Board of Directors of the Corporation, from time to time. All of the facilities which may be used for the delivery of water to the San Antonio Water System and its customers, owned by the Corporation shall be transferred to the San Antonio Water System as may be provided by any agreements between the Corporation and the San Antonio Water System or upon dissolution of the Corporation.

**ARTICLE FIVE**

The street address of the registered office of the Corporation is 1999 Bryant Street, Suite 900, Dallas, Texas 75201-3136, and the name of its initial registered agent at that address is CT Corporation System.

**ARTICLE SIX**

The Corporation shall have members. The classes, designations, manner of election or appointment of the Members and the qualifications and rights of the Members shall be as set forth in the bylaws.

**ARTICLE SEVEN**

The number of directors constituting the Board of Directors of the Corporation is four (4). The names and addresses of the persons who are to serve as the directors are:

<u>Name</u>	<u>Address</u>
Richard Morgan	P. O. Box 160573 Austin, TX 78716
Jorge A. Arroyo	129 Kingwood Dr. Elgin, TX 78621
Joaquín Abaurre Benjumea	P. O. Box 160573 Austin, TX 78716
Michael Irlbeck	P. O. Box 160573 Austin, TX 78716

**ARTICLE EIGHT**

The initial bylaws of the Corporation shall be adopted by its Board of Directors and the power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the Board of Directors.

**ARTICLE NINE**

The Corporation is and shall continue to be a Corporation without capital stock.

**ARTICLE TEN**

No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, to the Corporation for monetary damages caused in any way by an act or omission occurring in the Director's capacity as a Director of the Corporation, to the extent provided by Sections 22.221(b), 22.226(b), 22.227 or 22.28, Texas Business Organizations Code, as amended, and shall be entitled to contribution as provided in Section 22.229, Texas Business Organizations Code, as amended. A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in the Director's capacity as a Director, except to the extent a statute of the State of Texas expressly precludes elimination or limitation of such personal liability. Any repeal or modification of this provision of the Certificate of Formation shall be prospective only and shall not adversely affect any limitation of the personal liability of a Director of the Corporation existing at the time of the repeal or modification.

**ARTICLE ELEVEN**

In accordance with the provisions of Section 67.008 of the Texas Water Code, the Corporation will pay annually to political subdivisions, private corporations or other persons that have transacted business with the Corporation during the previous year any profits in direct proportion to the amount of business the Corporation transacts with such person or entity during the year; provided, that the Corporation may not make any such distribution if the Corporation has unpaid indebtedness.

**ARTICLE TWELVE**

The Corporation shall be wound-up, dissolved and terminated in the event a "Termination Date" or "Expiration Date" (as such terms are defined in that certain "Vista Ridge Project Real Property Conveyance Agreement" to be entered into between the City of San Antonio, Texas, acting by and through the San Antonio Water System, an agency of the City of San Antonio, and the Corporation) has occurred. Upon such event requiring winding-up (as such term is used in Section 11.051(3) of the Texas Business Organizations Code), after all liabilities and obligations of the Corporation are paid, satisfied, discharged or provided for, the remaining assets of the Corporation shall be transferred to the San Antonio Water System in accordance with the provisions of Section 11.30 of the Texas Tax Code because the San Antonio Water System provides water supply and wastewater service and is exempt from ad valorem taxation.

**SCHEDULE B**

**WATER SUPPLY CORPORATION BYLAWS**

*See attached*

**AMENDED AND RESTATED BYLAWS (WITH NEW AMENDMENTS)  
of the  
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION**

These Amended and Restated Bylaws of Central Texas Regional Water Supply Corporation (the "Corporation"), having been presented to the Board of Directors of said Corporation and duly adopted as follows:

**ARTICLE I**

The Corporation may have such officers as the Board of Directors determines and appoints from time to time including, without limitation, a President, Vice President, Secretary and Treasurer. One person may hold two or more offices; provided, however, that President and Secretary shall not be the same person. Terms of any officers elected after the organizational meeting shall commence on the date of the annual meeting following their election by the Board and shall end on the date of the annual meeting of the Members that is two (2) years subsequent.

**ARTICLE II**

The President shall preside at all meetings of the Members and Directors. The President may, and upon demand of any Member shall, call a special meeting of the Members or the Directors. Such special meetings shall be held upon giving the notice required in Article VII of these Bylaws. The President shall also have such authority and duties as usually pertain to such office and such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

**ARTICLE III**

The Vice President shall, in case of the absence or disability of the President, perform the duties of the President. The Vice President shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

**ARTICLE IV**

The Secretary shall keep minutes of all meetings of the Members and the Directors. The Secretary shall have custody of the seal of the Corporation and affix it as directed hereby or by resolution passed by the Board of Directors. The Secretary shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy secretary to assist the Secretary in all official duties pertaining to the office of the Secretary.

**ARTICLE V**

The Treasurer shall have the custody of all the monies and securities of the Corporation. The Treasurer shall keep regular books. All monies of the Corporation shall be deposited by the Treasurer in such depository as shall be selected by the Board of Directors. All checks or demands for money and notes of the Corporation shall be signed by the Treasurer or such other officer or officers as the Board of Directors may from time to time designate. The Treasurer

shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy treasurer to assist the Treasurer in all official duties pertaining to the office of the Treasurer.

The position of the Treasurer and other positions entrusted with receipt and disbursement of funds shall be placed under a fidelity bond in an amount which shall be set from time to time, but not less than once each year, by the Board of Directors.

## ARTICLE VI

Section 1. The Board of Directors shall initially consist of four (4) Directors, a majority of whom shall constitute a quorum. Each Director shall be a Member and shall satisfy all other applicable requirements of Chapter 67 of the Texas Water Code and other applicable law. The number of Directors may be increased or decreased from time to time by an amendment to these Bylaws, provided that the number of Directors may not be decreased to fewer than three (3) or increased to more than twenty-one (21). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Upon formation of the Corporation, and annually thereafter at the time of the annual meeting of the Members, the Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer. The initial Board of Directors shall serve until replaced by the subsequent Directors that are elected or appointed as herein provided.

Section 2. At the first annual meeting of the Members (and at subsequent annual meetings to the extent necessary), the Directors shall be divided into three (3) classes, each class to be as near as equal in number as possible. The terms of the Directors of the first class shall expire at the first annual meeting of the Members after their election; the terms of the Directors of the second class shall expire at the second annual meeting of the Members after their election; and the terms of the Directors of the third class shall expire at the third annual meeting of the Members after their election. At each annual meeting after such classification, the number of Directors equal to the number of class whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting. The Directors may receive such directors' fees (not to exceed \$5,000 per year) as the Directors may approve by majority vote and shall be reimbursed for actual expenses incurred in their duties as directors. Any vacancy occurring in the Board of Directors, whether due to death, resignation, removal or otherwise, may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of the previous Director. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election by the Members at an annual meeting or at a special meeting of the Members, called for that purpose. Any Director may be removed from office at any time, with or without cause, by vote of a majority of the Members.

Section 3. The Directors may meet by video conference as permitted by Chapter 6, Texas Business Organizations Code, as amended (the "BOC"), but only in the manner and to the extent permitted by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended (the "Open Meetings Act"). The Board may appoint committees to act on behalf of the Board as authorized by the BOC or to act in an advisory or fact-finding capacity.



## ARTICLE VII

Section 1. All meetings of the Board of Directors shall be held at such time and place as the President or the Board may determine and the conduct and notice of said meeting shall comply with any applicable provisions of the Open Meetings Act. Each Director shall be given 72 hours prior notice or shall sign a waiver of notice.

Section 2. The Board of Directors shall provide access for the public, new service applicants, or the Members to the meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

## ARTICLE VIII

The Directors of the Corporation shall establish and maintain, in an institution insured by the State or Federal Government, or invested in readily marketable securities backed by the full faith and credit of the United States of America, all funds of the Corporation.

## ARTICLE IX

Section 1. The Corporation shall have Members. Members shall consist of those persons who are elected to serve on the Corporation's Board of Directors, but only so long as such person continues to serve as a director. If a Director resigns, is removed or dies, such director shall automatically cease to be a Member of the Corporation. The initial Members shall be the four persons designated as Directors in the Corporation's Certificate of Formation. Members shall each have one vote in the election of Directors. Members shall have no other voting rights and shall not be required to approve any transactions by the Corporation (or any amendments to the Corporation's Certificate of Formation or Bylaws) that are approved by the Board of Directors.

Section 2. The Members shall elect the Directors at any annual or special meeting of the Members. Each Member shall have one vote in such election and the action of a majority of the Members shall be required to elect Directors.

Section 3. Membership rights of Members shall not be assignable or transferable, either voluntarily or involuntarily.

## ARTICLE X

There shall be a regular meeting of the Members held annually to transact all business that may be properly brought before it on such date and at such time as the Board of Directors shall fix and set forth in the notice of meeting. The Secretary shall give at least fifteen (15) days' written notice of such annual meeting to the Members indicating the time, place and purpose of such meeting, and shall address and mail the notice to each of the Members at the address last known to the Corporation. Failure to hold or call an annual or special meeting in accordance with these Bylaws shall give the Members the right to compel the Board of Directors to properly hold an annual or special meeting of the Members.

#### **ARTICLE XI**

Prior to convening any special meeting of the Members, the President shall request in writing that the Secretary give at least ten (10) days' notice to the Members, and that such special meeting is otherwise noticed as provided under Article VII of these Bylaws. Such notice shall specify the time, place and purpose of the meeting, and shall be addressed and mailed to each Member at the address last known to the Corporation.

#### **ARTICLE XII**

The business of the Corporation may be handled under the direction of the Board of Directors by a manager to be elected by a majority of the Board. The manager shall serve with or without compensation. The manager, with the approval of the Board of Directors, may employ, with or without compensation, such supervisory, clerical or other employees as may be required to effectively operate the business of the Corporation.

#### **ARTICLE XIII**

Upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation remaining after discharge of the indebtedness of the Corporation shall be transferred to SAWS in accordance with the provisions of Section 11.30 of the Texas Tax Code because SAWS provides water supply and wastewater service and is exempt from ad valorem taxation.

#### **ARTICLE XIV**

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

#### **ARTICLE XV**

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Members, Board of Directors, and committees, and shall keep a record of the names and addresses of its Members at its registered office or principal office in Texas.

Annually, the Board of Directors shall prepare or cause to be prepared a report of the financial activity of the Corporation for the preceding year, including a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses and balance sheets for all funds. Such reports shall be submitted for approval to the Board of Directors.

With prior written request, corporate records, books and annual reports, subject to exceptions provided by law, shall be available for public inspection and copying by the public or their duly authorized representatives during normal business hours subject to a reasonable charge for the preparation of copies.

## ARTICLE XVI

The Corporation shall not provide retail water or sewer service as such terms are used in Sections 67.0052-67.007 of the Texas Water Code. Accordingly, under Section 67.0075 of the Texas Water Code, annual meetings and election of directors shall be conducted in compliance with Chapter 22 of the BOC. Annual meetings, as well as all other meetings held by the Corporation, are also subject to the Open Meetings Act. If any provision of these Bylaws is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of these Bylaws. In the event that the Texas Water Code or any other applicable statute is hereafter amended to change any governance requirements applicable to the Corporation, these Bylaws and, if necessary, the Corporation's Certificate of Formation, shall be amended to comply with such new governance requirements.

## ARTICLE XVII

The Corporation (i) shall make distributions at a time and in a manner as not to subject it to tax under Section 4942 of the Internal Revenue Code (the "Code"); (ii) shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; (iii) shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; (iv) shall not make any investments which would subject it to tax under Section 4944 of the Code; and (v) shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code.

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under the Code and related regulations, rulings and procedures. Regardless of any other provision in these Bylaws or state law, the Corporation may not:

1. Engage in activities or use its assets in manners that do not further one or more exempt purposes, as set forth in these Bylaws and defined by the Code and related regulations, rulings and procedures, except to an insubstantial degree.
2. Serve a private interest other than one clearly incidental to an overriding public interest.
3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Code and related regulations, rulings and procedures.
4. Participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include publishing or distributing statements and any other direct or indirect campaign activities.
5. Have objectives characterizing it as an "action organization" as defined by the Code and related regulations, rulings and procedures.
6. Distribute its assets on dissolution other than for one or more exempt purposes. On dissolution, the Corporation's assets remaining after payment of the

indebtedness of the Corporation will be distributed to SAWS as set forth in Article XIII hereof, to be used to accomplish the general purposes for which the Corporation was organized.

7. Permit any part of the Corporation's net earnings to inure to the benefit of any private individual.
8. Carry on an unrelated trade or business, except as a secondary purpose related to the Corporation's primary, exempt purposes.

#### **ARTICLE XVIII**

These Bylaws may be altered, amended or repealed by a majority vote of the Board of Directors at a meeting of the Board of Directors or by a vote of the Members present at any regular meeting of the Corporation, or at any special meeting of the Corporation called for that purpose, except that neither the Board of Directors nor the Members shall have the power to change the purpose of the Corporation so as to decrease its rights and powers under the laws of the State, or to waive any requirements of bond or other provisions for the safety and security of the property and funds of the Corporation or its Members, or to deprive the Members of rights and privileges then existing, or so to amend these Bylaws as to effect a fundamental change in the policies or purposes of the Corporation. Notice of any amendment must be given to all members of the Board of Directors and the Members at least ten (10) days before such meeting and must set forth the amendments to be considered.

#### **ARTICLE XIX**

The seal of the Corporation shall consist of a circle within which shall be inscribed "CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION."

#### **ARTICLE XX**

The Corporation pledges its assets for use in performing the organization's non-profit functions.

**ARTICLE XXI**

The above Amended and Restated Bylaws and regulations were unanimously adopted by the Board of Directors of the CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, at a meeting held on the 18th day of September, 2015.

CENTRAL TEXAS REGIONAL WATER  
SUPPLY CORPORATION

By: 

\_\_\_\_\_  
Joaquin Abaurre Benjumea

Vice President, Secretary and Treasurer

**REFERENCE DOCUMENT 4**

**MEMBERSHIP INTEREST AND PURCHASE AGREEMENT**

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## **MEMBERSHIP INTEREST AND PURCHASE AGREEMENT**

**THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT** ("Agreement") is made as of March 21, 2016 ("Effective Date") by and among **GARNEY P3 LLC**, a Missouri limited liability company with a notice address of 1333 NW Vivion Road, Kansas City, MO 64118 ("Purchaser"), **GARNEY COMPANIES, INC.**, a Missouri corporation with a notice address of 1333 NW Vivion Road, Kansas City, MO 64118 ("Garney"), **GARNEY HOLDING COMPANY**, a Missouri corporation with a notice address of 1333 NW Vivion Road, Kansas City, MO 64118 ("Garney Parent"), **ABENGOA WATER USA LLC**, a limited liability company organized and existing under the laws of the State of Texas ("Seller"), and **ABENGOA S.A.**, a company organized and existing under the laws of the Kingdom of Spain ("Abengoa Parent"), and **ABENGOA VISTA RIDGE, LLC**, a limited liability company organized and existing under the laws of the State of Delaware ("Abengoa Vista Ridge"). The notice address for Seller, Abengoa Parent and Abengoa Vista Ridge shall be C/O Abengoa Vista Ridge, LLC, 40 NE Loop 410, Mercantile Building Suite 343 San Antonio, TX 78216 Attn: Carlos Cosín Fernández, President. The notice address for Purchaser, Garney and Garney Parent shall be Garney Companies, Inc. C/O 1333 NW Vivion Road, Kansas City, MO 64118. For the purpose of this Agreement Abengoa Parent and Seller may be collectively referred to herein as "Seller Parties", and Purchaser, Garney and Garney Parent may be collectively referred to herein as "Purchaser Parties").

### **Recitals**

**WHEREAS**, Garney Parent is a Missouri corporation which owns 100% of Garney;

**WHEREAS**, Garney is a Missouri corporation which owns 100% of Purchaser;

**WHEREAS**, Purchaser is a Missouri limited liability company that is wholly owned by Garney;

**WHEREAS**, Abengoa Parent is a Spanish company which owns, directly or indirectly, 100% of Seller, Abengoa Vista Ridge and **ABEINSA ABEIMA TEYMA GENERAL PARTNERSHIP**, a general partnership organized and existing under the laws of the State of Delaware ("Abeinsa");

**WHEREAS**, Seller owns, directly, 100% of the membership interests in Abengoa Vista Ridge ("Membership Interests");

**WHEREAS**, Abengoa Vista Ridge is a party to that certain Water Transmission and Purchase Agreement dated November 4, 2014 (the "WTPA") with The City of San Antonio, Texas acting by and through The San Antonio Water System Board of Trustees ("SAWS");

**WHEREAS**, the WTPA also provides that Abengoa Vista Ridge is to be a party to the "Construction Management Agreement", "Creditors' Remedies Agreement", "EPC Agreement", "Equity Contribution Agreement", "Groundwater Lease Conveyance Agreement", "Guaranty



Agreement", "Operating Service Agreement", "Project Construction Loan Agreement" and the "Water Transportation Agreement", (each as described in the WTPA), at such time as those agreements are executed;

**WHEREAS**, Seller, in its capacity as Operating Service Provider under the terms of the WTPA, is named in the WTPA as the "Operating Service Provider" and a party to the "Operating Service Agreement";

**WHEREAS**, Purchaser wishes to acquire from Seller, and Seller wishes to sell to Purchaser eighty percent (80%) of the Membership Interests under the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual representations, warranties, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**Section 1.1 Sale of Conveyed Interests.**

(a) Subject to the terms, covenants and conditions set out herein, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to buy from Seller eighty percent (80%) of the Membership Interests in Abengoa Vista Ridge, along with all right, title and interest in Abengoa Vista Ridge associated therewith, including, without limitation, any right, title and interest the Seller may have in and to the "Construction Management Agreement", "Creditors' Remedies Agreement", "EPC Agreement", "Equity Contribution Agreement", "Groundwater Lease Conveyance Agreement", "Guaranty Agreement", "Project Construction Loan Agreement" and the "Water Transportation Agreement", (each as described in the WTPA), (the "Conveyed Interests"), if any, but expressly excluding any right title or interest in and to the Operating Service Agreement.

(b) Purchaser Parties and Seller Parties hereby agree that Seller will, from the Closing Date and thereafter, own a non-dilutable twenty percent (20%) of the Membership Interests and all distributions to be made from Abengoa Vista Ridge, regardless of any future capital contributions, costs or expenses of Abengoa Vista Ridge or the Purchaser Parties

(c) Contemporaneously with the sale of the Conveyed Interests from Seller to Purchaser, the Limited Liability Company Agreement of Abengoa Vista Ridge, LLC dated as of September 15, 2014 (the "Company Agreement") will be modified by the execution by Purchaser and Seller of an Amended and Restated Limited Liability Company Agreement for Abengoa Vista Ridge to provide (i) that Purchaser, as owner of eighty percent (80%) of the Membership Interests of Abengoa Vista Ridge, shall have decision-making control over Abengoa Vista Ridge and all related employment matters subject to the limitations set out in Schedule 1.1(c), and (ii) for those additional provisions set out in Schedule 1.1(c), attached hereto (the "Amended and Restated Company Agreement").

**Section 1.2 Payments from Purchaser.** As consideration for the foregoing transfers, Purchaser Parties agree to:

(a) Pay to Seller, at Closing, Ten Dollars (\$10) cash;

(b) On or before the Closing, pay \$8,090,677.11 to Bank of America Merrill Lynch (“BAML”), as sums representing repayment of amounts (i) advanced to Abengoa Vista Ridge by BAML pursuant to an Agreement for Acceptance of Documentary Drafts or Bills of Exchange dated March 20, 2015, and entered into between BAML and Abengoa Vista Ridge, and (ii) arranged to be advanced by BAML to Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation (“CTRWSC”) at the direction and for the benefit of Abengoa Vista Ridge under the terms of the Water Transportation Agreement, pursuant to an Agreement for Acceptance of Documentary Drafts or Bills of Exchange dated March 20, 2015, and entered into between BAML and CTRWSC. For the purpose of this Agreement the two BAML credit facilities are hereinafter sometimes referred to collectively as the “BoA Debt Agreement”. The payment under (ii) shall be deemed a payment by Abengoa Vista Ridge to CTRWSC under the Water Transportation Agreement for the purpose of providing funds to CTRWSC to repay indebtedness therein described. The payment of \$8,090,677.11 will be applied by BAML upon the BoA Debt Agreement on a basis which is pro rata to the respective outstanding balances of the two credit facilities, as of the date such payment is applied.

(c) On or before March 31, 2016, to the hereinafter defined Lenders pay the quarterly interest payment in the amount of \$1,094,032.33 due on or before March 31, 2016 (the “March Loan Payment”) upon that one certain Bridge Loan Agreement (the “Bridge Loan”) entered into as of July 20, 2015, between Abengoa Vista Ridge, LLC, as “Borrower” and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Société Générale, as “Lenders”, pursuant to which Sumitomo Mitsui Banking Corporation serves as administrative agent for the Lenders, the current principal balance on such indebtedness being \$120,000,000.00 as of March 21, 2016, and which principal balance shall not be increased during the term of this Agreement by Seller or Purchaser;

(d) Contribute to Abengoa Vista Ridge the capital necessary to pay, subject to Section 1.6(b) below, reasonable costs to achieve Financial Close (as defined in the WTPA) and to further completion of the Project (the “Capital Contributions”) and to modify the Company Agreement to provide accordingly, as to be reflected in the Amended and Restated Company Agreement.

**Section 1.3 Closing.** The closing of the sale of the Conveyed Interests (“Closing”) shall occur on the later of (i) May 4, 2016 or (ii) three (3) business days after all Conditions of Closing for the sale of the Conveyed Interests have been satisfied or waived by the Purchaser or Seller, as the case may be, under the terms of this Agreement, or on such later date as mutually agreed by Purchaser and Seller (“Closing Date”).

**Section 1.4 Conditions of Closing.**

(a) The obligation of Purchaser to acquire the Conveyed Interests under the terms of this Agreement is contingent upon the following:

i. Seller Parties’ representations and warranties in Section 2.1(b) shall be true and correct when made, and shall be true and correct on the Closing Date;

- ii. Seller has delivered the items described in Section 1.5(b);
- iii. Purchaser has received the items described in Section 1.5(d);
- iv. Seller has paid to the Lenders that certain interest payment in the amount of \$1,020,157.33 plus past due interest in the amount of \$9,300.71, due and payable on December 31, 2015 which is due under the terms of the Bridge Loan, such payment is to be made within five (5) business days upon execution of this Agreement, but in no event later than March 27, 2016;
- v. Lenders of Abengoa Vista Ridge and Purchaser have agreed to mutually acceptable terms to the Lender Consent (as described in Section 1.5(d)(i)) and Bridge Loan (as described as set out in Section 1.2(c));
- vi. All litigation in connection with the Project involving Blue Water Systems, LP or its affiliates shall be resolved in the manner described in 1.5(d)(ii);
- vii. Seller has performed all other obligations and conditions required to be performed or observed by it on or prior to the Closing Date;
- viii. Seller has satisfied with BAML the remaining amounts due under the terms of the BoA Debt Agreement which are in excess of the amount paid or to be paid to BAML pursuant to Section 1.2(b); and
- ix. Seller has delivered to SAWS those documents and instruments for which it is responsible, as may be required by SAWS related to its approval as per Section 1.5 below.

(b) The obligation of Seller to sell the Conveyed Interests under the terms of this Agreement is contingent upon the following:

- i. Purchaser Parties have caused the payments to be paid, as set out in Sections 1.2 (a),(b) and (c) (collectively the "Transaction Payments");
- ii. Purchaser Parties' representations and warranties in Section 2.1(a) shall be true and correct when made, and shall be true and correct on the Closing Date;
- iii. Purchaser Parties are not, as of the Closing Date, in default of the Closing Covenants set out in Section 1.6;
- iv. Purchaser has delivered the items described in Section 1.5(a);
- v. Seller has received the items described in Section 1.5(c) and Section 1.5(d);
- vi. A termination of the Early Works Services Agreement, entered into as of July 23, 2015 (the "Early Works Services Agreement"), by and among CTRWSC and

Abeinsa and, in connection therewith, a release by CTRWSC and Abengoa Vista Ridge, and all other parties who may claim by or through CTRWSC or Abengoa Vista Ridge, of all claims, rights and remedies they may have against Abeinsa, at law or in equity, for sums paid by Abengoa Vista Ridge to Abeinsa at the direction of CTRWSC, in the amount of \$118,735,00.00 (the “Bridge Loan Proceeds”), including any obligation for Abeinsa to repay to CTRWSC any Bridge Loan Proceeds.

vii. A termination of the Letter of Intent dated December 12, 2014 between Abengoa Vista Ridge and Abeinsa, and a release of both parties thereto as to all obligations thereunder, including any obligation for Abeinsa to repay to Abengoa Vista Ridge any amounts advanced by Abengoa Vista Ridge thereunder.

viii. Purchaser Parties shall have released Seller Parties in connection with any other debt related to Abengoa Vista Ridge effective as of the Closing Date.

ix. A release by SAWS of (i) the Abengoa guaranty arising under the terms of the Guaranty Agreement (as defined in the WTPA), and (ii) the Abengoa Letter of Support (as defined in the WTPA), as well as a substitution of a similar guaranty and letter of support and related documentation included in Appendix 16 of the WTPA from Garney Companies, Inc. in favor of SAWS.

x. Purchaser has delivered to SAWS those documents and instruments for which it is responsible, as may be required by SAWS related to its approval as per Section 1.5 below.

xi. Purchaser Parties shall have performed all other obligations and conditions required to be performed or observed by it on or prior to the Closing Date.

(c) The above notwithstanding, in the event the Conditions to Closing are not completed or the Closing has not occurred by June 3, 2016, this Agreement shall automatically terminate and the Seller Parties, Abengoa Vista Ridge and Purchaser Parties will have no further obligations to each other under the terms of this Agreement; provided, however, if Purchaser Parties have paid the March Loan Payment at the time of the termination of this Agreement under this Section, Seller shall reimburse Purchaser a sum equal to the March Loan Payment within five (5) business days from the date of such termination.

(d) Notwithstanding anything to the contrary, upon Purchaser’s payment of the March Loan Payment, Seller may not terminate this Agreement except in the case of a default by Purchaser or as per Section 1.4 (c) above.

**Section 1.5 Closing Deliveries.** On the Closing Date:

(a) Purchaser shall deliver or execute or cause to be executed and delivered to Sellers (as applicable) on or before Closing:

i. The Transaction Payments as set out in Section 1.2.

ii. Written approvals, consents and acceptances of the transactions contemplated hereby from (A) SAWS (which the parties hereto acknowledge, when and if delivered by SAWS, shall be pursuant to Article 24 and Section 1.2(BB) of the WTPA), (B) the Lenders, and (C) Blue Water Vista Ridge, LLC (“Blue Water”), in the form agreed to between Seller and Purchaser, in their reasonable discretion.

iii. A copy of the fully executed substituted guaranty and letter of support and related documentation included in Appendix 16 of the WTPA, in favor of SAWS from Garney Companies, Inc., as described in Section 1.4(b)(ix).

(b) Sellers shall deliver or execute or cause to be executed and delivered to Purchaser at Closing:

i. Documentation necessary to transfer the Conveyed Interests, free and clear of all liens or other claims such that Purchaser owns the Conveyed Interests, in the form agreed to between Seller and Purchaser, in their reasonable discretion.

ii. Seller shall execute and deliver to Purchaser (i) a unanimous consent document which shall appoint the board of directors, which board will include one director appointed by Seller, and appoint Purchaser as the manager of Abengoa Vista Ridge and (ii) such amendments to the controlling documents of Abengoa Vista Ridge as Purchaser may reasonably require to reflect the changes brought about by this Agreement.

iii. A copy of the release from Abengoa Greenbridge, S.A.U. of the debt assumed by Abengoa Vista Ridge under certain *Contrato de Crédito Recíproco* (Reciprocal Credit Agreement) dated December 17, 2014.

iv. Written approvals, consents and acceptances of the mutual release contemplated by Section 1.4(b)(vi) above from CTRWSC, in the form agreed to between Seller and Purchaser, in their reasonable discretion.

v. An accounting of sums paid as per Letter of Intent dated December 12, 2014 between Abengoa Vista Ridge and Abeinsa, and any necessary documentation required by Purchaser confirming that no future obligations remain outstanding.

vi. A release by Seller of amounts due to Seller by Abengoa Vista Ridge under the terms of the Reciprocal Credit Agreement dated December 1, 2014, all of which amounts due shall be deemed converted to constitute Seller’s contribution to capital in Abengoa Vista Ridge in the Amended and Restated Company Agreement.

vii. Documents as may be necessary to provide Abengoa Vista Ridge (i) a no fee license to use the name “Abengoa” as a part of the name of Abengoa Vista Ridge, and (ii) to the extent not already owned by Abengoa Vista Ridge, title to intellectual property developed by Seller Parties for the exclusive use of the Project, if any.

(c) At or prior to Closing Seller Parties must have received each of the following items:

(i) A fully executed general release from CTRWSC of all claims it may have against any of the Seller Parties, Abengoa Vista Ridge and Abeinsa for any obligations owed by the Seller Parties or Abeinsa to CTRWSC, expressly including but not limited to any claims relating to all claims, rights and remedies at law or in equity, for sums paid by Abengoa Vista Ridge to Abeinsa at the direction of CTRWSC as the Bridge Loan Proceeds.

(ii) A fully executed modification to, or other contractual arrangement having the following effect with respect to, the Guarantee Agreement relating to the Bridge Loan, entered into between Abengoa and the Lenders, on or about July 20, 2015 as may have been amended or modified, including but not limited to, any amendment or modification effected in connection with the restructuring of and/or reorganization of the debt and/or obligations of Abengoa Parent (the "Parent Guaranty"), which modification shall provide that (i) the guarantors thereunder shall have no obligations thereunder unless and until the WTPA has been terminated by SAWS, and (ii) which Parent Guaranty shall be released in full upon the occurrence of Financial Close (as that term is defined in the WTPA), and shall be in a form approved by Seller Parties.

(iii) An agreement between Lenders and Seller as to the terms and conditions for the Lender Consent (as that term is defined below), as well as any modifications to the Bridge Loan which are required by Lenders or Seller in connection with such Lender Consent, which Bridge Loan modifications shall prohibit any further advancement of funds under the terms of the Bridge Loan beyond those which have been advanced as of the date of this Agreement, which Consent and modifications to the Bridge Loan will be in a form approved by Purchaser Parties, Seller Parties and Lenders.

(iv) Lenders have provided a release of any and all claims Lenders may have against those employees, officers and/or directors or individual managers of the Seller Parties, Abengoa Vista Ridge, Abeinsa or CTRWSC listed on Schedule 1.5(c)(v), in connection with any matters relating to the Bridge Loan that are extant as of the Closing Date, whether known or unknown, including, but not limited to, the use or application of the Bridge Loan Proceeds, and shall be in a form reasonably acceptable to Seller Parties.

(d) At or prior to Closing Purchaser Parties and Seller Parties have received each of the following items:

(i) An agreement between Lenders and Purchaser as to the terms and conditions for Lender consent to the change in control caused by the sale of the Conveyed Interest to Purchaser (the "Lender Consent"), as well as any modifications to the Bridge Loan which are required by Lenders or Purchaser in connection with such Lender Consent.

(ii) Satisfactory confirmation that all litigation in connection with CAUSE NO. D-1-GN-15-005744, METROPOLITAN WATER COMPANY, L.P., *Plaintiff*, v. BLUE WATER SYSTEMS LP; BLUE WATER REGIONAL SUPPLY PROJECT, LP; BLUE WATER VISTA RIDGE, LLC; ABENGOA VISTA RIDGE LLC; and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee of the Burleson/Milam Master Lease Trust, *Defendants*. IN THE DISTRICT COURT TRAVIS COUNTY, TEXAS 201<sup>ST</sup>

JUDICIAL DISTRICT, shall be resolved to the satisfaction of Purchaser Parties, Seller Parties and SAWS (the “Met Water Suit”); provided, however, no approval and consent from the Seller Parties with respect to the Met Water Suit shall be required if, prior to Closing Seller Parties receive a full release from Metropolitan Water Company, L.P. and any of its Affiliates for any and all claims it may have against Seller Parties.

(iii) A fully executed certification in the form as set out on *Schedule 1.5(d)(iii)* from SAWS, with the content to be updated by SAWS to be true and correct as of the date of Closing; provided, however in the event the content is materially different than the form attached, the certifications shall not be deemed to have satisfied this condition unless accepted and approved by Purchaser.

(iv) A fully executed certification in the form set out on *Schedule 1.5(d)(iv)* from Blue Water, with the content to be updated by Blue Water to be true and correct as of the date of Closing; provided, however in the event the content is materially different than the form attached, the certifications shall not be deemed to have satisfied this condition unless accepted and approved by Purchaser.

(v) The fully executed Amended and Restated Company Agreement under the terms of which Purchaser will appoint all of the members of the Board of Directors, with the exception of one member of the Board of Directors, which shall be appointed by Seller.

(vi) A fully executed general release from Abeinsa of all claims it may have against any of the Purchaser Parties, Seller Parties, and Abengoa Vista Ridge for any obligations owed by the Purchaser Parties, Seller Parties, and Abengoa Vista Ridge to Abeinsa.

(vii) A fully executed agreement between Abengoa Vista Ridge, SAWS and Purchaser (the “O&M Option Agreement”), under the terms of which Seller agrees to (i) convey to SAWS the Operating Service Agreement (as that term is defined in the WTPA) rights retained by Seller, or (ii) convey to any person who has acquired more than 50% of the Membership Interests from Purchaser, and as a part of such purchase requires that they also retain control or direct control over who will act as the Operating Service Provider (as that term is defined in the WTPA) under the terms of the Operating Service Agreement, provided such option is exercised on or before Financial Close and in connection with the exercise of such option right, Seller is paid the amount of \$6,000,000.00 cash.

**Section 1.6 Closing Covenants.** In addition to the Transaction Payments to be paid, as set out in Section 1.2, as a part of the consideration for this sale of the Conveyed Interests by Seller to Purchaser, the Purchaser Parties further agree to:

(a) Prior to Closing, interview the current Abengoa Vista Ridge employees listed on *Schedule 1.6 (a)* for continued employment by Abengoa Vista Ridge, and to the extent reasonably acceptable to the Purchaser Parties, continue to retain such persons as employees of Abengoa Vista Ridge, until Financial Close, on substantially similar terms, which may be under

separate employment agreements effective following Purchaser's receipt of the Conveyed Interests.

(b) Following the Effective Date until the earlier of Closing or termination of this Agreement, Purchaser Parties will pay all Project Costs (as defined below) payable from and after the Effective Date which are submitted by Seller to Purchaser for payment, and are approved by Purchaser as Project Costs, in its reasonable discretion, which sums shall be deemed a part of the Capital Contributions; however, Purchaser Parties will not be responsible for the payment of Operating Costs (as defined below), except as expressly set out in paragraph (d), below. For purposes of clarity (i) Purchaser Parties will have no duty to pay a cost submitted if it does not reasonably believe it is a Project Cost, and (ii) if a Project Cost submitted by Seller is not approved by Purchaser for payment, Seller shall have no duty to pay such Project Cost. For the Purpose of this Agreement a "Project Cost" is any cost owed to a third party which is incurred or to be incurred which are directly related to the pre-development, development, construction or financing of the Project, including but not limited to all advancements to CTRWSC, and any cost required to be incurred under the terms of the WTPA.

(c) Following the Effective Date, except as set out below, Seller Parties agree to pay all Operating Costs (as defined below) incurred or to be incurred from the Effective Date until the Closing or termination of this Agreement. For the purpose of this Agreement Operating Costs shall mean those expenses incurred or to be incurred by Abengoa Vista Ridge which do not directly relate to the pre-development, development, construction or financing of the Project, such as rent for offices, employee salaries and general overhead expenses. The above notwithstanding, in the event:

(i) Seller Parties have made available for Closing each of the items set forth in Section 1.5(b), and Purchaser Parties have failed to make available for Closing any one or more of those items set out in Section 1.5(a) as of the date Seller Parties have made the items in Section 1.5(b) available for Closing, Purchaser Parties shall be responsible for all Operating Costs of Abengoa Vista Ridge which are incurred from and after the later of May 4, 2016, or the date the Seller Parties have made available for Closing each of the items set forth in Section 1.5(b); or

(ii) Seller Parties have made available for Closing each of the items set forth in Section 1.5(b), Purchaser Parties have also made available for Closing each of the items set forth in Section 1.5(a), however items described in Sections 1.5(c) or 1.5(d) have not been made available for Closing, Purchaser Parties may either elect to pay all Operating Costs of Abengoa Vista Ridge which are incurred from and after the later of May 4, 2016, or the date the Seller Parties have made available for Closing each of the items set forth in Section 1.5(b), or terminate this Agreement, which election shall be made by Purchaser Parties within ten (10) days of the Purchaser Parties' receipt of a request from the Seller Parties to pay such Operating Costs. In the event of such termination by Purchaser, Seller Parties agree to reimburse Purchaser for the March Loan Payment and, to the extent paid, such sums shall be paid within seven days following Seller Parties' receipt of the notice of termination.

(d) For the purpose of allocating Operating Costs as of the Closing, all normal and customarily pro-ratable items, including, without limitation, real estate and personal property



taxes, and utility bills, shall be prorated as of 11:59 p.m. on the date prior to the Closing, Seller being charged and credited for all of same up to such time and date and Purchaser being charged and credited for all of same after such time and date.

(e) Following the Effective Date the Purchaser Parties agrees that they will pay or cause to be paid, when due, any and all amounts due to SAWS under Section 24.5 of the WTPA in connection with the request to assign and transfer the Conveyed Interests under the terms of this Agreement.

(f) Following the Effective Date the Purchaser Parties agree they will pay, or cause to be paid when due, all attorney's fees which have accrued or may accrue and are owed or which may be owed by Abengoa Vista Ridge to (or on account of) the Lenders in connection with or relating to the Bridge Loan, or modification thereto, including but not limited to those fees relating to enforcement of the Bridge Loan or its restructuring, which the Lenders have estimated to be approximately \$280,000.00.

(g) Confirmation by SAWS, Abengoa Vista Ridge, and Purchaser Parties that, subject to the "O&M Option Agreement", as defined herein, Seller Parties will retain the rights and obligations as the Operating Service Provider under the Operating Service Agreement; however, ***for purpose of clarity***, if SAWS makes the election to exercise its rights under the O&M Option Agreement, and the \$6,000,000.00 sum is paid to Seller as set out therein, SAWS shall obtain all rights (including the rights to assign such contract to a third party), as Operating Service Provider thereunder.

## **Section 2.1 Representations and Warranties.**

(a) Purchaser Parties hereby represent and warrant to Seller Parties that the Purchaser Parties have the requisite power and capacity to execute and deliver this Agreement, to perform its obligations under this Agreement, and to consummate the transactions contemplated by this Agreement.

(b) Purchaser Parties hereby represent and warrant to Seller Parties that this Agreement has been duly executed and delivered by Purchaser Parties and this Agreement constitutes the valid and binding obligations of Purchaser Parties.

(c) Each of Purchaser Parties represents and warrants that they are fully aware of the CAUSE NO. D-1-GN-15-005744, METROPOLITAN WATER COMPANY, L.P., *Plaintiff*, v. BLUE WATER SYSTEMS LP; BLUE WATER REGIONAL SUPPLY PROJECT, LP; BLUE WATER VISTA RIDGE, LLC; ABENGOA VISTA RIDGE LLC; and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee of the Burleson/Milam Master Lease Trust, *Defendants*. IN THE DISTRICT COURT TRAVIS COUNTY, TEXAS 201<sup>st</sup> JUDICIAL DISTRICT, and accepts the Conveyed Interests subject to such claims.

(d) Each of Purchaser Parties represents and warrants that it is fully aware of the CAUSE NO. D-1-GN-15-001738, METROPOLITAN WATER COMPANY, L.P., *Plaintiff*, v. BLUE WATER SYSTEMS LP and BLUE WATER 130 PROJECT, LP, *Defendants* and accepts the Conveyed Interests, subject to such claims.

(e) Each of the Seller Parties, and Abengoa Vista Ridge hereby represent and warrant to Purchaser Parties that they have the requisite power and capacity to execute and deliver this Agreement, to perform its obligations under this Agreement, and to consummate the transactions contemplated by this Agreement.

(f) Each of the Seller Parties and Abengoa Vista Ridge hereby represents and warrants to Purchaser Parties that this Agreement has been duly executed and delivered by Seller Parties and Abengoa Vista Ridge, and this Agreement constitutes the valid and binding obligations of such parties.

(g) Each of the Seller Parties hereby represents and warrants to Purchaser Parties that each such Seller Party has the requisite power and capacity to execute and deliver this Agreement, to perform its obligations under this Agreement, and to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by each of the Seller Parties and, assuming the due execution and delivery of this Agreement by Purchaser Parties and the other Seller Parties, this Agreement constitutes the valid and binding obligations of each Seller Party. Seller represents that it is the lawful, beneficial and record owner of the Conveyed Interests to be conveyed by it under the terms of this Agreement free and clear of all liens, encumbrances, restrictions and claims of every kind and nature. The Seller Parties represent that the delivery to the Purchaser of the Conveyed Interests in accordance with the terms and provisions of this Agreement will transfer to Purchaser good and valuable title to interest in such Conveyed Interests, free and clear of any and all encumbrances.

(h) Seller Parties hereby represent that Schedule 2.1(h) sets out, in all material respects, all of the accounts payable set out on the books and records of Abengoa Vista Ridge as of the Effective Date of this Agreement, and Purchaser Parties expressly acknowledge that the representation set out in this paragraph does not address such matters as contingent or unknown claims or liabilities of Abengoa Vista Ridge, which Schedule shall be amended and updated by Seller to reflect the accounts payable set out on the books and records of Abengoa Vista Ridge as of the Closing Date. In connection with these representations, Seller Parties do hereby confirm that the existing intercompany payables consisting of (i) a \$651,720.00 payable to Abengoa Water SL, (ii) a \$1,659,799.16 payable to Abengoa Water USA, LLC, (iii) a \$26,414.79 payable to Simosa IT US, LLC, and (iv) \$8,987.16 as work in process to be billed by Simosa IT US, LLC to Abengoa Vista Ridge, as well as all other intercompany payables owed by Abengoa Vista Ridge (collectively referred to herein as the “Intercompany Payables”), shall be cancelled at Closing and will not be a part of the accounts payable owed by Abengoa Vista Ridge following Closing.

(i) Seller Parties hereby represent that Schedule 2.1(i) sets out, all contracts or agreements entered into by Abengoa Vista Ridge as of the Effective Date of this Agreement which Schedule shall be amended and updated by Seller to reflect the contracts or agreements entered into by Abengoa Vista Ridge as of the Closing Date. In connection with these representations, Seller Parties do hereby confirm that any contracts relating to the Intercompany Payables, including but not limited to (i) the Consulting Services Agreement with Seller, to the extent in existence, (ii) the Technical Assistance Services Agreement with Seller, and (iii) Reimbursable Costs Agreement with Seller, will be terminated at Closing.

(j) Seller Parties hereby represent that the only contracts or agreements entered into between Abeinsa and Abengoa Vista Ridge is the Letter of Intent which is to be terminated on or prior to the Closing Date.

(k) Seller Parties hereby represent that the execution, delivery and performance by such parties of this Agreement and, the obligations of the Seller Parties to Close contemplated under the terms of this Agreement would not be prohibited if the “Standstill Agreement by and among ABENGOA, S.A. as the Parent a group of companies of the Group as Debtors and a group of entities as Creditor” proposed by Abengoa Parent were currently in effect.

(l) EACH OF PURCHASER PARTIES REPRESENTS TO SELLER THAT IT HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE BOOKS AND RECORDS OF ABENGOA VISTA RIDGE, AS IT DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO ANY MATTER RELATING TO THE CONVEYED INTERESTS AND EXCEPT AS SET OUT IN THIS AGREEMENT, WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER PARTIES, THEIR AGENTS, EMPLOYEES OR THIRD PARTIES REPRESENTING OR PURPORTING TO REPRESENT SELLER PARTIES.

EACH OF PURCHASER PARTIES ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER PARTIES THAT ARE EXPRESSLY SET FORTH IN SECTION 2.1 OF THIS AGREEMENT, SELLER PARTIES AND ANY OF ITS AFFILIATES OR REPRESENTATIVES EXPRESSLY DISCLAIM AND MAKE NO, AND SHALL NOT BE DEEMED TO HAVE MADE ANY, REPRESENTATION OR WARRANTY OF ANY KIND (WHETHER EXPRESS OR IMPLIED) TO PURCHASER PARTIES OR ANY OF THEIR RESPECTIVE AFFILIATES OR REPRESENTATIVES. WITHOUT LIMITING THE FOREGOING AND FOR THE AVOIDANCE OF DOUBT, EACH OF PURCHASER PARTIES FURTHER ACKNOWLEDGES AND AGREES THAT NEITHER SELLER PARTIES NOR ANY OF THEIR AFFILIATES OR REPRESENTATIVES WILL HAVE OR BE SUBJECT TO ANY LIABILITY TO PURCHASER PARTIES OR ANY OTHER PERSON RESULTING FROM ANY INFORMATION, DOCUMENT OR MATERIAL MADE AVAILABLE TO PURCHASER PARTIES OR THEIR AFFILIATES OR REPRESENTATIVES IN CERTAIN “DATA ROOMS” AND ONLINE “DATA SITES,” MANAGEMENT PRESENTATIONS OR ANY OTHER FORM IN EXPECTATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (NOR HAS PURCHASER PARTIES RELIED ON ANY SUCH INFORMATION IN DETERMINING TO ENTER INTO THIS AGREEMENT).

IN CONNECTION WITH PURCHASER PARTIES REVIEW AND ANALYSIS OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, PURCHASER PARTIES (EITHER DIRECTLY OR THROUGH ITS REPRESENTATIVES) MAY HAVE RECEIVED FROM OR ON BEHALF OF ABENGOA VISTA RIDGE, AND/OR REPRESENTATIVES THEREOF CERTAIN ESTIMATES, FORECASTS, BUDGETS, PLANS AND PROJECTIONS, REPORTS AND DISCLOSURES (EITHER FINANCIAL OR OTHERWISE). EACH OF THE PURCHASER PARTIES ACKNOWLEDGES AND AGREES THAT (I) THERE ARE UNCERTAINTIES INHERENT IN ATTEMPTING TO MAKE SUCH ESTIMATES, FORECASTS, BUDGETS, PLANS AND PROJECTIONS, REPORTS OR DISCLOSURES, (II) EACH OF THE PURCHASER PARTIES IS FAMILIAR WITH SUCH

UNCERTAINTIES, (III) NONE OF THE PURCHASER PARTIES HAS RELIED UPON THE ESTIMATES, FORECASTS, BUDGETS, PLANS, PROJECTIONS, REPORTS OR DISCLOSURES FURNISHED TO IT, (IV) EACH OF THE PURCHASER PARTIES IS TAKING FULL RESPONSIBILITY FOR MAKING ITS OWN EVALUATION OF THE ADEQUACY AND ACCURACY OF ALL ESTIMATES, FORECASTS, BUDGETS, PLANS AND PROJECTIONS REPORTS OR DISCLOSURES SO FURNISHED TO PURCHASER PARTIES (INCLUDING THE REASONABLENESS OF THE ASSUMPTIONS UNDERLYING SUCH ESTIMATES, FORECASTS, BUDGETS, PLANS AND PROJECTIONS REPORTS OR DISCLOSURES), AND (V) THAT NONE OF THE PURCHASER PARTIES SHALL HAVE ANY CLAIM, NOR SHALL IT OR ITS REPRESENTATIVES ASSERT ANY CLAIM, AGAINST SELLER PARTIES ANY OF ITS AFFILIATES OR REPRESENTATIVES WITH RESPECT THERETO.

**Section 3.1 Survival of Representations; Mutual Release and Indemnification.**

(a) All representations, warranties, covenants and obligations of each of the Seller Parties, Purchaser Parties and Abengoa Vista Ridge, contained herein shall survive the Closing.

(b) From and after the Closing Date, Seller Parties (jointly and severally) (each a "Seller Indemnifying Party"), shall be responsible to assume the defense of, and indemnify and hold harmless Purchaser Parties (each a "Purchaser Indemnified Party"), their Affiliates and their members, managers, directors, officers, agents and employees (collectively, "Purchaser Indemnified Group") from any and all losses, damages, costs and expenses, including, without limitation, court costs and reasonable outside attorneys' and accountants' fees suffered or incurred by a Purchaser Indemnified Party or any other member of the Indemnified Group that relate to or arise out of or in connection with the breach of any representation, warranty, covenant or agreement by the Seller Indemnifying Party contained in this Agreement.

(c) From and after the Closing Date, Purchaser Parties (jointly and severally) (each a "Purchaser Indemnifying Party"), shall be responsible to assume the defense of, and indemnify and hold harmless Seller Parties (each a "Seller Indemnified Party"), their Affiliates and their members, managers, directors, officers, agents and employees (collectively, "Seller Indemnified Group") from any and all losses, damages, costs and expenses, including, without limitation, court costs and reasonable outside attorneys' and accountants' fees suffered or incurred by a Seller Indemnified Party or any other member of the Seller Indemnified Group that relate to or arise out of or in connection with the breach of any representation, warranty, covenant or agreement by the Purchaser Indemnifying Party contained in this Agreement.

(d) For the purpose of this Agreement "Released Claims" means any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, liabilities, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, losses, judgments, extents, executions, claims and demands.

(e) From and after the Closing, Purchaser Parties on behalf of itself and each of its respective subsidiaries and Affiliates, hereby unconditionally and irrevocably releases Seller Parties and Abeinsa, their respective agents, representatives and Affiliates, managers, directors, officers and employees, including the directors, officers and employees of such parties that served in such capacities at any time prior to Closing (collectively, the "Seller Released Parties")

from any and all Released Claims relating to, arising out of or in connection with any facts or circumstances, directly or indirectly, relating to Abengoa Vista Ridge or any assets of Abengoa Vista Ridge, which existed on or prior to the date of Closing, and agrees not to bring or threaten to bring or otherwise join in any such Released Claims against the Seller Released Parties or any of them; provided, however, that the foregoing shall not apply to any Released Claim arising under, related to, or resulting from any breach of this Agreement.

(f) From and after the Closing, Seller Parties on behalf of themselves and each of their respective subsidiaries and Affiliates, hereby unconditionally and irrevocably releases Abeinsa and Purchaser Parties, their respective agents, representatives and Affiliates, managers, directors, officers and employees, including the directors, officers and employees of such parties that served in such capacities at any time prior to Closing (collectively, the “Purchaser Released Parties”) from any and all Released Claims relating to, arising out of or in connection with any facts or circumstances, directly or indirectly, relating to Abengoa Vista Ridge or any assets of Abengoa Vista Ridge, which existed on or prior to the date of Closing, and agrees not to bring or threaten to bring or otherwise join in any such Released Claims against the Purchaser Released Parties or any of them; provided, however, that the foregoing shall not apply to any Released Claim arising under, related to, or resulting from any breach of this Agreement.

(g) From and after the Closing, Abengoa Vista Ridge, on behalf of itself and its subsidiaries and Affiliates, hereby unconditionally and irrevocably releases Seller Parties, Abeinsa, and Purchaser Parties, their respective agents, representatives and Affiliates, managers, directors, officers and employees, including the directors, officers and employees of such parties that served in such capacities at any time prior to Closing (collectively, the “Contract Released Parties”) from any and all Released Claims relating to, arising out of or in connection with any facts or circumstances, directly or indirectly, relating to Abengoa Vista Ridge or any assets of Abengoa Vista Ridge, which existed on or prior to the date of Closing, including but not limited to any claims, rights and remedies at law or in equity, for sums paid by Abengoa Vista Ridge to Abeinsa at the direction of CTRWSC, as the Bridge Loan Proceeds, and agrees not to bring or threaten to bring or otherwise join in any such Released Claims against the Contract Released Parties or any of them; provided, however, that the foregoing shall not apply to any Released Claim arising under, related to, or resulting from any breach of this Agreement.

(h) From and after the Closing, Seller Parties and Purchaser Parties, on behalf of themselves, and their respective subsidiaries and Affiliates, hereby unconditionally and irrevocably releases Abengoa Vista Ridge, its agents, representatives and Affiliates, managers, directors, officers and employees, including the directors, officers and employees of such parties that served in such capacities at any time prior to Closing (collectively, the “AVR Released Parties”) from any and all Released Claims relating to, arising out of or in connection with any facts or circumstances, directly or indirectly, relating to Abengoa Vista Ridge or any assets of Abengoa Vista Ridge, which existed on or prior to the date of Closing, and agrees not to bring or threaten to bring or otherwise join in any such Released Claims against the AVR Released Parties or any of them; provided, however, that the foregoing shall not apply to any Released Claim arising under, related to, or resulting from any breach of this Agreement.

## **Section 5. Default and Remedies**

(a) In the event of a default hereunder, the non-breaching party or parties shall be entitled to pursue any remedy available at law or in equity, including the right of termination, subject to the limitations set out in paragraph (c), of this Section.

(b) Each party to this Agreement shall use commercially reasonable efforts to mitigate any loss for which such Party seeks damages for a breach of the terms of this Agreement.

(c) In the event if Purchaser Parties have paid the March Loan Payment at the time of Seller's exercise of its termination rights under this Section, Seller must also deliver a sum equal to the March Loan Payment to Purchaser along with its termination notice.

**Section 6. Miscellaneous.**

(a) Subject to the provisions of Section 6(k) below, the parties hereto shall pay all their own fees and expenses relating to the negotiation of this Agreement, due diligence done in connection with this Agreement and the transactions contemplated by this Agreement including, without limitation, the fees and expenses of their respective counsel.

(b) This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas, without reference to principles of conflicts or choice of law.

(c) This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one instrument.

(d) This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by Purchaser Parties and Seller Parties.

(e) If any date set forth in this Agreement for the performance of any obligation by a party hereto, or for the delivery of any instrument or notice should be on a Saturday, Sunday, or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or legal holiday. As used in this Agreement, the term "legal holiday" means any federal holiday for which financial institutions or post offices in San Antonio, Texas, are generally closed for observance thereof and the term "business day" shall mean a day that is not a Saturday, Sunday or legal holiday.

(f) Following Closing, the parties hereto shall execute such further instruments and take such further actions as may reasonably be necessary to carry out the intent of this Agreement and each party hereto shall cooperate affirmatively with the other parties hereto, to the extent reasonably requested by such other parties, to enforce rights and obligations herein provided. The "reasonably necessary actions" and "reasonably requested cooperation" shall not require any Seller Party or Purchaser Party or any of their respective affiliates to expend any money to remedy any breach of any representation or warranty hereunder, to commence any

litigation or arbitration proceeding, to offer or grant or otherwise provide any accommodation (financial or otherwise) to any person.

(g) Should any party file suit to enforce this Agreement or its alleged breach, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs.

(h) Seller Parties shall provide Purchaser Parties with such access to the books and records of Abengoa Vista Ridge as may be necessary to (i) perform due diligence of the nature and type customarily performed in connection with transactions of this size and complexity and (ii) to confirm all of the Seller Parties' representations and warranties contained herein.

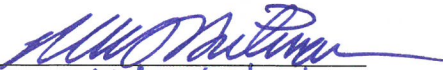
(i) Sellers have previously given Purchaser permission to discuss this Agreement and the ongoing work and financing under the WTPA with Sellers' lenders and other creditors including, but not limited to, the Lenders. Such approval is hereby confirmed and Purchaser's acts in connection therewith to date are hereby ratified.

(j) Purchaser Parties and Seller Parties have authority to contact the Lenders and SAWS for the purpose of coordinating the requirement to carry out the transactions set out herein.

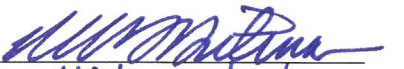
(k) In the event that the WTPA is terminated by SAWS at any time after the Effective Date, including anytime following termination of this Agreement, any amounts received as a result of such termination shall be paid first to Purchaser and Parent in the amount necessary to reimburse Purchaser and Parent for any and all fees and expenses relating to the negotiation of this Agreement, due diligence done in connection with this Agreement and the transactions contemplated by this Agreement including, without limitation, the fees and expenses of Purchaser's legal counsel.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed, all as of the day and year first above written.


**GARNEY P3, LLC.,**  
a Missouri limited liability company

By:   
Name: Michael Heitmann  
Title: Authorized Person

**GARNEY COMPANIES, INC.,**  
a Missouri corporation

By:   
Name: Michael Heitmann  
Title: President

**GARNEY HOLDING COMPANY,**  
a Missouri corporation

By:   
Name: Michael Heitmann  
Title: CEO

**ABENGOA VISTA RIDGE, LLC,** a limited liability company organized and existing under the laws of the State of Delaware

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABENGOA WATER USA LLC,** a limited liability company organized and existing under the laws of the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABENGOA S.A.,** a company organized and existing under the laws of the Kingdom of Spain

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed, all as of the day and year first above written.

**GARNEY P3, LLC.,**  
a Missouri limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GARNEY COMPANIES, INC.,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GARNEY HOLDING COMPANY,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ABENGOA VISTA RIDGE, LLC,** a limited liability company organized and existing under the laws of the State of Delaware

By: \_\_\_\_\_  
Name: Pedro Almagro Gavilán  
Title: President

**ABENGOA WATER USA LLC,** a limited liability company organized and existing under the laws of the State of Texas

By: \_\_\_\_\_  
Name: Carlos Cosín Fernández  
Title: Manager

**ABENGOA S.A.,** a company organized and existing under the laws of the Kingdom of Spain

By: \_\_\_\_\_  
Name: Joaquín Fernández de Piérola Marín  
Title: CEO

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed, all as of the day and year first above written.

**GARNEY P3, LLC.,**  
a Missouri limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**GARNEY COMPANIES, INC.,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GARNEY HOLDING COMPANY,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

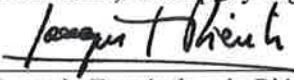
**ABENGOA VISTA RIDGE, LLC,** a limited liability company organized and existing under the laws of the State of Delaware

By:  \_\_\_\_\_  
Name: Pedro Almagro Gavilán  
Title: President and Manager

**ABENGOA WATER USA LLC,** a limited liability company organized and existing under the laws of the State of Texas

By:  \_\_\_\_\_  
Name: Carlos Cosin Fernández  
Title: Manager

**ABENGOA S.A.,** a company organized and existing under the laws of the Kingdom of Spain

By:  \_\_\_\_\_  
Name: Joaquín Fernández de Piérola Marín  
Title: CEO

### **Schedule 1.1(c)**

**Form of Management.** Abengoa Vista Ridge appoint a board of directors, which board will include one director appointed by Seller, and which board of directors will appoint Purchaser as the manager of Abengoa Vista Ridge.

**Amendments to Company Agreement.** Except for the provisions set out in this Schedule, the Amended and Restated Company Agreement of Abengoa Vista Ridge may provide for the Members to amend the agreement without the approval of Seller; provided (i) Seller is provided no less than seven (7) days prior written notice of the amendment, and (ii) the amendment does not eliminate or reduce any of the rights of Seller set out in this Schedule.

**Decision Making.** Control of the Board of Directors will be based on a majority vote of those Board Members, with the exception that it will require a vote of all of the Members of Abengoa Vista Ridge with respect to any of the following matters:

1. To admit a new Member, issue any additional Equity Interest in Abengoa Vista Ridge, or modify the capital structure of Abengoa Vista Ridge which would in any way change Seller's non-dilutable 20% Membership interest or right to receive 20% of all distributions from Abengoa Vista Ridge including, but not limited to any subordination of those interest to any other form of capital or through establishing different classes of equity.
2. Amend the Amended and Restated Company Agreement in any manner which has the effect of reducing distributions from Abengoa Vista Ridge and, correspondingly increasing sums received by other Members of Abengoa Vista Ridge or their Affiliates or is otherwise inconsistent with the terms and requirements of this Schedule.
3. To conduct any business other than that related to or benefitting the construction, maintenance and operations of the Project, in the manner set out in the WTPA, as that agreement may be amended from time to time without the consent of Seller.
4. To loan sums to another person except as may be required under paragraph 3, above, or contemplated under the terms of the Water Transportation Agreement between Abengoa Vista Ridge and CTRWSC.
5. Any requirement for Seller to (i) make any contributions of money, services or other property to Abengoa Vista Ridge, (ii) guaranty or provide any assurance as to any obligations of Abengoa Vista Ridge, or (iii) pledge or in any manner encumber Seller's non-dilutable 20% Membership interest or right to receive 20% of all distributions from Abengoa Vista Ridge; provided, however Seller shall be required to pledge its Membership Interest to secure the Bridge Loan or any Project financing which qualifies as Senior Debt (as defined in the WTPA) on the same terms and conditions as the pledge of the Membership Interests held by all other Members of Abengoa Vista Ridge. Any pledge of the Membership Interest by Seller will be on a basis which is non-recourse to Seller.

6. To exercise any right or provision which could reduce or eliminate Seller's non-dilutable 20% Membership interest or right to receive 20% of all distributions from Abengoa Vista Ridge, however this shall not prohibit Purchaser from actions which may impact its Conveyed Interests.
7. Cause the rights of any other Member to receive distributions or payments from the Abengoa Vista Ridge to be subordinated to or less than pari passu with distributions or payments to any other Member of Abengoa Vista Ridge, excepting and excluding the payments to Purchaser under the terms of the EPC Agreement, and as per Section 6.k above.

Required Agreements and Covenants: The Amended and Restated Company Agreement must provide that:

1. Abengoa Vista Ridge may not contract for or carry out any agreement between Abengoa Vista Ridge or its Affiliates or any Member or Affiliate of a Member, other than the EPC Agreement and such other agreements contemplated by the WTPA which shall be awarded to Purchaser under terms agreed to by SAWS, provided such other agreements are entered into on terms which, for Abengoa Vista Ridge, are not in excess of market prices and market terms.
2. Abengoa Vista Ridge may not contract with any other person, which has the effect of reducing distributions from Abengoa Vista Ridge and, correspondingly increasing sums received by other Members of Abengoa Vista Ridge or their Affiliates, other than agreement contemplated by the terms of this Agreement and/or related thereto, provided such agreement contemplated by the terms of this Agreement and/or related thereto are entered into on terms which, for Abengoa Vista Ridge, are not in excess of market prices and market terms.
3. The Amended and Restated Company Agreement shall not contain any provisions that is (i) oppressive, unfairly prejudicial, or unfairly disregards the interests of Seller (ii) lacks fair dealing to the prejudice of Seller; or (iii) is a visible departure from the standards of fair dealing, or defeats Seller's expectations that, objectively viewed, were reasonable under the circumstances.

Transfer of Ownership Interest.

1. Seller shall have the right to transfer its interest in Abengoa Vista Ridge, to any person which is a wholly owned Affiliate of either of the Seller Parties, which transfer will be subject to the approval of the Board of Directors of Abengoa Vista Ridge, which approval will not be unreasonably withheld, delayed or conditioned.
2. Seller shall have the right to transfer all or a part of its interest in Abengoa Vista Ridge to any other person, provided that Seller first offers Abengoa Vista Ridge the right to purchase such Membership Interests on the same terms and conditions as any third party offer it has received for such Membership Interests, and Abengoa Vista Ridge fails to (i) elect to purchase such Membership Interests within thirty (30) days after it has received

notice of any such offer and the terms relating thereto, or (ii) elects to purchase such Membership Interests but fails to close on such purchase in accordance with such terms.

**Schedule 1.5(c)(v)  
Released Persons**

Santiago Martínez Mansilla  
Rodrigo Segovia Yuste  
Pedro Almagro Gavilán  
Santos Mauleón Lozano  
Jorge Dalmau Sayol  
Carlos Cosin Fernandez  
Juan Carlos Felio de Haro  
Sebastian Felicetti  
Michael Irlbeck  
Joaquin Abaurre Benjumea  
Julen Del Corral Beraza  
Arturo Buenaventura Pouyfaucón  
Araceli Gomez Thebaut  
Rachel Tutak  
Felipe Guinea Benjumea  
Jose María Ponce de León Álvarez  
Leonardo B. Maccio

**Schedule 1.5(d)(iii)**

**CERTIFICATE for VERIFICATION OF FACTS**

**TO: GARNEY P3 LLC**, a Missouri limited liability company (“Purchaser”), and **ABENGOA VISTA RIDGE, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (“Abengoa Vista Ridge”).

**RE: Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement**

The City of San Antonio, Texas acting by and through the San Antonio Water System Board of Trustees (“SAWS”), is a party to that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement dated November 4, 2014. SAWS understands and acknowledges that Purchaser will be acquiring an eighty percent (80%) ownership interest in Abengoa Vista Ridge, LLC, the counterparty to the WTPA, and that this certificate is being made in connection therewith.

A. SAWS hereby certifies to Purchaser, and Abengoa Vista Ridge that, to the current actual knowledge of the undersigned, without investigation or duty to investigate, as of the date hereof:

1. A true, correct and complete copy of the Water Transmission and Purchase Agreement dated November 4, 2014 (“WTPA”) with the City of San Antonio, Texas acting by and through SAWS is attached hereto and incorporated herein as Exhibit A, attached hereto.
2. The WTPA has not been amended, supplemented and/or modified by SAWS except for the Contract Administration Memoranda (CAM 2014-1, CAM 2014-2 and CAM 2014-3) and as otherwise as set forth on Exhibit A-1 attached hereto.
3. The WTPA is in full force and effect and is binding upon SAWS to the extent provided in Section 2.1(b) of the WTPA.
4. There are no other agreements, either written or oral, by and between SAWS and Abengoa Vista Ridge relating to the agreements made in the WTPA.
5. SAWS has not received any written notice of default under the WTPA from any party to the WTPA and SAWS has not given written notice of default to any party to the WTPA; provided however, SAWS has delivered to Abengoa Vista Ridge a reservation of rights letter dated February 26, 2016 (the “Reservation of Rights Letter”) the assertions under which remain valid and travel with Abengoa Vista Ridge.

6. There are no pending actions, suits, claims, or adverse proceedings with respect to the WTPA and/or the enforcement thereof to which SAWS is a named party or claimant except for the Reservation of Rights Letter.
7. Nothing contained in this certificate or relating to the transaction for which it is delivered shall be deemed to amend or waive any rights of SAWS under the terms of the WTPA.
8. SAWS executes and delivers this with the understanding that Abengoa Water USA, LLC and Purchaser are contemplating a sale and purchase of ownership interest in Abengoa Vista Ridge, and if such sale occurs, then Purchaser will be taking those actions in reliance on SAWS representations set out in this certificate; provided however, notwithstanding anything contained herein to the contrary, SAWS shall have no liability for such reliance by Purchaser and Abengoa Vista Ridge, and SAWS does not waive any defenses relating to Purchaser's and Abengoa Vista Ridge's respective reliance on this certificate.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

[Signatures on following page]



THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE SAN  
ANTONIO WATER SYSTEM BOARD OF  
TRUSTEES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 1.5(d)(iv)**

**CERTIFICATE for VERIFICATION OF FACTS**

TO: **GARNEY P3 LLC**, a Missouri limited liability company (“Purchaser”), and **ABENGOA VISTA RIDGE, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (“Abengoa Vista Ridge”).

RE: Blue Water Agreements

Blue Water Vista Ridge, LLC, a Texas limited liability company (“Blue Water”) is a party to those agreements attached hereto as Exhibit “A” (collectively, the “Agreements”). Blue Water understands and acknowledges that Purchaser will be acquiring an eighty percent (80%) ownership interest in Abengoa Vista Ridge, Inc., the counterparty to the Agreements, and that this certificate is being made in connection therewith.

Blue Water hereby certifies to Purchaser, and Abengoa Vista Ridge:

A. That, to the current actual knowledge of the undersigned, without investigation or duty to investigate, as of the date hereof:

1. True, correct and complete copies of the Agreements are attached hereto and incorporated herein as Exhibit A. The Agreements have not been amended, supplemented and/or modified except as set forth on Exhibit A.
2. The Agreements have not been amended, supplemented and/or modified by Blue Water except as set forth on Exhibit A.
3. The Agreements are in full force and effect and binding upon Blue Water.
4. There are no other agreements, either written or oral, by and between Blue Water and Abengoa Vista Ridge relating to the Agreements.
5. Blue Water has not received any written notice of default under the Agreements from any party to the Agreements and Blue Water has not given written notice of default to any party to the Agreements except the December 31, 2015, Notice of Default regarding Abengoa Vista Ridge failure to pay Reservation Fees to Blue Water and failure to pay Permit Fees to Post Oak Savannah Conservation District.
6. There are no pending or, to the knowledge of Blue Water, threatened, actions, suits, claims, or adverse proceedings regarding Blue Water with respect to the Agreements and/or the enforcement thereof other than CAUSE NO. D-1-GN-15-005744, METROPOLITAN WATER COMPANY, L.P., *Plaintiff*, v. BLUE WATER SYSTEMS LP; BLUE WATER REGIONAL SUPPLY PROJECT, LP; BLUE WATER VISTA RIDGE, LLC; ABENGOA VISTA RIDGE LLC; and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee of the

Burleson/Milam Master Lease Trust, *Defendants*. IN THE DISTRICT COURT TRAVIS COUNTY, TEXAS 201<sup>ST</sup> JUDICIAL DISTRICT.

- 7. Nothing contained in this certificate shall be deemed to amend the Agreements.
  
- 8. Blue Water executes and delivers this with the understanding that Abengoa Water USA, LLC and Purchaser are contemplating a sale and purchase of ownership interest in Abengoa Vista Ridge, and if such sale occurs, then Purchaser will be taking those actions in reliance on Blue Water's representations set out in this certificate; provided however, notwithstanding anything herein to the contrary, Blue Water shall have no liability for such reliance by Purchaser and Abengoa Vista Ridge, and Blue Water does not waive any defenses relating to Purchaser's and Abengoa Vista Ridge's reliance on this certificate.

Executed this \_\_\_ day of \_\_\_\_\_, 2016

Blue Water Vista Ridge, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Exhibit A**

1. Groundwater Lease Conveyance Agreement
2. Trust Agreement for Burleson/Milam Master Lease Trust
3. Assignment of Leases
4. Assignment of Permit Rights
5. Lease Administration Agreement
6. Blue Water Lease Security Agreement
7. Leasehold Deed of Trust
8. Permit Security Agreement
9. Permits Conveyance and Administration Agreement
10. Sublease and Partial Assignment
11. Disclosure Agreement
12. Letter Agreement for Modifications Required by SAWS and/or Trustee of Milam/Burleson Trust

Schedule 1.6 (a)

**Employees**

Sapna Mulki (PR)

Sha Yu Han (accounting and payroll)

Rachel Tutak (legal)

Steven Renneker (engineering)

Alida Gonzales (secretary)

**Schedule 2.1(h)**  
**Accounts Payable**

<b>Trade Payables - Third Party</b>	<b><u>6,456,323.46</u></b>	
Total **Joaquin Abaurre**	632.77	
Total **Jorge Dalmau Sayol**	-119.00	
Total **Sapna Mulki**	57.95	
Total Blue Water Vista Ridge, LLC	656,028.60	
Total Central Texas Regional WSC - AP	4,986,430.92	
Total Clifford Chance US LLP	188,440.39	
Total Communication Network Design, Inc	4,037.72	
Total Cuatrecasas, Goncalves Pereira	13,737.62	
Total Haynes & Boone, LLP	260,659.75	
Total Marc A. Rodriguez	30,000.00	
Total Nixon Peabody, LLP	30,926.50	
Total Post Oack Savannah Groundwater Conservati	96,927.37	
Total RBC Consulting, LLC	35,500.00	
Total Shearman & Sterling, LLP	97,313.01	
Total Vianovo, LP	55,749.86	
<b>Trade Payables - BAML PPB Line</b>	<b><u>8,090,677.11</u></b>	
Total Central Texas Regional WSC - PPB	7,692,509.60	To be paid by Purchaser on or before Closing
Total AVR - PPB	398,168.05	To be paid by Purchaser on or before Closing
<b>Loans - Credit Entities</b>	<b><u>120,000,000.00</u></b>	
Sumitomo Mitsui Banking Corp	50,000,000.00	
Banco Santander SA	25,000,000.00	
Royal Bank of Canada	25,000,000.00	
Societe Generale	20,000,000.00	
<b>Interests - Credit Entities</b>	<b><u>2,128,647.84</u></b>	
Sumitomo Mitsui Banking Corp	886,936.60	
Banco Santander SA	443,468.30	
Royal Bank of Canada	443,468.30	
Societe Generale	354,774.64	
<b>Loans - Intercompany</b>	<b><u>84,219,311.24</u></b>	
Abengoa Greenbridge	67,178,684.95	To be released by Seller on or before Closing
Abengoa Water USA	17,040,626.29	To be reclassified to capital
<b>Interests - Intercompany</b>	<b><u>1,467,527.56</u></b>	
Abengoa Greenbridge	1,188,689.51	To be released on or before closing
Abengoa Water USA	278,838.05	To be reclassified to capital

**Work in Process estimated through March 31st (1)**

<b>Trade Payables WIP - Third Parties</b>	<b>874,326.84</b>
Total Anthem Blue Cross & Blue Shield	7,264.11
Total Assurant Employee Benefits	1,633.47
Total Central Texas Regional WSC - AP	356,374.46
Total CUNA Mutual Retirement Solutions	1,814.86
Total Clifford Chance US LLP	200,000.00
Total Employees Expense Reports	3,000.00
Total Haynes & Boone, LLP	150,000.00
Total QuickBooks Payroll Service	54,239.94
Total SAWS	100,000.00

(1) Work in Process is estimated based on the Company's best knowledge. Actual amounts may vary upon receiving actual invoices.

**Schedule 2.1(i)**  
**Abengoa Vista Ridge Contracts and Agreements**

	Agreement name	Other parties	date
AVR	Bridge loan agreement	Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, Societe Generale	July 20, 2014
	Public Private Partnership Framework Agreement	CTRWSC	March 9, 2015
	Water Transportation Agreement	CTRWSC	March 9, 2015
	WTPA	SAWS	November 4, 2014
	Consulting services agreement	Abengoa Water USA	Not signed
	Construction management agreement	CTRWSC	April 10, 2015
	Assignment of leases	Blue Water Vista Ridge Burleson/Milam Master Lease Trust	June 24, 2015
	Assignment of Permits	Blue Water Vista Ridge	June 24, 2015
	Leasehold deed of trust	Blue Water Vista Ridge Burleson/Milam Master Lease Trust (Wilmington Trust)	June 24, 2015
	Lease administration agreement	Blue Water Vista Ridge Burleson/Milam Master Lease Trust (Wilmington Trust)	June 24, 2015
	Blue Water Lease	Blue Water Vista Ridge	June 24, 201



	Security Agreement	Burleson/Milam Master Lease Trust (Wilmington Trust)	
	Trust Agreement for Burleson/Milam Master Lease Trust	Blue Water Vista Ridge Burleson/Milam Master Lease Trust (Wilmington Trust)	January 31 2015
	Blue Water Permit Security Agreement	Blue Water Vista Ridge	June 24, 2015
	Letter of Intent	Abeinsa Abeima Teyma General Partnership	December 12, 2014
	Permit conveyance and administration agreement	Blue water vista ridge	June 24, 2015
	Disclosure Agreement	Blue water vista ridge	June 24, 2015
	letter agreement for modifications required by saws and/or trustee of milam/burleson trust	Blue water vista ridge	June 24, 2015
	Sublease and partial assignment	Blue water vista ridge	
	Reciprocal credit agreement	Abengoa water USA	December 17, 2014
	Marc A. Rodriguez	Marc A. Rodriguez	April 20 2015
	Technical consulting services agreement	RBC consulting	March 27, 2015
		Haynes & Boone	
		Vianovo LP	June 22 2015
		Shearman & Sterling, LLP	
	Engagement letter	Nixon Peabody	July 21 2014
	Reciprocal credit agreement	Abengoa Greenbridge	December 17, 2014
	Advisory, Consulting and Assistance Agreement	Abengoa Water	May 1, 2015

	Technical Assistance Services Agreement	Abengoa Water USA	
	Reimbursable Costs Agreement	Abengoa Water USA	
	Office Lease Agreement	Texas Name Mercantile Investment	March 24, 2015
	IT Office Infrastructure	Simosa IT USA	February 25, 2015
	Ralph Voss	Residential Lease	August, 2015
	Master Vehicle Lease Agreement	Horizon Bank Leasing	March 31, 2015
	Master Vehicle Lease Agreement	Horizon Bank Leasing	November, 2015

**FIRST AMENDMENT TO  
MEMBERSHIP INTEREST AND PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO MEMBERSHIP INTEREST PURCHASE AND AGREEMENT** ("Amendment") is made as the 2<sup>nd</sup> day of June, 2016 for the purpose of amending that one certain **MEMBERSHIP INTEREST AND PURCHASE AGREEMENT** (the "Agreement") dated effective March 21, 2016, by and among **GARNEY P3 LLC**, a Missouri limited liability company ("Purchaser"), **GARNEY COMPANIES, INC.**, a Missouri corporation ("Garney"), **GARNEY HOLDING COMPANY**, a Missouri corporation ("Garney Parent"), **ABENGOA WATER USA LLC**, a Texas limited liability company organized ("Seller"), and **ABENGOA S.A.**, a company organized and existing under the laws of the Kingdom of Spain ("Abengoa Parent"), and **ABENGOA VISTA RIDGE, LLC**, a Delaware limited liability company ("Abengoa Vista Ridge"). The notice address for Purchaser, Garney and Garney Parent shall be Garney Companies, Inc. C/O 1333 NW Vivion Road, Kansas City, MO 64118. The notice address for Seller, Abengoa Parent and Abengoa Vista Ridge shall be C/O Abengoa Vista Ridge, LLC, 40 NE Loop 410, Mercantile Building Suite 343 San Antonio, TX 78216 Attn: Carlos Cosín Fernández, President. For the purpose of this Agreement, Abengoa Parent and Seller may be collectively referred to herein as "Seller Parties", and Purchaser, Garney and Garney Parent may be collectively referred to herein as "Purchaser Parties".

**WHEREAS**, Garney, Abengoa Vista Ridge and Purchaser Parties desire to amend the Agreement to accurately reflect subsequent negotiations and agreements between the parties;

**NOW, THEREFORE**, in consideration of terms covenants and agreements set out herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, Abengoa Vista Ridge, the Seller Parties and the Purchaser Parties do all hereby agree as follows:

1. Section 1.4(b)(vi) is hereby amended by the substitution of "\$118,735,000.00" for the reference to "118,735,00.00".
2. Section 1.4(b)(vii) is hereby deleted in its entirety and replaced with the following:

“(vii) An assignment by Abengoa Vista Ridge of all of its rights and obligations under that one certain Letter of Intent dated December 12, 2014, between Abengoa Vista Ridge and Abeinsa, to Abengoa Greenbridge S.A.U., a Spanish Company (the "Letter of Intent"), and a release by Abeinsa of Abengoa Vista Ridge from any further obligations owed by Abengoa Vista Ridge to Abeinsa thereunder.”
3. Section 1.4(c) is hereby amended by the substitution of "June 10, 2016" for the reference to "June 3, 2016".
4. Section 1.5(b)(iii) is hereby deleted in its entirety and replaced with the following:

“(iii) A copy of the Transfer and Assignment of Letter of Intent entered into by and between Abengoa Vista Ridge, Abeinsa and Abengoa Greenbridge, S.A.U., under the terms of which the Letter of Intent is assigned by Abengoa Vista Ridge to Abengoa Greenbridge, S.A.U. in full satisfaction of the debt owed by Abengoa Vista Ridge to Abengoa Greenbridge, S.A.U. under that certain *Contrato de Crédito Recíproco* (Reciprocal Credit Agreement) dated December 17, 2014.”

5. Section 1.5(b)(v) is hereby modified by the addition, at the end of that Section of the phrase “except between Abeinsa and Abengoa Greenbridge, S.A.U.”

6. Section 1.5(d)(vii) is hereby deleted in its entirety and replaced with the following:

“(vii) A fully executed agreement between Abengoa Vista Ridge, Purchaser and Seller (the “O&M Option Contract”), whereby Seller agrees, among other things, to convey to Purchaser all of Seller’s rights and interests to the Operating Services Agreement (as defined in the WTPA) subject to the terms and conditions contain therein.”

7. Section 1.6(g) is hereby deleted in its entirety.

8. Section 2.1(j) is hereby deleted in its entirety and replaced with the following:

“(j) Seller Parties hereby represent that the only contracts or agreements entered into between Abeinsa and Abengoa Vista Ridge is the Letter of Intent, which is to be assigned by Abengoa Vista Ridge to Abengoa Greenbridge, S.A.U. in full satisfaction of the debt owed by Abengoa Vista Ridge to Abengoa Greenbridge, S.A.U. under that certain *Contrato de Crédito Recíproco* (Reciprocal Credit Agreement) dated December 17, 2014, on or prior to the Closing Date.”

9. Conflicts. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.


10. No Other Changes. Except as specifically amended by this Amendment, the Agreement remains unchanged and in full force and effect.

11. Counterparts. The parties may execute this Amendment in one or more signed counterparts, delivered to the other party via e-mail, facsimile or the like, each of which shall be deemed an original, and all of which taken together shall constitute a fully executed agreement.

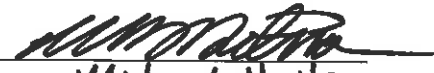
**[SEPARATE SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed, all as of the day and year first above written.


**GARNEY P3, LLC.,**  
a Missouri limited liability company

By:   
Name: Michael Heitmann  
Title: Authorized Person


**GARNEY COMPANIES, INC.,**  
a Missouri corporation

By:   
Name: Michael Heitmann  
Title: Authorized Person


**GARNEY HOLDING COMPANY,**  
a Missouri corporation

By:   
Name: Michael Heitmann  
Title: Authorized Person

**ABENGOA VISTA RIDGE, LLC**, a limited liability company organized and existing under the laws of the State of Delaware

By:   
Name: Pedro Almagro Gavilan  
Title: President

**ABENGOA WATER USA LLC**, a limited liability company organized and existing under the laws of the State of Texas

By:   
Name: Pedro Almagro Gavilan  
Title: CEO

**ABENGOA S.A.**, a company organized and existing under the laws of the Kingdom of Spain

By: Authorized Signatory  
Name: Joaquin Fernández de Pierola  
Title: CEO



[Signature Page to First Amendment to MIPA]