

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: July 21, 2016

TEAM MANAGER: Clay Schultz

<b>APPLICANT</b>	Schertz/Seguin Local Government Corporation
<b>TYPE OF ASSISTANCE</b>	\$43,670,000 Low Interest Loan \$22,830,000 Master Agreement
<b>LEGAL PLEDGE</b>	Contract revenues

**STAFF RECOMMENDATION**

Approve                       No Action

**ACTION REQUESTED**

Approve by resolution, a request from the Schertz/Seguin Local Government Corporation (Counties of Bexar, Guadalupe, and Comal) for \$66,500,000 in financial assistance consisting of a \$43,670,000 low interest loan and a \$22,830,000 Board Participation commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design and construction phases of a regional water supply project and transmission pipeline.

**PROJECT**

Expanded Carrizo for Schertz/Seguin Local Government Corporation  
Project Number 51032

**BACKGROUND**

Passed by the 83<sup>rd</sup> Legislature and approved by Texas voters through a constitutional amendment, the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) were created to provide affordable, alternative financing options to develop projects that are recommended water management strategies in the State Water Plan. The program, referred to as SWIFT, provides financing through low interest loans, deferral of loan repayments, and incremental repurchase terms for projects with state ownership aspects. SWIFT projects presented for consideration have been scored and ranked utilizing a prioritization criteria outlined in Texas Administrative Code Title 31 §363.1304 and are included on the prioritized list of projects approved by the Board on April 11, 2016.

The Schertz/Seguin Local Government Corporation (Corporation) is a regional provider of treated water to the San Antonio Water System (SAWS), the cities of Schertz, Seguin, Universal City, Converse, and Selma, as well as the Springs Hill Water Supply Corporation. The service area for the Corporation lies to the east-northeast of San Antonio and is bounded on the west by San Antonio and the east by Seguin.

<b>COMMITMENT PERIOD: EXPIRES DECEMBER 31, 2016</b>
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The Corporation relies on groundwater from the Carrizo-Wilcox Aquifer, supplied from a wellfield located in Gonzales County. Regional planning projections for the Corporation show that in order to meet projected demand in the area, the Corporation must develop additional water supplies. The proposed project includes new wells in the Carrizo-Wilcox Aquifer and a pipeline to provide additional supplies. The Cities of Schertz and Seguin will each receive 50% of the treated water produced by the project.

## **FINANCIAL**

### Key Issues

None

### Pledge and Repayment

The Corporation has offered a pledge of contract revenues derived from a regional water supply contract between the Corporation and the cities of Schertz and Seguin, in several amounts. Contract revenues between Schertz and Seguin with the Corporation are sufficient to support the proposed debt service requirements. Under the contract, the Cities are required to pay their proportionate share of the debt service. The Cities' liability to make the annual payments to the Corporation are several and not joint liabilities based upon a 50%/50% basis, as described in the Water Supply Contract. Accordingly, in the event that one of the Cities defaults on its proportionate share of the annual payments, the non-defaulting City has no legal obligation to make any payments on behalf of the defaulting City. This percentage equates to the proportionate share of the treated groundwater each City will receive from the project.

The cities of Schertz and Seguin represent 42% of the Corporation's total revenues with SAWS representing 49% of the remaining revenue and the other four customers representing 9% of revenue.

### Cost Savings

Based on a 30-year maturity and current interest rates, the Corporation could save approximately \$5,611,580 over the life of the \$43,670,000 Series 2016 low interest loan.

### Internal Risk Score

Staff assigns a 2B to the Corporation and the proposed project to be funded by the Texas Water Development Board. This means that the Corporation's payment capacity is adequate.

The Corporation's financial sustainability indicators are strong. The operating revenues of the utility system have grown at an average annual rate of 13.43% over the last five years. The steady growth in revenues resulted in net operating income of \$8,459,693 in 2015. In addition, the long-term condition of the system is sound. A measure to show the long-term condition of the system is the asset condition ratio. The Corporation's asset condition ratio is 39.91 years. This shows a high level of reinvestment in the system's long-term assets to generate future revenues.

The Corporation's socioeconomic indicators are based on the cities of Schertz and Seguin (region) which are strong in general. The population of these entities has increased over the last five years at an average rate of 2.93%, compared to an annual rate of 1.60% for the State overall.

The median household income average for the two cities is \$54,609, which is above the median household income of \$52,576 for the State. The region's unemployment rate is high with an average of 5.2% for the two cities. This is higher than the unemployment rate of 4.9% for the State overall.

The Corporation retains cash and short-term investments that are not restricted for any use at the level of approximately 757 days of the operating expenses of the utility system. Any amount over 250 days is considered a very high level of liquidity. This is interpreted as providing greater financial stability to the Corporation by providing the resources needed to cover short-term, unforeseen expenses. Additionally, the Corporation holds \$3,725,638 in funds from impact fees that are dedicated to capital improvements, as well as additional assets restricted for debt service.

The 2B risk score is based on the Corporation's consistent revenue growth, strong liquidity, regional population growth, and above average median household income, which mitigate the region's high unemployment rate and the Corporation's customer base concentration.

## **LEGAL**

### Key Issues

#### Master Agreement

Financing will be provided through a Master Agreement, which sets out the responsibilities, duties and liabilities between the Corporation and the Board. Under the Master Agreement, the Texas Water Development Board (TWDB) will purchase a percentage of the project, as defined in the Master Agreement, based on the amount of TWDB Board Participation funds provided as compared to the total amount of funds spent on the project. The Corporation obligates itself to purchase the TWDB's interest in the project under a Payment Schedule attached to the Master Agreement, which provides that the Corporation will make payments of principal and interest. Attached to the Resolution is a draft of the Master Agreement for the project in substantially final form, for Board approval.

#### Conditions

Standard SWIFT, Board Participation, tax-exempt, and contract revenue conditions, and further conditioned as follows:

- Water rights certification

Attachments: 1. Project Data Summary  
2. Debt Service Schedule  
3. Engineering/Environmental Review  
4. Project Budget  
5. Resolution (16- )  
6. Resolution (16- )  
7. Master Agreement  
8. Water Conservation Review  
9. Location Map

**Project Data Summary**

<b>Responsible Authority</b>	Schertz/Seguin Local Government Corporation
<b>Program</b>	State Water Implementation Fund for Texas
<b>Commitment Code</b>	LM16044 LB16044
<b>Project Number</b>	51032
<b>Intended Use Plan/Fund Year</b>	2016
<b>Fund Number</b>	361
<b>Type of Pledge</b>	4- Contract Revenue
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	\$43,670,000 Schertz/Seguin Local Government Corporation Contract Revenue Bonds (Texas Water Development Board SWIRFT Project Financing), Proposed New Series 2016 \$22,830,000 Master Agreement
<b>Tax-exempt or Taxable</b>	Tax-exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	No
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	N/A
<b>Population</b>	182,783
<b>Rural</b>	No
<b>Water Connections</b>	7 wholesale customers
<b>Wastewater Connections</b>	None
<b>Qualifies as Disadvantaged</b>	N/A
<b>Disadvantaged Level</b>	9
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	Low-Interest Loan and Board Participation
<b>SWIFT Characteristic</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	N/A
<b>Funding Phase Code</b>	Planning, Acquisition, Design, and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	N/A
<b>Water Rights Certification Required</b>	Yes
<b>Internal Risk Score</b>	2B
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	A
<b>Moody's</b>	Non-Rated
<b>Fitch</b>	AA
<b>Special Issues</b>	

**Project Team**

Team Manager	Clay Schultz
Financial Analyst	Hector Estrada
Engineering Reviewer	Joel Smith
Environmental Reviewer	Katherine Calnan
Attorney	Alexis Lorick

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
Schertz/Seguin Local Government Corporation

**\$43,670,000 Schertz/Seguin Local Government Corporation Contract Revenue Bonds (Texas Water Development Board SWIRFT Project Financing), Proposed New Series 2016**

**\$22,830,000 Master Agreement**

Dated Date: 11/1/2016 Source: SWIFT-LOW-30YR  
 Delivery Date: 11/1/2016 Rate: 2.77%  
 First Interest: 2/1/2017 Insurance: No  
 First Principal: 8/1/2017 Case: Revenue  
 Last Principal: 8/1/2046 Admin.Fee: \$ -  
 Fiscal Year End: 9/30 Admin. Fee N/A  
 Required Coverage: 1.0 Payment Date:

Dated Date: 11/1/2016  
 Delivery Date: 11/1/2016  
 First Interest: 2/1/2017  
 First Principal: 8/1/2037  
 Last Principal: 8/1/2051  
 Fiscal Year End: 9/30  
 Required Coverage: 1.0

Source: SWIFT-PARTICIPATION  
 Rate: 3.90%  
 Insurance: -  
 Case: -  
 Admin.Fee: \$ -  
 Admin. Fee Payment Date: N/A

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	Low Interest Loan \$43,670,000 ISSUE				Master Agreement \$22,830,000 ISSUE				ACTUAL COVERAGE									
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	DEFERRED INTEREST										
2017	6,893,163	5,007,338	1,100,000	0.790%	785,826	1,885,826	-	0.000%	665,059	(665,059)	-	6,893,163	1.00							
2018	7,168,353	5,019,275	1,110,000	0.890%	1,039,078	2,149,078	-	0.000%	886,746	(886,746)	-	7,168,353	1.00							
2019	7,246,386	5,008,513	1,120,000	0.990%	1,029,199	2,149,199	-	0.000%	886,746	(798,071)	88,675	7,246,386	1.00							
2020	7,343,897	5,018,438	1,130,000	1.110%	1,018,111	2,148,111	-	0.000%	886,746	(709,396)	177,349	7,343,897	1.00							
2021	7,370,841	4,998,588	1,145,000	1.210%	1,005,568	2,150,568	-	0.000%	886,746	(665,059)	221,686	7,370,841	1.00							
2022	7,473,161	5,011,088	1,160,000	1.310%	991,713	2,151,713	-	0.000%	886,746	(576,385)	310,361	7,473,161	1.00							
2023	7,586,684	5,013,963	1,175,000	1.410%	976,517	2,151,517	-	0.000%	886,746	(465,541)	421,204	7,586,684	1.00							
2024	7,711,928	5,007,763	1,190,000	1.510%	959,950	2,149,950	-	0.000%	886,746	(332,530)	554,216	7,711,928	1.00							
2025	7,852,558	5,013,350	1,210,000	1.590%	941,981	2,151,981	-	0.000%	886,746	(199,518)	687,228	7,852,558	1.00							
2026	8,103,790	5,135,809	1,225,000	1.670%	922,742	2,147,742	-	0.000%	886,746	(66,506)	820,240	8,103,790	1.00							
2027	8,163,267	5,124,238	1,250,000	1.910%	902,284	2,152,284	-	0.000%	886,746	-	886,746	8,163,267	1.00							
2028	8,166,492	5,131,338	1,270,000	2.080%	878,409	2,148,409	-	0.000%	886,746	-	886,746	8,166,492	1.00							
2029	8,553,870	5,131,931	1,300,000	2.230%	851,993	2,151,993	-	0.000%	886,746	383,201	1,269,946	8,553,870	1.00							
2030	8,926,169	5,125,019	1,325,000	2.360%	823,003	2,148,003	-	0.000%	886,746	766,401	1,653,147	8,926,169	1.00							
2031	8,938,016	5,133,136	1,360,000	2.480%	791,733	2,151,733	-	0.000%	886,746	766,401	1,653,147	8,938,016	1.00							
2032	8,942,448	5,141,296	1,390,000	2.580%	758,005	2,148,005	-	0.000%	886,746	766,401	1,653,147	8,942,448	1.00							
2033	8,945,665	5,140,375	1,430,000	2.670%	722,143	2,152,143	-	0.000%	886,746	766,401	1,653,147	8,945,665	1.00							
2034	8,945,261	5,143,152	1,465,000	2.740%	683,962	2,148,962	-	0.000%	886,746	766,401	1,653,147	8,945,261	1.00							
2035	8,941,995	5,140,028	1,505,000	2.800%	643,821	2,148,821	-	0.000%	886,746	766,401	1,653,147	8,941,995	1.00							
2036	8,548,265	5,126,638	1,550,000	2.860%	601,681	2,151,681	-	0.000%	886,746	383,201	1,269,946	8,548,265	1.00							
2037	9,332,703	5,133,606	1,595,000	2.910%	557,351	2,152,351	1,160,000	3.620%	886,746	-	886,746	9,332,703	1.00							
2038	9,333,571	5,137,881	1,640,000	2.950%	510,937	2,150,937	1,200,000	3.670%	844,754	-	844,754	9,333,571	1.00							
2039	9,327,614	5,134,344	1,685,000	2.990%	462,557	2,147,557	1,245,000	3.720%	800,714	-	800,714	9,327,614	1.00							
2040	9,329,331	5,132,756	1,740,000	3.020%	412,175	2,152,175	1,290,000	3.760%	754,400	-	754,400	9,329,331	1.00							
2041	9,328,223	5,132,700	1,790,000	3.040%	359,627	2,149,627	1,340,000	3.790%	705,896	-	705,896	9,328,223	1.00							
2042	4,620,621	425,300	1,845,000	3.070%	305,211	2,150,211	1,390,000	3.820%	655,110	-	655,110	4,620,621	1.00							
2043	4,615,181	424,600	1,900,000	3.090%	248,570	2,148,570	1,440,000	3.850%	602,012	-	602,012	4,615,181	1.00							
2044	4,619,731	423,300	1,960,000	3.110%	189,860	2,149,860	1,500,000	3.880%	546,572	-	546,572	4,619,731	1.00							
2045	4,192,275	-	2,020,000	3.130%	128,904	2,148,904	1,555,000	3.900%	488,372	-	488,372	4,192,275	1.00							
2046	4,193,404	-	2,085,000	3.150%	65,678	2,150,678	1,615,000	3.930%	427,727	-	427,727	4,193,404	1.00							
2047	2,044,257	-	-	0.000%	-	-	1,680,000	3.980%	364,257	-	364,257	2,044,257	1.00							
2048	2,042,393	-	-	0.000%	-	-	1,745,000	3.990%	297,393	-	297,393	2,042,393	1.00							
2049	2,042,768	-	-	0.000%	-	-	1,815,000	4.000%	227,768	-	227,768	2,042,768	1.00							
2050	2,045,168	-	-	0.000%	-	-	1,890,000	4.020%	155,168	-	155,168	2,045,168	1.00							
2051	2,044,190	-	-	0.000%	-	-	1,965,000	4.030%	79,190	-	79,190	2,044,190	1.00							
	\$	128,515,759	\$	43,670,000	\$	20,568,582	\$	64,238,582	\$	22,830,000	\$	25,349,296	\$	0	\$	25,349,296	\$	48,179,296	\$	240,933,637

\$43,670,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.98 YEARS
NET INTEREST RATE	2.775%
COST SAVINGS	\$ 5,611,580
AVERAGE ANNUAL REQUIREMENT	\$2,141,286

\$22,830,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	28.45 YEARS
NET INTEREST RATE	3.903%
COST SAVINGS	-
AVERAGE ANNUAL REQUIREMENT	\$1,376,551

TOTAL AVERAGE ANNUAL REQUIREMENTS	
	\$6,883,818

This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable

**Schertz Seguin LGC  
51032 Expanded Carrizo for Schertz-Seguin  
Local Government Corporation (SSLGC)  
Engineering and Environmental Review**

**Engineering:**

Key Issues:

A Water Rights Certification must be completed prior to the release of construction funds.

Project Need/Description

Need: The Schertz-Seguin Local Government Corporation (Corporation) is a regional provider of treated water for Spring Hill Water Supply Corporation and the cities of Schertz, Seguin, Selma, Universal City, and San Antonio (via San Antonio Water System). Regional planning projections for the Corporation show a demand of 18,756 acre-feet per year (ac-ft/yr), in 2020. At this time, the Corporation has 17,030 ac-ft/yr of firm yield water sources. In order to meet projected demand, the Corporation needs to develop additional water supplies.

Project Description: The Corporation seeks SWIFT funding to develop a new wellfield in Southeast Guadalupe County, to access the Wilcox and Carrizo aquifers. The proposed project will include a water treatment facility, located in the wellfield, storage and booster pump facilities, and a 36-inch transmission line to deliver the treated groundwater into the distribution system. The new wellfield will generate approximately 6,500 ac-ft/yr, supplying projected customer demand until 2050.

**Project Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Closing	11/1/2016
Engineering Feasibility Report Completion (End of Planning Phase)	5/31/2017
Design Phase Complete	9/24/2018
Start of Construction	6/1/2019
Construction Completion	2/10/2021

**Environmental Section:**

Key Issues:

None.

Environmental Summary:

As set forth in the preliminary environmental information submitted by the applicant, there are no known environmental, social, or permitting issues that would preclude construction of the project. Based on this initial environmental review, it is not anticipated that the proposed project's primary environmental impacts should be significant or adverse, nor should they affect project implementation.

Pursuant to the requirements of 31 Texas Administrative Code §363.14, all financial assistance shall be conditioned to read that funding for design and construction costs for specific project elements will not be released until the environmental review has been completed and a favorable environmental determination has been issued.

**Curent Budget Detail**

Schertz Seguin LGC

51032 - Expanded Carrizo for  
Schertz-Seguin

Local Government Corporation

Budget Items	Description	SWIFT (Application)		
		TWDB Funds LB16044	TWDB Funds LM16044	Total
<b>Construction</b>				
Construction		\$17,111,000	\$35,489,000	\$52,600,000
<b>Subtotal for Construction</b>		<b>\$17,111,000</b>	<b>\$35,489,000</b>	<b>\$52,600,000</b>
<b>Basic Engineering Services</b>				
Construction Engineering		\$319,500	\$630,500	\$950,000
Design		\$639,000	\$1,161,000	\$1,800,000
Planning		\$71,000	\$129,000	\$200,000
<b>Subtotal for Basic Engineering Services</b>		<b>\$1,029,500</b>	<b>\$1,920,500</b>	<b>\$2,950,000</b>
<b>Special Services</b>				
Application		\$28,400	\$51,600	\$80,000
Environmental		\$28,400	\$41,600	\$70,000
Geotechnical		\$21,300	\$28,700	\$50,000
Inspection		\$106,500	\$223,500	\$330,000
O&M Manual		\$0	\$30,000	\$30,000
Special Service Other (Describe)	ROW Agent	\$248,500	\$101,500	\$350,000
Surveying	Boundary	\$248,500	\$101,500	\$350,000
	Design	\$298,200	\$161,800	\$460,000
Testing		\$49,700	\$40,300	\$90,000
<b>Subtotal for Special Services</b>		<b>\$1,029,500</b>	<b>\$780,500</b>	<b>\$1,810,000</b>
<b>Fiscal Services</b>				
Bond Counsel		\$88,700	\$161,300	\$250,000
Financial Advisor		\$142,000	\$258,000	\$400,000
Fiscal/Legal		\$21,300	\$38,700	\$60,000
Issuance Costs		\$21,300	\$38,700	\$60,000
<b>Subtotal for Fiscal Services</b>		<b>\$273,300</b>	<b>\$496,700</b>	<b>\$770,000</b>
<b>Other</b>				
Land/Easements Acquisition		\$1,065,000	\$435,000	\$1,500,000
Project Legal Expenses		\$71,000	\$29,000	\$100,000
<b>Subtotal for Other</b>		<b>\$1,136,000</b>	<b>\$464,000</b>	<b>\$1,600,000</b>
<b>Contingency</b>				
Contingency		\$2,250,700	\$4,519,300	\$6,770,000
<b>Subtotal for Contingency</b>		<b>\$2,250,700</b>	<b>\$4,519,300</b>	<b>\$6,770,000</b>
<b>Total</b>		<b>\$22,830,000</b>	<b>\$43,670,000</b>	<b>\$66,500,000</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$66,500,000 TO THE SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION  
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS  
THROUGH THE PROPOSED PURCHASE OF  
\$43,670,000 SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION  
CONTRACT REVENUE BONDS  
(TEXAS WATER DEVELOPMENT BOARD SWIRFT PROJECT FINANCING),  
PROPOSED NEW SERIES 2016

(16- )

WHEREAS, the Schertz/Seguin Local Government Corporation (Corporation) has filed an application for financial assistance in the amount of \$66,500,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the planning, acquisition, design and construction of certain water supply Project(s) identified as Project No. 51032 (Project); and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$43,670,000 Schertz/Seguin Local Government Corporation Contract Revenue Bonds (Texas Water Development Board SWIRFT Project Financing), Proposed Series 2016, (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, by separate request, the TWDB is considering an application for financial assistance from the Corporation in the amount of \$22,830,000 from the TWDB's Board Participation Account for the Project and the Corporation's sale of its \$43,670,000 in SWIRFT Bonds exceeds the required equity percentage that the Corporation must contribute pursuant to the Master Agreement; and

WHEREAS, the Corporation has offered a pledge of contract revenues derived from a Regional Water Supply Contract between the Corporation and the Cities of Schertz and Seguin, Texas, located in Bexar, Comal, and Guadalupe counties, respectively, on a several (and not joint basis) as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307; and

WHEREAS, interest rate subsidies are available to the Corporation at the following levels: 35% for a loan of a term of 20 years, 25% for a loan of a term of 21 to 25 years, and 20% for a loan of a term of 26 to 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the Corporation, pursuant to this Resolution; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;

2. that the Project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that the Corporation satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the Project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);
4. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the Corporation and filed with the TWDB in accordance with 31 TAC § 358.6;
5. that the Corporation has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable State law relating to contracting with historically underutilized businesses, as defined in Texas Government Code Section 2161.001, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the Schertz/Seguin Local Government Corporation for financial assistance in the amount of \$66,500,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$43,670,000 Schertz/Seguin Local Government Corporation Contract Revenue Bonds, Proposed New Series 2016, for the purposes of financing the Corporation's interest in the Expanded Carrizo Parallel Pipeline Project before the TWDB for separate consideration. This commitment will expire on December 31, 2016.

Such commitment is conditioned as follows:

**Standard Conditions:**

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and general laws of the State of Texas; and that said Obligations are valid and binding special obligations of the Corporation;
3. this commitment is contingent upon the Corporation's continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the Corporation executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed

agreement to the TWDB consistent with the terms and conditions described in the financing agreement;

5. this commitment is contingent upon the Corporation executing a separate master agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the master agreement;
6. the Corporation shall use a paying agent/registrars in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrars to provide a copy, to the TWDB and to the TWDB's designated Trustee, of all receipts documenting debt service payments;

**The Following Conditions Must Be Included in the Obligations:**

7. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
8. the Obligations must include a provision wherein the Corporation, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the Corporation's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by the Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12), and determined as if the TWDB were a Participating Underwriter within the meaning of such rule; such continuing disclosure undertaking is for the benefit of the TWDB and the beneficial owners of the Corporation's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to such bonds under SEC Rule 15c2-12;
9. the Obligations must include a provision requiring the Corporation to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project for the following purposes as approved by the Executive Administrator: (1) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (2) eligible costs for the Project as authorized by the Executive Administrator;
10. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
11. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated State depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

12. loan proceeds shall not be used by the Corporation when sampling, testing, removing or disposing of contaminated soils and/or media at the Project site. The Obligations shall include an environmental indemnification provision wherein the Corporation agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project to the extent permitted by law;
13. the Obligations must include a provision stating that the Corporation shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);
15. the Obligations must include a provision prohibiting the Corporation from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
16. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
  - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
  - b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and
  - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
17. the Obligations must include a provision requiring the Corporation take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of

the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the Corporation will:

- a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The Corporation may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the Corporation, provided that the Corporation separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The Corporation shall maintain a copy of such calculations for at least six years after the final Computation Date;
  - c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
  - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
18. the Obligations must include a provision prohibiting the Corporation from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
  19. the Obligations must provide that the Corporation will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
  20. the Obligations must provide that neither the Corporation nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the Corporation by the TWDB;
  21. the Obligations must contain a provision requiring that, upon request by the Executive Administrator, the Corporation shall submit annual audits of contracting parties for the Executive Administrator's review;
  22. the Obligations must contain a provision requiring the Corporation to require its customers to establish and maintain rates and charges sufficient to pay all of their revenue obligations arising

from the operation of the Corporation's utility system and the separate utility systems of the Cities of Schertz and Seguin, Texas;

23. the Obligations must contain a provision that the pledged contract revenues from the Corporation may not be pledged to the payment of any additional parity obligations of the Corporation secured by a pledge of the same contract revenues unless the Corporation demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;

**Conditions to Close or for Release of Funds:**

24. prior to closing, and if not previously provided with the application, the Corporation shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel contracts, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the applicable contract, and acceptable to the Executive Administrator;
25. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the Corporation shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
26. prior to closing, the Corporation's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the Corporation when rendering this opinion;
27. prior to closing, the Corporation's bond counsel must prepare a written opinion that also states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Corporation when rendering this opinion;
28. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Corporation's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
29. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;
30. prior to closing, the Corporation must submit executed contracts between the Corporation and the contracting parties regarding the contract revenues pledged to the payment of the Corporation's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of

revenues sufficient to meet the Corporation's debt service obligations and additional parity obligations;

PROVIDED, however, the commitment is subject to the following special conditions:

**Special Conditions:**

31. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the Corporation has the right to use the water that the Project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
32. prior to the release of construction funds for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the Corporation has the right to use the water that the Project financed by the TWDB will provide.

APPROVED and ordered of record this, the 21st day of July, 2016.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech K. Bruun, Chairman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeff Walker  
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FROM  
THE SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION  
FOR THE TEXAS WATER DEVELOPMENT BOARD'S  
ACQUISITION AND SALE OF AN INTEREST IN  
THE EXPANDED CARRIZO PARALLEL PIPELINE PROJECT  
WITH FUNDS FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR  
TEXAS

(16- )

WHEREAS, the Texas Water Development Board (TWDB), under the authority of Chapter 15, Subchapter H of the Texas Water Code, is authorized to use the Board Participation Account of the State Water Implementation Revenue Fund for Texas (SWIRFT) to encourage optimum regional development of projects through the acquisition of an interest in new water supply project facilities and the sale, transfer, or lease of its interest in those facilities; and

WHEREAS, the Schertz/Seguin Local Government Corporation (Corporation), has filed an application with the TWDB requesting that TWDB acquire an interest in its Expanded Carrizo Parallel Pipeline Project, Project No. 51032 (Project), not to exceed seventy-one percent (71%) of the total Project cost, in order to enable excess capacity for the optimum regional development of the Project, using Board Participation Account funds from the SWIRFT; and

WHEREAS, the Corporation will finance at least twenty-nine percent (29%) of the total Project costs from sources other than Board Participation Account funds from the SWIRFT, pursuant to 31 TAC § 363.1308; and

WHEREAS, the Corporation is financing \$45,670,000 in low interest loan bonds from the TWDB, which is sufficient to satisfy the Corporation's equity percentage on the TWDB's Board Participation Account Loan; and

WHEREAS, by separate request, the TWDB is considering an application for financial assistance from the Corporation through the TWDB's proposed purchase of \$43,670,000 Schertz/Seguin Local Government Corporation Contract Revenue Bonds, Proposed New Series 2016 for the Project; and

WHEREAS, the Project is expected to cost \$32,155,000, of which the TWDB's share, pursuant to this commitment, will not exceed \$22,830,000; and

WHEREAS, the Corporation will purchase the TWDB's interest in the Project with the proceeds of a future bond issue, from other revenues, or from other lawful sources of funds in accordance with a Master Agreement to be executed between the Corporation and the TWDB; and

WHEREAS, the Corporation has offered a pledge of contract revenues derived from a wholesale water supply contract between the Cities of Schertz and Seguin, Texas, in several

amounts as sufficient security for its obligation to purchase the TWDB's interest in the Project; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307; and

WHEREAS, the TWDB has considered the long-term needs of the area, the costs of the Project, and the feasibility of the Project; and

WHEREAS, the Project will aid in addressing the long-term needs of the Corporation's utility system, expanding the Corporation's utility system's current capacity and redundant pipeline capacity to meet current peak demands and meet projected growth demands in Region L, including the construction of a 36-inch welded steel parallel pipeline, approximately 98,000 linear feet in length for transportation of treated water from three (3) projects identified in the Region L Regional Water Plan; and

WHEREAS, pursuant to 31 TAC § 363.1308, the terms of the TWDB's ownership interest in the Project have been incorporated into a proposed Master Agreement that sets forth the responsibilities, duties and liabilities of each party and that is attached hereto as Attachment A; and

WHEREAS, the Executive Administrator seeks the Board's approval of the terms of the proposed Master Agreement and consent to the execution of a Master Agreement with substantially similar terms; and

WHEREAS, the TWDB hereby finds that:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. it is reasonable to expect that the TWDB will recover its investment in the Project because the revenues to be generated by the projected number of customers served by the Project will be sufficient to purchase the excess capacity owned by the TWDB in the Project accordance with 31 TAC § 363.1308(c)(1);
3. the cost of the Project exceeds the current financing capabilities of the area to be served by the Project, in accordance with 31 TAC § 363.1308(c)(2);
4. the optimum regional development cannot be reasonably financed by local interest based on an assessment of the estimated cost to construct the Project and the revenue to be generated by the projected number of customers of the facility, in accordance with 31 TAC § 363.1308(c)(3);
5. the public interest will be served by the TWDB's acquisition of an interest in the Project because the cost of the Project to the public will be reduced by the Board's participation

in the Project, in accordance with 31 TAC § 363.1308(c)(4);

6. the Project contemplates the optimum regional development that is reasonably required under all existing circumstances of the site because the design capacity of the components of the Project are sufficient to meet the foreseeable needs of the area, in accordance with 31 TAC § 363.1308(c)(5);
7. the project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
8. that a water conservation plan, if required by Texas Water Code § 11.1271, has been submitted and implemented in accordance with 31 TAC § 363.1309(b)(1);
9. the Corporation satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the Project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), Water Code, in accordance with Texas Water Code § 15.435(g)(2) and 31 TAC § 363.1309(b)(2);
10. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the Corporation and filed with the TWDB in accordance with 31 TAC § 358.6;
11. that the Corporation has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable state law relating to contracting with historically underutilized businesses, as defined in Texas Government Code § 2161.001, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

1. a commitment is made by the TWDB to acquire and sell an ownership interest in the Expanded Carrizo Parallel Pipeline Project, not to exceed seventy-one percent (71%) of the total Project cost, based on an application filed by the Schertz/Seguin Local Government Corporation in an amount not to exceed \$22,830,000 from the Board Participation Account of the State Water Implementation Revenue Fund for Texas. This commitment will expire on December 31, 2016; and
2. the Board approves the terms of the Master Agreement attached to this Resolution as Attachment A; and
3. the Executive Administrator is authorized to negotiate and execute the terms of a Master Agreement, in substantially the form attached hereto as Attachment A, that will set forth the duties, responsibilities and liabilities of the TWDB and the Corporation.

Such commitment is conditioned as follows:

**Standard Conditions:**

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the Corporation's continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstance, or any other legal requirement;
3. this commitment is contingent upon the Corporation executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed financing agreement to the TWDB consistent with the terms and conditions described in the financing agreement;

**The Following Conditions Must Be Included in the Master Agreement:**

4. the Master Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Master Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
5. loan proceeds are public funds and, as such, the Master Agreement must include a provision requiring that these proceeds shall be held at a designated State depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
6. loan proceeds shall not be used by the Corporation when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Master Agreement shall include an environmental indemnification provision wherein the Corporation agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling and disposition of any contaminated sewer sludge, contaminated sediments and/or contaminated media that may be generated by the Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project to the extent permitted by law;
7. the Master Agreement must include a provision stating that the Corporation shall report to the TWDB the amounts of Project funds, if any, which were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
8. the Master Agreement must include a provision stating that the Corporation shall have

the right to make an early purchase of all or a portion of the TWDB's ownership interest in the Project, on or after the specified Call Date, by making principal payments in excess of the scheduled principal payments. Such early purchases may be made no more than once a year, unless otherwise allowed by the Executive Administrator;

9. the Master Agreement must contain a provision requiring that, upon request by the Executive Administrator, the Corporation shall submit annual audits of the contracting parties to the Project for the Executive Administrator's review;
10. the Master Agreement must contain a provision requiring the Corporation to require its customers to maintain rates and charges sufficient to pay all of the Corporation's revenue obligations arising from the operation of the Project;

**Conditions to Close or for Release of Funds:**

11. prior to closing, the Corporation and the TWDB will execute a Master Agreement which will set forth the responsibilities, duties and liabilities of each party;
12. prior to closing, the Corporation will provide an attorney's opinion that is satisfactory and acceptable to the Executive Administrator as to any impact of the Project on the tax-exempt status of any bonds issued by the TWDB to fund its acquisition of an interest in the Project;
13. the Corporation agrees to take such actions as are necessary to assure, or to refrain from such actions as would materially adversely affect, the excludability from gross income for Federal income tax purposes of interest payable on such obligations as are issued by the TWDB to finance its acquisition of an interest in the Project;
14. prior to closing, the Corporation must submit executed contracts between the Corporation and the contracting parties to the Project regarding the contract revenues pledged to the payment of the Corporation's obligation to purchase the TWDB's interest in the Project, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Corporation's revenue obligations;
15. prior to closing, and if not previously provided with the application, the Corporation shall submit executed contracts for engineering, and, if applicable, financial advisor and legal counsel contracts, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the applicable contract, and acceptable to the Executive Administrator;
16. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the Corporation shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

PROVIDED, however, the commitment is subject to the following special conditions:

**Special Conditions:**

17. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the Corporation has the right to use the water that the Project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
18. prior to the release of construction funds for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the Corporation has the right to use the water that the Project financed by the TWDB will provide.

APPROVED and ordered of record this the 21st day of July, 2016.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech K. Bruun, Chairman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeff Walker  
Executive Administrator

**MASTER AGREEMENT  
BETWEEN  
TEXAS WATER DEVELOPMENT BOARD  
AND  
SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION**

**REGARDING BOARD PARTICIPATION  
IN THE EXPANDED CARRIZO PARALLEL PIPELINE PROJECT  
PROJECT NO. 51032**

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**MASTER AGREEMENT  
BETWEEN  
TEXAS WATER DEVELOPMENT BOARD  
AND  
SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION**

WHEREAS, the Texas Water Development Board, (TWDB), a Texas agency created pursuant to Article III, Section 49-c of the Texas Constitution, is authorized under the authority of § 15.435(c)(4), Water Code, and 31 Texas Administrative Code (TAC) §§ 363.1305 and 363.1308, to acquire, sell, transfer, and lease an interest in water supply projects using the Board Participation Program of the State Water Implementation Revenue Fund for Texas (SWIRFT) in order to encourage the optimum regional development of reservoirs and facilities for the transmission of water; and

WHEREAS, the Schertz/Seguin Local Government Corporation, a local government corporation and non-profit corporation (Corporation) duly created pursuant to Texas Transportation Code §§ 431.101 through 431.109 and lawfully operating under Titles 1 and 2, Chapters 2 and 22, respectively, of the Texas Business Organizations Code, is proposing to develop a new water transmission pipeline project known as the Expanded Carrizo Parallel Pipeline Project, TWDB Project No. 51032 (Project); and

WHEREAS, the Project will consist of addressing the long-term needs of the Corporation's utility system, and the utility systems of the Cities of Schertz and Seguin, Texas, expanding the Corporation's utility system's current capacity to meet current peak demands and meet projected growth demands in Region "L," including the construction of a 36-inch welded steel parallel pipeline, approximately 98,000 linear feet for transportation of treated water from three (3) projects identified in the Region "L" Regional Water Plan; and

WHEREAS, the Project is a recommended water management strategy in the 2017 State Water Plan and in the 2016 Region "L" Regional Water Plan; and

WHEREAS, at its meeting on July 21, 2016, the TWDB, through adoption of TWDB Resolution No. 16-XXX (Attachment A, referred to herein as the Resolution), approving the Corporation's application for the TWDB's participation in the Project in an amount not to exceed \$22,830,000 from the Board Participation Program of the SWIRFT; and

WHEREAS, under 31 TAC § 363.1308, the TWDB's ownership interest in the Project is limited to the excess capacity of the Project; and

WHEREAS, the Corporation will finance at least twenty-nine percent (29%) of the Project and the TWDB may finance up to seventy-one percent (71%) of the Project; and

WHEREAS, the Corporation also filed an application for financial assistance and is selling obligations in the amount of \$43,670,000 from the SWIRFT to finance the planning, acquisition, design and construction of the Project, and the issuance of these obligations meets the Corporation's required threshold financing percentage in regard to the Project.

WHEREAS, the Corporation will purchase the TWDB's undivided ownership interest in the Project with the proceeds of a future bond issue, with other revenues, or with other lawful sources of funds in accordance with this Master Agreement to be executed by and between the Corporation and the TWDB; and

WHEREAS, in the Resolution, the TWDB authorized the Executive Administrator to negotiate and execute a Master Agreement setting forth the duties, responsibilities and liabilities of the TWDB and the Corporation; and

WHEREAS, this Master Agreement has been negotiated pursuant to the authority delegated to the Executive Administrator in the Resolution and is approved in substantially this form by the TWDB under the Resolution, subject to final terms approved by the Executive Administrator and is hereby entered into and executed between the TWDB and the Corporation to authorize the TWDB's acquisition of an ownership interest in the Project and the subsequent purchase of the TWDB's ownership interest in such Project by the Corporation.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Master Agreement, and in contemplation of and in accordance with the applicable laws of the State of Texas, the Corporation, acting by and through its undersigned representatives as duly authorized by a resolution of its governing body, and the TWDB, acting herein by and through its undersigned representative, as duly authorized by a TWDB Resolution, (both of which may be referred to herein as "Party" or "Parties") enter into this Master Agreement and mutually agree as follows:

## **ARTICLE 1. DEFINITIONS AND CONSTRUCTION**

**§1.1 DEFINITIONS.** Words and phrases as used in this Master Agreement shall have the following meanings

- (a) "*Additional New Series Bonds*" shall mean (i) the currently outstanding Previously Issued New Series Bonds and any bonds, notes, warrants, or any similar obligations hereafter issued by the Corporation that are payable wholly or in part from and equally and ratably secured by a lien and pledge of the Bond Payment portion of the Annual Payments received by the Corporation from the Cities under the Contract, which lien and pledge is junior and inferior to the lien thereon and pledge thereof securing the repayment of the currently outstanding Priority Bonds until such time as no Priority Bonds remain Outstanding (at which point all New Series Bonds will enjoy a first and prior lien on and pledge of the Bond Payment portion of the Annual Payments), but senior and superior to the lien thereon and pledge thereof of any additional Corporation obligations secured by and payable from a lien on and pledge of the Bond Payment portion of the Annual Payments that is subordinate and inferior to the lien thereon and pledge thereof securing the repayment of any New Series Bonds and (ii) obligations hereafter issued to refund any of the foregoing that are payable from and equally and ratably secured by a lien on and pledge of the of the Bond Payment portion of the Annual Payments received by the Corporation from the Cities under the Contract, as determined by the Corporation in accordance with applicable law, on parity with the lien thereon and pledge thereof securing the other New Series Bonds then-Outstanding.

- (b) *“Additional Obligations”* shall mean, collectively, additional debt or other obligations of the Corporation defined as *“Prior Lien Obligations,” “Junior Lien Obligations,”* or *“Inferior Lien Obligations,”* issued by the Corporation and for which the Corporation either (1) pledges a parity lien on the same wholesale contract revenues, which the source of the *“Bond Payment”* and the *“Annual Payment,”* as pledged herein or (2) a lien on and pledge of the net revenues of the Corporation’s utility system, if such a general rate tariff system exists as the time of issuance of such Additional Obligations.
- (c) *“Additional Priority Bonds”* shall mean any bonds, notes, warrants, or other evidences of indebtedness (including those issued for the purpose of refunding previously issued bonds, notes, or other evidences of indebtedness) which the Corporation reserves the right to issue under the Priority Bonds Resolutions the repayment of which is secured by a parity lien on and pledge of the *“Bond Payment”* portion of the *“Annual Payments”* received by the Corporation from the Cities under the Contract, which lien and pledge is on parity with the lien thereon and pledge thereof securing the repayment of the currently outstanding Priority Bonds. The Corporation covenants not to issue any Additional Priority Bonds.
- (d) *“Annual Payments”* shall mean the payments, including the *“Bond Payment,”* operation and maintenance expenses, and overhead expenses the Corporation expects to receive from the *“Cities,”* on a several, and not joint, basis at specific times and in certain amounts, pursuant to the terms of the Contract.
- (e) *“Agreement”* shall mean this Master Agreement.
- (f) *“Application”* shall mean the Corporation’s application to the TWDB for Board Participation under SWIRFT for TWDB Project No. 51032, together with all attachments and any amendments thereto.
- (g) *“Bond Payment”* shall mean the amount of money to be paid to the Corporation by the *“Cities,”* on a several basis, from the revenues of the *“Cities’ System”* as an operating and maintenance expense of the *“Cities’ System”* at specific times and in certain amounts, pursuant to the terms of the Contract.
- (h) *“Call Date”* shall mean the date prior to which the Corporation cannot purchase the TWDB’s portion of the Project, as set forth in the Schedules.
- (i) *“Cities”* shall mean the City of Schertz, Texas and the City of Seguin, Texas, both home rule municipalities acting and operating through their respective City Council and each City Council may delegate certain authority to their City Manager.
- (j) *“Cities’ System”* shall mean and includes each respective Cities’ existing combined waterworks and wastewater disposal system and any electric power and or natural gas system, together with all future extensions, improvements, enlargements, and additions thereto, including, to the extent permitted by law, storm sewer and drainage, and or reclaimed water systems within the waterworks or wastewater disposal system, and all replacements thereof, provided that, the term

respective Cities' System does not include any waterworks, wastewater, electric power, or natural gas facilities which are declared by the respective Cities not to be a part of the respective Cities' System and which are hereafter acquired or constructed by the Cities with the proceeds from the issuance of "*Special Facilities Bonds*," which are hereby defined as being special revenue obligations of the Cities not secured by or payable from the net revenues of the Cities' System, but which are secured by and are payable solely from special contract revenues, or payments received from the respective Cities or any other legal entity, or any combination thereof, in connection with such facilities; and such revenues or payments shall not be considered as, or constituted gross revenues of, the respective Cities' System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such "*Special Facilities Bonds*."

- (k) "*Construction Fund*" shall mean a separate account created under Section 2.2 of this Agreement. The Construction Fund shall be maintained at the depository bank of the Corporation for the purpose of paying and accounting for "*Project Costs*," and into which any funds may be transferred either directly from the TWDB or from the Escrow Account pursuant to approval by the Executive Administrator. The Construction Fund is for the receipt and disbursement of all proceeds from the sale of the Bonds and all other funds acquired by the Corporation in connection with the planning, acquisition, design, and construction of the "*Project*" financed, in whole or part, with funds from the TWDB's sale of bonds. Funds in the Construction Fund may only be used only for: (1) Project Costs as approved by the "*Executive Administrator*;" (2) or otherwise permitted by 31 TAC Chapter 363 and those applicable provisions of Chapters 15, 16, or 17 of the Texas Water Code; or (3) for the Corporation's purchase of the TWDB's undivided ownership interest in the "*Project*."
- (l) "*Construction Stage*" shall mean that stage of the "*Project*" that involves the physical construction of the "*Project*," including the construction and installation of a 36-inch welded steel transmission line approximately 98,000 in linear feet.
- (m) "*Contract*" shall mean the Regional Water Supply Contract between the Cities, dated November 15, 1999, together with amendments and supplements thereto (which by the term of such instrument is designated as a supplement to such Contract).
- (n) "*Contract Revenues*" shall mean the Annual Payments made by the Cities pursuant to the provisions of the Contract.
- (o) "*Corporation*" shall mean the Schertz/Seguin Local Government Corporation and any other nonprofit ~~corporation~~ entity, or political subdivision succeeding to, or otherwise assigned the powers, rights, privileges, and functions of the Corporation under this Agreement.
- (p) "*Corporation's System*" shall mean the works, improvements, facilities, plants, equipment, appliances, property, easements, leaseholds, licenses, privileges, right of use or enjoyment, contract rights, or other interests in property comprising the utility system of the Corporation, including the "*Project*," now owned or to be hereafter purchased, constructed, or otherwise acquired whether by deed, contract or otherwise, together with any additions or extensions thereto, or improvements and replacements thereof, or the utility system of any other

entity to which the Corporation has contractual rights of use, including the “*Project*,” except the facilities which the Corporation may purchase or acquire with the proceeds of “*Special Project Bonds*,” so long as such “*Special Project Bonds*” are outstanding, notwithstanding that such facilities may be physically connected with the System.

- (q) “*Cost of Acquisition*” shall mean the amount of funds deposited into the Construction Fund and/or the “*Escrow Account*” by the TWDB for the acquisition of an undivided interest in the “*Project*.”
- (r) “*Customers*” shall mean collectively:
  - i. The Cities, which have executed contracts with the Corporation to participate in paying the costs associated with the Project, as applicable, and for a right to contract to receive a portion of the treated water from the Project upon its completion.
  - ii. Any entity that is a “political subdivision” as defined in Section 15.001, Water Code, other than a water supply corporation, and other than the Customers listed in (i) above with which the Corporation executes a contract for the purpose of paying the costs associated with the Project and with the Site Acquisition stage, as applicable, and for purposes of supplying treated water from the Project.
- (s) “*Date of Acquisition*” shall mean each date that TWDB delivers funds to the Construction Fund and/or the Escrow Account for the acquisition of an undivided ownership interest in the Project.
- (t) “*Design Stage*” shall mean that stage of the Project that involves the design of the Project and related engineering fees.
- (u) “*Escrow*” shall mean the TWDB’s transfer of funds to the “*Escrow Agent*” until such funds are authorized for release to the Corporation by the “*Executive Administrator*.”
- (v) “*Escrow Account*” shall mean the account created under this Agreement for the TWDB’s delivery of funds to be held in Escrow upon closing for the TWDB’s acquisition of an undivided interest in the “*Project*.” Funds in the Escrow Account may be used only for “*Project Costs*” or for the Corporation’s purchase of the TWDB’s interest in the “*Project*.”
- (w) “*Escrow Agent*” shall mean the third party appointed to hold the escrow funds until such funds are authorized for release to the Corporation.
- (x) “*Event of Default*” shall mean the non-performance or violation by the Corporation of any obligation or provision in this Agreement if such non-performance or violation is not cured within 30 days after written notice by the TWDB to the Corporation of the non-performance or violation, or the Corporation otherwise fails to use good faith and diligence to remedy the default.
- (y) “*Executive Administrator*” shall mean the Executive Administrator of the TWDB.

- (z) “*Force Majeure*” shall mean a failure or delay in a Party’s performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.
- (aa) “*Junior Lien Obligations*” shall mean any bonds, notes, warrants, or any similar obligations issued by the Corporation that are payable wholly or in part from and equally and ratably secured by a junior and inferior lien on and pledge of the “*Net Revenues*” of the Corporation’s System, and obligations issued to refund any of the foregoing instruments that are payable from and equally and ratably secured by a junior and inferior lien on and pledge of the “*Net Revenues*” as determined by the Corporation in accordance with any applicable law.
- (bb) “*Net Revenues*” shall mean the “Gross Revenues” of the Corporation’s System, after deducting operation and maintenance expenses, and as defined in the debt instruments authorizing the Corporation’s outstanding Prior Lien Obligations. Net Revenues includes payments made by the Cities, excluding the Bond Payment portion of the Annual Payments.
- (cc) “*New Series Bonds*” shall mean the Previously Issued New Series Bonds and any Additional New Series Bonds hereafter issued by the Corporation
- (dd) “*Operation and Maintenance Expenses*” shall mean all reasonable, necessary, and direct, current costs and expenses related to the operation and maintenance of the Corporation’s System including, but not limited to, repairs, operating personnel, the cost of utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, paying agents’ fees, and those amounts payable under any contract with any person, including but not limited to, any federal, state, or local agency for the right to produce and use groundwater or other source of water, any contribution or payment in lieu of taxes or any fee or charge by any governmental authority relating to the Corporation’s production of groundwater or sale of treated water pursuant to the Contract; and any other supplies, services, administrative costs, and equipment necessary for the use or operation of any property, and payments made by the Corporation in satisfaction of judgments or other liabilities resulting from claims not covered by Corporations insurance. Depreciation shall not be considered an item of Operation and Maintenance Expense.
- (ee) “*Party*” or “*Parties*” means the TWDB and the Corporation and their authorized successors and assignees.
- (ff) “*Planning Stage*” means that stage of the Project that involves the planning of the Project, and related fees.
- (gg) “*Pledged Revenues*” means those revenues pledged to the payment of the Corporation’s obligation to purchase the TWDB’s interest in the Project, as provided in Section 3.2 herein.
- (hh) “*Previously Issued New Series Bonds*” shall mean (i) \$6,275,000 “SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION CONTRACT REVENUE REFUNDING BONDS, NEW

SERIES 2014”, dated September 1, 2014, (ii) 41,720,000 “SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION CONTRACT REVENUE IMPROVEMENT AND REFUNDING BONDS, NEW SERIES 2015”, dated December 1, 2014, and (iii) obligations hereafter issued to refund any of the foregoing that are payable from and equally and ratably secured by a junior and inferior lien on and pledge of the Bond Payment portion of the Annual Payments as determined by the Corporation’s governing body in accordance with any applicable law.

- (ii) “*Prior Lien Obligations*” shall mean all bonds, notes, or other obligations of the Corporation whether now outstanding or hereafter issued, payable from and secured by a first and prior lien on and pledge of the Net Revenues of the Corporation’s System and obligations issued to refund any of the foregoing instruments if issued in a manner so as to be payable from and secured by a first and prior lien on and pledge of the Net Revenues as determined by the Corporation in accordance with applicable law.
- (jj) “*Project*” means the development of a 36-inch welded steel transmission pipeline approximately 98,000 linear feet in length, as described in the Application, for the transportation of treated water.
- (kk) “*Project Costs*” means costs of the Project associated with its construction, closing costs, and all other costs and expenditures which under standard principles of accounting would constitute a capital cost of the Project, including, but not limited to, specifically: the cost of engineering planning, design, supervision and inspection; the cost of testing laboratories and other professional services associated with construction of the Project; abstractors’ costs; the cost of acquiring all lands and interests in land for the Project, including all costs associated with planning, design, and construction of the Projects. The term “Project Costs” does not include any capitalized interest, reserve funds or operational expenses.
- (ll) “*Schedules*” means the payment schedule(s) attached hereto in Attachment C that, from time to time, show the payments that the Corporation is obligated to make in order to purchase the TWDB’s interest in the Project. Each Schedule is associated with the funds delivered by the TWDB upon each Date of Acquisition. Such Schedules shall, at a minimum, detail the interest rate to be paid by the Corporation, the TWDB’s source of funds, and the Call Date associated with the Corporation’s purchase obligation.
- (mm) “*Site Acquisition Stage*” means the stage of the Project that involves the acquisition of title to all of the land and easements needed to develop the Project as defined in this Agreement.
- (nn) “*Special Project Bonds*” shall mean the bonds issued by the Corporation in one or more installments for the purchase, construction, improvement, extension, replacement, enlargement, or repair of utility facilities necessary under a contract or contracts with persons, corporations, municipal corporations, political subdivisions, or other entities, such bonds to be payable from and secured by the proceeds of such contract or contracts. The Corporation further reserves the right to refund such bonds and secure the payment of the debt service requirements on the refunding bonds in the same manner or as otherwise permitted by the laws of the “State.”

- (oo) “*Special Facilities Bonds*” shall have the meaning as described in “*Cities’ System.*”
- (pp) “*State*” shall mean the State of Texas.
- (qq) “*Texas Transportation Corporation Act*” shall mean the legislation found in Subchapter D of the Texas Transportation Code Chapter 431, which incorporates Chapters 2 and 22 of the Texas Business Organizations Code, as amended.
- (rr) “*TCEQ*” shall mean the Texas Commission on Environmental Quality or any other board, commission or agency which succeeds it as to any rights, powers or duties under this Agreement.
- (ss) “*TWDB Cost of Acquisition*” shall mean the total of the payments made by TWDB to the Corporation for purchase of an undivided interest in the Project pursuant to this Agreement, less any purchases of TWDB's interest by the Corporation.
- (tt) “*TWDB Rules*” shall mean the applicable rules and regulations of the TWDB set forth in Title 31 Texas Administrative Code Part 10.

## **ARTICLE 2. BOARD PARTICIPATION**

**§2.1 TWDB ACQUISITION OF OWNERSHIP.** The TWDB agrees to participate in the Project by acquiring an undivided ownership interest of the Project as a whole, including all work performed and all properties and facilities acquired or constructed as part of the Project, not to exceed an amount as specified in the Resolution and the terms of this Agreement. The TWDB’s undivided ownership interest in the Project will cost not more than 71% of the total Project cost, which is expected to be \$22,830,000 to be allocated for the costs of the Planning Stage, Site Acquisition Stage, the Design Stage, and the Construction Stage, respectively, in any manner determined to be acceptable by the TWDB’s Executive Administrator, in accordance with the provisions of this Agreement. If the costs of the Project exceed \$32,155,000, the TWDB may consider, in its sole discretion, providing additional funds if requested by the Corporation in writing. If the TWDB’s Cost of Acquisition does not exceed 71% of the total Project, then the TWDB and the Corporation will amend this Master Agreement evidencing the increased Cost of Acquisition, reflecting the change in the percentage of ownership interests between the Parties, and the TWDB will provide additional Schedules to the Corporation to reflect the Corporation’s obligation to purchase the TWDB’s increased, undivided ownership interest in the Project. For the purposes of this Agreement, the Parties agree that the TWDB is purchasing an undivided ownership interest, to the extent permitted by law, in the entire Project, including real estate purchased for the Site Acquisition Stage, facilities constructed for and all related appurtenances and any structures of the Project.

**§2.2 ESCROW ACCOUNT AND CONSTRUCTION FUND.** Prior to the delivery of TWDB funds to the Corporation, the Corporation will create: (1) a Construction Fund to be held by the Corporation, and (2) an Escrow Account under an escrow agreement, approved by the Executive Administrator, to be held by the Escrow Agent. Funds in the Escrow Account and Construction Fund, including interest and investment earnings therein, are to be used only for Project Costs or for the Corporation’s purchase of the TWDB’s undivided ownership interest in the Project. Funds in the Escrow Account may be released

by the Escrow Agent for deposit into the Construction Fund only upon direction by the Executive Administrator.

The funds to be placed in the Construction Fund and the Escrow Account are public funds and, as such, these funds shall be held at a designated State depository institution or other properly chartered and authorized institution, and managed in accordance with the Public Funds Investment Act, Chapter 2256, Government Code (the “*PPIA*”), and secured in accordance with the Public Funds Collateral Act, Chapter 2257, Government Code (the “*PFCA*”).

**2.3 DELIVERY OF TWDB FUNDS.** The TWDB shall deliver to the Construction Fund and/or the Escrow Account up to \$22,830,000, subject to the availability of funds and satisfactory documentation that the Corporation has met all prerequisites for the delivery of TWDB funds into these accounts under this Agreement, the TWDB’s rules, and the Resolution authorizing the TWDB participation in the Project. The Executive Administrator shall determine from time to time the amounts to be delivered to the Construction Fund and/or the Escrow Account, as appropriate. The Executive Administrator, or his or her designee, shall authorize the release of funds from the Escrow Account to the Construction Fund for the Planning Stage, Site Acquisition Stage, Design Stage, and Construction Stage (collectively, the “Stages”), as provided below, after the Corporation has provided information, satisfactory to the Executive Administrator, that the funds are needed for eligible Project Costs. Upon each Date of Acquisition, Schedules shall be dated and signed by both the Executive Administrator and by a duly authorized representative of the Corporation to indicate agreement between the Parties, and such agreed Schedules shall be appended to and incorporated into this Agreement.

**A. PLANNING STAGE:** After the completion of all prerequisites for the release of funds for work to be performed under the Planning Stage satisfactory to the Executive Administrator, including, but not limited to those in 31 TAC Chapter 363, the Executive Administrator shall either deliver to the Construction Fund, or authorize the release of funds from the Escrow Account to the Construction Fund, for the costs associated with the Planning Stage.

**B. SITE ACQUISITION STAGE:** Prior to the authorization for release of funds from the Escrow Account to the Construction Fund for the Site Acquisition Stage, the Corporation must: (1) submit all necessary legal documentation for the purchase of land, or easements for the Project satisfactory in form and substance to the Executive Administrator, and; (2) the Executive Administrator must make a favorable environmental determination relating to the Project.

**C. DESIGN STAGE:** After the completion of all prerequisites for the release of funds for work to be performed for the Design Stage satisfactory to the Executive Administrator, including, but not limited to those in 31 TAC Chapter 363, the Executive Administrator shall either deliver to the Construction Fund or authorize the release of funds from the Escrow Account to the Construction Fund an amount for the costs associated with the Design Stage. Prior to the delivery of funds to the Construction Fund for the Design Stage, the Executive Administrator must make a favorable environmental determination relating to the Project.

**D. CONSTRUCTION STAGE:** After completion of all prerequisites to the release of funds for construction activities, including, but not limited to those in 31 TAC Chapter 363, the Executive Administrator shall either deliver to the Construction Fund, or authorize the release

from the Escrow Account to the Construction Fund, an amount up to the remainder of funds available under this Agreement for the costs associated with the Construction Stage. Prior to the delivery of funds to the Construction Fund for the Construction Stage, the Executive Administrator must make a favorable environmental determination relating to the Project.

**§2.4 VESTING AND NATURE OF TWDB OWNERSHIP.** The Parties understand that the TWDB is purchasing an undivided ownership interest, to the extent permitted by law, in the entire Project, including real estate purchased in the Site Acquisition Stage, facilities constructed for Project infrastructure, and all related appurtenances and any structures of the Project. Upon delivery of funds in any amount by the TWDB into the Construction Fund and/or the Escrow Account, there will be vested in the TWDB: (1) an undivided ownership interest in the Project, along with the right to the TWDB's use of the Project, and; (2) an undivided ownership right in all applicable operating permits related to the Project. The TWDB's undivided ownership interest in the Project shall include, but not be limited to, the right to the transmission pipeline (the subject of the Project) subject to the Corporation's preferential right to purchase the TWDB's interest under Section 3.8 of this Agreement. Should the TWDB request in writing that the Corporation hold title to any Project land, easements, and facilities in trust for the TWDB, the Corporation will execute and record any conveyances and assignments which may be necessary to effectuate this request, and place title of the Project, t land, easements, and/or facilities in the TWDB to the extent of the TWDB's ownership interest. The Corporation acknowledges that the TWDB's interest shall constitute an undivided ownership interest whether or not the TWDB ever requires execution of any conveyance documents to evidence such interest. The percentage of the TWDB's undivided ownership interest in the Project is initially set at 71% and shall not exceed 71% until: (1) additional funding is provided by the TWDB to the Corporation in accordance with Section 2.1 of this Agreement, and this Master Agreement is amended or supplemented; or (2) until all Stages of the Project are complete and final accounting is performed by the Corporation in accordance with Section 2.5 of this Agreement; or (3) upon a determination by the TWDB that the Project will not be completed, and a final accounting is performed by the Corporation under Section 2.5 of this Agreement.

**§2.5 CALCULATION OF TWDB OWNERSHIP INTEREST.** The Corporation shall provide to the TWDB a final accounting of all Project Costs within sixty (60) days of completion of all Stages of the Project and the issuance of a certificate of approval by the Executive Administrator under 31 TAC §§ 363.42 and 363.55, respectively, or upon a determination by the TWDB that the Project will not be completed. Upon the TWDB's approval of the final accounting, the TWDB's total undivided ownership interest in the Project shall be calculated by dividing the TWDB Cost of Acquisition by the Project Costs incurred on the Project to that point in time. If, at the time that the TWDB approves the final accounting, the calculation of the TWDB's ownership interest exceeds 71%, the Corporation shall, within 30 days after the TWDB's approval of the final accounting, take all actions necessary to remit to the TWDB the amount necessary to reduce the TWDB's ownership interest to 71% of the total Project Cost. The TWDB shall have the right to determine the schedule and method by which the Corporation remits such funds to the TWDB. Upon remittance, any Schedule and any lease payment schedule calculated pursuant to the terms of this Agreement shall be amended to reflect the remitted amount.

Upon the TWDB's approval of the Corporation's final accounting for the Project, and any actions taken to adjust the Parties' ownership interests, the TWDB shall then own that percentage interest in the Project not to exceed 71%, and the Corporation shall own the remaining 29%. Such ownership interests shall be documented in writing in Attachment C as agreed by both Parties and made part of this

Agreement for all purposes. The use of each Party's ownership in the Project shall be determined annually thereafter based on the Projected firm yield of the well fields, as further described in the Application, as follows: (1) the Corporation's Expanded Carrizo Project, peak usage 6,000 acre-feet per year, pipeline utilization 29%; (2) the Cibolo Valley Local Government Corporation Wilson County Carrizo Project, peak usage 10,000 acre-feet per year, pipeline utilization 47%, and; (3) the Corporation's Brackish Wilcox, peak usage 5,000 acre-feet per year, pipeline utilization 24%, and in accordance with Section 3.6 of this Agreement.

## **§2.6 TAX-EXEMPT ASSURANCES.**

- A.** The TWDB has identified the source of funds for its share of the Project Costs as \$22,830,000 from the proceeds of tax-exempt obligations to be issued by the TWDB. Subject to market conditions and laws at the time of issuance (if proceeds of said obligations are utilized by the TWDB), TWDB covenants to make all reasonable efforts to minimize the borrowing costs to the Corporation to finance the cost of the Project. As required by the Resolution, the Corporation has provided a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator as to any impact of the Project, or the use thereof, and the Corporation's payments under this Agreement (Attachment B) on the excludability of interest on obligations issued by the TWDB to fund their undivided interest in the Project from gross income of the owners of such obligations for federal income tax purposes. The Corporation agrees to take such actions, including the execution and delivery of such certificates and agreements as are necessary to assure, or to refrain from such actions as would materially adversely affect, such excludability from gross income, including, but not limited to: (1) the filing of an Internal Revenue Service (IRS) Form 8038-G in connection with the execution of this Agreement by the Corporation in connection with the financing of the Corporation's interest in the Project; and (2) the adoption of written procedures relating to arbitrage compliance, private business use and record retention as set forth in the Corporation's certificates as to the exception.
- B.** The TWDB and the Corporation expressly acknowledge the following: (1) the Project will be constructed for the benefit of the Customers; (2) the Corporation will utilize revenues generated from its Customers to purchase the TWDB's undivided ownership interest in the Project. The TWDB and the Corporation intend to finance the acquisition of their respective interests in the Project through a combination of proceeds of tax-exempt obligations, which are described in section 103(a) of the Internal Revenue Code of 1986, and any such other sources of funds as may be needed.
- C.** At each Date of Acquisition, the Corporation must submit a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator as to any impact of the Project, or the use thereof, and the Corporation's payments under this Agreement on the tax-exempt status of TWDB bonds.
- D.** To the extent that the TWDB and the Corporation use proceeds from tax-exempt obligations to finance all or a portion of their respective interests in the Project, the TWDB and the Corporation hereby agree that the proceeds of their respective tax-exempt

obligations will not be used in a manner that will cause the obligations to be "private activity bonds" or "arbitrage bonds." In furtherance thereof, the TWDB and the Corporation agree to make timely payments of arbitrage rebate to the United States required to be made by section 148 of the Code.

### **ARTICLE 3. CORPORATION'S PURCHASE OBLIGATION**

**§3.1 PURCHASE BY THE CORPORATION.** The Corporation will purchase TWDB's undivided ownership interest in the Project at the earliest possible date, which date shall be not later than the date(s) established by the Schedule(s), so that the State may fully recover its investment.

#### **§3.2 PLEDGE BY THE CORPORATION.**

- A.** In order to secure its obligations, including the ultimate purchase by the Corporation of 100% of the TWDB's undivided ownership interest in the Project, under the authority of the Texas Transportation Corporation Act, and any other applicable law, the Corporation pledges and grants to the TWDB as security for the payments hereunder, a lien and pledge on the Bond Payment portion of the Annual Payments from the Contract, in such amounts as may be necessary to purchase the TWDB's undivided ownership interest in the Project when, and as required by this Agreement, the Schedules incorporated herein require.
- B.** The Corporation agrees, assuming that the TWDB has transferred the Project Costs to the Construction Fund and the Executive Director of the Corporation has authorized these funds for the Project, that it shall be unconditionally obligated to purchase 100% of the TWDB's undivided ownership interest in the Project with the Bond Payment portion of the Annual Payments from the Contract regardless: (1) of whether the Corporation actually acquires or completes the Project; or (2) whether the Corporation actually approves, purchases, receives, accepts, or uses the Project. Such purchase by the Corporation of the TWDB's undivided ownership interest in the Project shall not be subject to any abatement, set-off, recoupment, or counterclaim. The TWDB shall be entitled to rely on this Agreement and representations made therein and in the Application by the Corporation, notwithstanding any provision of this Agreement or any other contract or agreement to the contrary, and regardless of the validity of, or the performance of, the remainder of this Agreement or any other contract or agreement, by the Corporation.
- C.** The pecuniary obligations of the Corporation under this Agreement shall be a special limited obligation of the Corporation, payable from the sources described herein, and shall be enforceable as provided under this Agreement and in the Contract.
- D.** The Corporation covenants to establish, fix and maintain rates and charges to its Customers that will produce Contract revenues not less than the amounts required: (1) to pay the Operation and Maintenance Expenses of the System; (2) to pay debt service on all of the Corporation's Priority Bonds, Prior Lien Obligations, Junior Lien Obligations, and Inferior Lien Obligations; and (3) to provide sufficient funds on a timely basis to

enable the purchase of the TWDB's undivided ownership interest in the Project in accordance with the terms and Schedules provided for in this Agreement, and specifically, to provide for the amortization of any bonds that may be issued for such purchase of the TWDB's undivided ownership interest in the Project by the Corporation in the future.

- E. The Corporation shall submit annual audits of the Customers for the Executive Administrator's review within the timeframes prescribed by law.
- F. The Contract pledged to the repayment of the Project's Costs is approved, executed, and in effect. The Corporation must maintain and enforce the Contract so that revenues paid to it by the Customers are sufficient to meet the revenue requirements related to the Corporation's obligation to purchase the TWDB's undivided ownership interest in the Project that are supported by the pledged revenues of the Contract. The TWDB reserves the right to compel compliance of this obligation by mandamus or any other appropriate means including those under Texas Water Code Section 6.114.

**§3.3 PRICE OF SALE TO CORPORATION.** The TWDB agrees to sell its undivided ownership interest to the Corporation at the following price: the sum of the TWDB Cost of Acquisition plus an amount of interest calculated by multiplying the lending rate in effect at the Date of Acquisition (and as identified on the Schedules) by the amount of TWDB money disbursed for the acquisition, times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of the sale or transfer of any portion of the TWDB's undivided ownership interest in the Project to the Corporation, plus TWDB's cost, if any, of operating and maintaining the Project from the Date of Acquisition to the date of such purchase by the Corporation, less any payments received by the TWDB from the lease of the Project or sale of capacity in the Project therefrom.

The Corporation shall assume at the time of purchase, to the extent disclosed by the TWDB at or prior to the sale, any and all direct, conditional, or contingent liabilities of the TWDB attributed to the Project in direct relation to the percentage of the Project acquired.

For purposes of this Section, the dates of sale to the Corporation shall be the dates on which the Corporation provides payment to the TWDB to acquire part or all of the TWDB's undivided ownership interest in the Project. After all principal and accrued interest under the Schedules have been paid, the Corporation's scheduled payments of principal under the Schedules or the Corporation's partial purchases of TWDB's undivided ownership interest made pursuant to Section 3.4 or Section 3.5 of this Agreement shall constitute the purchase of a proportion of the TWDB's undivided ownership interest, such proportion to be calculated by dividing such principal payment by the TWDB Cost of Acquisition, provided the Corporation also pays the same proportion of the TWDB's cost of operating and maintaining the Project to the date of each purchase. The lending rate in effect at each Date of Acquisition shall be based upon the TWDB's methodology, established by rule, for computing such rates. Interest will accrue on outstanding principal based upon simple interest rate calculation on a basis of a 360-day year consisting of twelve (12) 30-day months.

**§3.4 SCHEDULE OF THE CORPORATION'S PAYMENTS.** The Corporation agrees to purchase the TWDB's undivided ownership interest in the Project beginning with the first scheduled principal

payment and in accordance with all subsequently scheduled principal payments on the Schedules attached to this Agreement as Attachment C and any revisions made thereto pursuant to this Agreement. The Corporation shall wire all payments to the TWDB in accordance with the Schedules, without the need for an invoice and at no cost to the TWDB or its Trustee, to the following:

THE BANK OF NEW YORK MELLON

ABA#: 021000018  
A/C: 3919348400  
A/C Name: Specialized Processing  
REF: Deal/Loan Information

The Corporation also agrees to make scheduled interest payments prior to the first scheduled principal payment(s) as provided on the Schedules, and any revisions thereto pursuant this Agreement. In exchange for having a preferential right to purchase the TWDB's undivided ownership interest in the Project, the Corporation agrees to pay all deferred interest and accrued interest attributed to the Project prior to the Corporation's purchase of any ownership interest in the Project.

**§3.5 EARLY PURCHASE BY THE CORPORATION.** The Corporation shall have the right, the Schedules notwithstanding, to make an early purchase of all or a portion of the TWDB's undivided ownership interest reflected in the Schedules on or after the Call Date specified in each Schedule by making principal payments in excess of the scheduled principal payments in the Schedules. Such early purchases may be made no more than once a year, unless otherwise allowed by the Executive Administrator. Early purchases under this section by the Corporation must be made in minimum increments of \$5,000 principal amounts under any Schedule. Any partial early purchase will be applied in inverse order to the payments set forth in the Schedules.

**§3.6 LEASE OR PURCHASE UPON THE CORPORATION'S USE OF TWDB OWNERSHIP.**

- A. DETERMINATION OF THE CORPORATION'S USE OF TWDB OWNERSHIP.** The Corporation shall report to the TWDB by March 1 of each year the Corporation's actual use of the Project's capacity for each calendar year, beginning upon the TWDB's approval of the final accounting under Section 2.5 herein, in the format included herein as Attachment D. This report shall be submitted to:

Texas Water Development Board  
Attn: Financial Compliance  
P.O. Box 13231  
Austin, Texas 78711-3231

The Corporation shall be considered to be using a portion of the TWDB's undivided ownership interest in the Project when the Corporation's cumulative transportation of water by the Project exceeds the Corporation's interest shown on Attachment C in acre-feet per year, and as determined under Section 2.5 of this Agreement.

The transportation of water shall be calculated as the combined volume of all water produced and transported from the Project as metered by the Corporation at locations

acceptable to the Executive Administrator as may be necessary to accurately determine water produced and transported from the Project. The water meters and water meter readings shall be accessible to the TWDB at all times. A minimum number of water meter readings will be made by the Corporation as mutually agreed to by TWDB and the Corporation. The Corporation shall ensure that such meters are installed prior to the production and transportation of water from the Project, and shall monitor the accuracy of the meters annually at a minimum. If at any time the accuracy of the metering equipment is more than two percent (2%) in error, the Corporation will correct the inaccuracy as soon as possible. Adjustments in the quantity of water measured during the period when the meters were not accurately measuring the quantity of water delivered, if such period can be determined, shall be agreed to by authorized representatives of Corporation and the TWDB.

- B. METHOD OF CORPORATION'S LEASE OR PURCHASE OF TWDB INTEREST.** In the event the Corporation begins using any portion of the TWDB's undivided ownership interest in the Project, either prior to or after any Call Date, the Corporation will, at the TWDB's option, either: (1) lease from the TWDB that portion of the TWDB's undivided ownership interest that the Corporation is using; or (2) upon approval of the TWDB, issue bonds to the TWDB as consideration to purchase that portion of the TWDB's undivided ownership interest that the Corporation is using; or (3) purchase the TWDB's ownership interest with other lawful sources of funds. The sales price of any of the TWDB's undivided ownership interest under this Section shall be determined in accordance with Section 3.3 of this Agreement.
- C. PROVISIONS RELATING TO PURCHASE USING BONDS AS CONSIDERATION.** If the Corporation issues bonds to be purchased by the TWDB as consideration to purchase all or a part of the TWDB's undivided ownership interest in the Project in accordance with Texas Water Code § 15.435(c)(4), the principal amount of the bonds shall be equal to the price for purchasing all or a portion of such ownership interest. The bonds must be non-callable prior to the Call Dates of the Schedules. Terms and maturities of such bonds will be subject to TWDB approval at the time of purchase. The bonds may, at the TWDB's option, either be on a parity with, or subordinate to, the outstanding bonds issued pursuant to TWDB Resolution No. 16-XXX.
- D. LEASE PAYMENTS.** If the Corporation leases all or a portion of the TWDB's ownership interest in the Project, the lease payments will be the proportionate share that the percentage of the Corporation's use of TWDB's undivided ownership interest bears to a lease payment schedule to be determined in accordance with Article 3 of this Agreement, or the payment amount in the Schedules, whichever is greater. Such lease payment under this Agreement must be calculated to ensure that any such lease payments shall not be less than the proportionate share that the percentage of use bears to the annual principal and interest requirements attributable to the debt incurred by the State in acquiring its share of the Project, as determined by the TWDB. Lease payments shall be due and payable on each May 15 immediately following the Corporation's calculation in which the Corporation has used a portion of the TWDB's ownership interest.

**§3.8 PREFERENTIAL RIGHT TO LEASE AND PURCHASE.** Pursuant to this Agreement, the Corporation has: (1) a preferential right to lease the TWDB's undivided ownership interest in the Project and (2) a right of first refusal prior to any sale or transfer of the TWDB's interest in the Project. The TWDB may not lease, sell, or transfer its interest in the Project to any other party, without the Corporation's written consent, which shall not be unreasonably withheld. However, upon an Event of Default, the Corporation shall lose (1) its preferential right to lease the TWDB's undivided ownership interest in the Project, and (2) its right of first refusal prior to the sale or transfer of the TWDB's interest in the Project. Upon an Event of Default, the TWDB may then lease, sell, or transfer its interest in the Project without the Corporation's written consent.

**§3.9 PURCHASE AND LEASE SCHEDULES.**

- A. PURCHASES - SCHEDULES.** The Corporation obligates itself and agrees to purchase the TWDB's undivided ownership interest in the Project as outlined in the attached Schedules, which are incorporated herein for all purposes. Prior to each Date of Acquisition, the Corporation shall deliver a Schedule for the Corporation's purchase of the TWDB's undivided ownership interest in the Project that will be acquired by the TWDB at such Date of Acquisition. This new Schedule will be appropriately labeled and appended to this Agreement. All Schedules submitted by the Corporation for the purchase of the TWDB's undivided ownership interest in the Project are subject to TWDB approval. In addition, at each purchase of the TWDB's undivided ownership interest by the Corporation pursuant to Section 3.5 or Section 3.6 of this Agreement, the schedule of payments in the Schedules shall be amended to reflect the reduction in the TWDB's ownership interests in the Project.
- B. LEASES.** The schedule for the Corporation's lease payments for the use of the TWDB's undivided ownership interest in the Project will be calculated in accordance with the terms of this Agreement. The TWDB and the Corporation agree that upon each lease of the TWDB's ownership interest by the Corporation pursuant to Section 3.6 of this Agreement, and prior to each payment date in the Schedules, the Schedules will be amended to credit each lease payment by the Corporation as follows: first to deferred interest, then to current interest, and then to principal.
- C. REVISIONS TO SCHEDULES.** Revisions to Schedules and lease payment schedules calculated in accordance with this Agreement are subject to TWDB approval and shall be dated and signed by both Parties to indicate agreement to the revisions prior to being appended to and incorporated into this Agreement.

**ARTICLE 4. PROCEDURES DURING PROJECT CONSTRUCTION**

**§4.1 PROJECT SCHEDULE.** The Corporation shall proceed with all studies and planning in an expeditious manner, and provide for acquisition, design, construction and operation of the Project on a reasonable schedule.

**§4.2 THE CORPORATION'S RESPONSIBILITIES.** The Corporation shall perform the duties and functions required of it, including such provisions of law as may relate to bidding, awarding of

contracts, acquisition of land and improvements, and shall provide such personnel as may be necessary to secure and protect the property and facilities as acquired and constructed in connection with the Project. As a local government corporation organized under the Texas Transportation Act, the Corporation is not subject to competitive bidding procedures under Chapter 252, Texas Local Government Code, as amended, due to the definitional application therein.

**§4.3 SUPERVISION OF CONSTRUCTION.** During the construction of the Project, the Corporation shall provide for adequate supervision of the Project to assure that all work covered by this Agreement is performed in a satisfactory manner in accordance with final plans and specifications and approved change orders.

**§4.4 TWDB INSPECTION.** The TWDB or its authorized agent shall have the right to inspect construction of the Project at any time to assure compliance with the final plans and specifications. The inspections shall not subject the TWDB or the State of Texas to any claims or actions for damages.

**§4.5 REPORTS TO BE PROVIDED.** Upon the delivery of any funds by the TWDB, the Corporation shall prepare and file with TWDB reports on the status of the Project, including the Site Acquisition, Design and Construction Stages as requested by the Executive Administrator. Reports shall be provided to:

Texas Water Development Board  
Attn: WSI-RWPD  
P.O. Box 13231  
Austin Texas 78711-3231

## **ARTICLE 5. OPERATION AND MAINTENANCE**

**§5.1 OPERATION AND MAINTENANCE.** The Parties agree that the Corporation, or its lawful assignees, will be responsible for the operation and maintenance of the Project and no requirement shall be made of the TWDB to share in this responsibility or in the cost. The Corporation shall take whatever measures are reasonable and prudent to ensure that the Project is operated safely, efficiently, and in accordance with the laws creating and governing it and the general laws of the State. The Corporation, or its authorized designees, binds itself to take such action as may be necessary to ensure that the Project is adequately maintained and protected, and shall keep the physical properties comprising the Project in good and operable state of repair.

### **§5.2 INDEMNIFICATION.**

- A. GENERAL INDEMNIFICATION.** To the extent permitted by law, the Corporation shall indemnify and hold the TWDB and the State harmless, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the Corporation, arising out of the activities and work conducted pursuant to this Agreement. The Corporation is solely responsible for liability arising out of its acts or omissions during the performance of this Agreement. In the event insurance coverage may be inadequate to completely indemnify and hold the TWDB harmless and free of all costs or liability for any and all claims for injuries to

persons or property, or otherwise resulting from ownership or operation of the Project, then the Corporation shall utilize any and all other funds and resources lawfully available as may be required to indemnify and hold the TWDB and the State harmless and free of all costs or liability for any and all such claims.

- B. ENVIRONMENTAL INDEMNIFICATION.** Proceeds of the TWDB's funds delivered for the TWDB's Cost of Acquisition shall not be used by the Corporation to sample, test, remove or dispose of contaminated soils and/or media that may be present at or around the Project site or any sites upon which related facilities are located; nor shall such proceeds be used, either directly or indirectly, to acquire property or to remediate property(s) that contains known, hazardous wastes and hazardous substances. To the extent permitted by law, the Corporation agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages, however and whenever arising, to the person or property of third parties caused either directly or indirectly by the sampling, analysis, transport, storage, treatment, recycling and disposal of any contaminated soil, surface water, groundwater and contaminated media that may be generated or encountered by the Corporation, its contractors, consultants, agents, officials and employees as a result of activities undertaken to complete this Project.

**§5.3 INSURANCE.** For so long as the TWDB maintains an undivided ownership interest in the Project, the Corporation agrees to maintain insurance in the type and amount that, in the reasonable judgment of the Corporation and consistent with standard industry practices, is necessary to protect the Corporation, the TWDB, and employees and officials of the TWDB from liability arising out of this Agreement and the Project, including but not limited to workers' compensation, property damage, general liability, and automobile liability, naming the TWDB as an additional insured, to the extent required to fulfill the requirements of this provision. Typically, the Corporation maintains single limit coverage limits of \$[XXXXXXXXXX] with excess liability coverage of \$[XXXXXXXXXX]. These coverage limits are reviewed by the Corporation's governing body from time to time and may be adjusted as necessary. The Corporation will require that all consultants and contractors involved with the Project maintain liability, automobile, and workers' compensation coverage in amounts necessary to protect the Corporation and the TWDB and name the Corporation and TWDB as additional insured. The Corporation must provide copies of all insurance policies relating to the TWDB and the State of Texas to the TWDB, and such insurance shall be effective at the time the TWDB acquires an undivided ownership interest in the Project. If the Corporation intends to satisfy these insurance requirements through self-insurance, it may seek to self-insure in the future provided that (a) prior notification is forwarded to the Executive Administrator for approval along with copies of all pertinent insurance-related documentation, and (b) the Executive Administrator issues written approval allowing the Authority to self-insure.

**§5.4 BUDGETS, AUDITS AND REPORTS.** The Corporation shall keep and maintain complete records, accounts, and financial statements pertaining to the operation of the Project in accordance with generally accepted accounting principles. The Corporation shall provide the TWDB with the reports required in this Section and any other report as the TWDB shall from time to time reasonably require. The Corporation shall provide the TWDB with a copy of its annual budgets. The annual budget shall reflect Project revenues, maintenance and operation expenses, and capital outlays anticipated for the next ensuing year. The Corporation agrees to deliver copies of all minutes, monthly operating

statements, contracts, leases, deeds, and other documents concerning the Project upon request of the TWDB. The Corporation will submit comprehensive annual audits for each fiscal year to the TWDB within thirty (30) days of the completion of such audits. The audits for each fiscal year must be prepared according to Generally Accepted Auditing Standards within 120 days from the end of the Corporation's fiscal year. In addition, the Corporation shall submit audits of each Customer as stated in § 3.2 (E) of this Agreement within the timeframe prescribed by law. These reports shall be provided to:

Texas Water Development Board  
Attn: Financial Monitoring  
P.O. Box 13231  
Austin, Texas 78711-3231

**§5.5 RECORDS RETENTION.** Unless otherwise directed by the TWDB, the Corporation shall retain all records relating to the provision of services herein for a period of six (6) years following the termination of this Agreement. Upon the request of the TWDB, the Corporation shall allow representatives or designees of the Texas State Auditor, Texas Attorney General and/or the TWDB to review and/or audit said records at all reasonable times. Upon the request of the TWDB, after the expiration of the records retention period, the Corporation shall return all files and records to the TWDB. The Corporation may destroy all records in whatever media that are not returned at the expiration of the record retention period.

**§5.6 TWDB OPERATION AND MAINTENANCE.** If the Corporation fails at any time to operate and maintain the Project as provided in this Article, or in any manner fails to comply with any provisions of this Agreement, the TWDB, in addition to other legal remedies, may take over, operate, and maintain the Project, or cause such to be done for the benefit of the TWDB. The TWDB shall give at least sixty (60) days written notice to the Corporation of its intent to take over and operate and maintain the Project so as to provide the Corporation with the opportunity to remedy the problem(s) identified by the TWDB. The Corporation shall remain liable for any expenditures made by the TWDB with respect to notice, remedies, operation, and maintenance of the Project.

## **ARTICLE 6. SALE AND LEASE OF PROPERTY BY CORPORATION**

**§6.1 DISPOSAL AND ENCUMBRANCE OF PROJECT.** During the time that TWDB owns an undivided ownership interest in the Project, the Corporation will not sell, lease, or otherwise dispose of or encumber any part of the Project, except as provided herein.

**§6.2 LEASE OF CORPORATION PROPERTY.** Subject to the provisions of Section 6.3 of this Agreement, the Corporation may lease any of the property that is part of the Project for any purpose, if such lease or the use of such property will not be detrimental to the operation and maintenance of the Project, as determined by the Corporation. No lease shall be made that will result in any damage to or substantial diminution of the value of any of the property that is part of Project, or that will in any manner interfere with the Project or divert, endanger, or contaminate water that is to be produced or transported by operation of the Project.

**§6.3 TWDB APPROVAL OF SALES AND LEASES.** Except for short term leases of less than two (2) years, any lease or sale by the Corporation of real property in which the TWDB has an interest under

this Agreement shall require prior written approval from the Executive Administrator. Nothing contained in this Agreement shall be regarded or construed as creating a lien or encumbrance against the title to lands now or hereafter vested in the Corporation insofar as the rights of third parties may be concerned. The Corporation, however, hereby covenants not to sell or otherwise relinquish full right to the use of any lands and facilities acquired and necessary for the construction and operation of the Project for as long as the TWDB has an undivided ownership interest in the Project.

**§6.4 SALE OF CERTAIN ITEMS.** The Corporation may from time to time sell any machinery, fixtures, apparatus, tools, instruments, or other movable property and any materials used in connection with the Project, if the Corporation shall determine that such articles are no longer needed or are no longer useful in connection with the operation and maintenance of the Project. If the costs of such items were included as Project Costs, then the value received from the sale shall be deducted from total Project Costs.

**§6.5 COMPLIANCE WITH TAX CODE.** The Corporation must ensure that any sale, lease, or other disposition of Project-related assets and articles complies with applicable provisions of Title 26 U.S.C., Internal Revenue Code and Internal Revenue Service Regulations.

#### **ARTICLE 7. EFFECTIVE DATE AND TERM OF AGREEMENT**

**§7.1 EFFECTIVE DATE.** This Agreement shall become effective upon execution by all of the Parties.

**§7.2 TERM.** This Agreement shall continue in full force and effect until the Corporation has satisfied all of its obligations hereunder and has purchased all of the TWDB's undivided ownership interest in the Project.

#### **ARTICLE 8. FURTHER COVENANTS**

**§8.1 NOTICES.** For purposes of providing notifications to the TWDB in accordance with the notification and reporting requirements set forth in this Agreement, the following points of contact are hereby established:

Alan Cockerell  
P.O. Box 833  
Seguin, Texas  
Phone Number: (830) 401-2409  
Fax Number: (830) 4012481  
Email Address: [acockerell@seguintexas.gov](mailto:acockerell@seguintexas.gov)

Executive Administrator  
Texas Water Development Board  
1700 North Congress Avenue  
Austin, Texas 78701

It is the Corporation's burden and responsibility to provide written notification to the Executive Administrator of any change to the Corporation's point of contact.

**§8.2 PROJECT EXPANSION.** The Corporation will submit to the TWDB for approval any plan for future expansion of the Project that will commence before the Corporation has purchased all of the TWDB's undivided ownership interest in the Project. The TWDB will not unreasonably withhold approval of said plan submitted by the Corporation.

**§8.3 TITLE COVENANTS.** The Corporation covenants that it will obtain title insurance to the land to be purchased for the Project. The Corporation warrants, by executing this Agreement, that any and all title objections referenced by any title insurance commitment policy entered into at the Site Acquisition Stage that may impair the Project will be cured to the satisfaction of the Executive Administrator. Additionally, if required by the TWDB, the Corporation agrees to provide a policy of title insurance for the benefit of the TWDB.

**§8.4 PLEDGE COVENANTS.** The Corporation hereby covenants that it has the lawful power to pledge its Contract Revenues to the payment of its obligations pursuant to this Agreement in the manner herein contemplated and has lawfully exercised such power under the Texas Transportation Corporation Act, the Texas Business Organizations Code Chapter 22, the Contract, and any other laws of the State.

#### **ARTICLE 9. LAWS GOVERNING THE AGREEMENT; REMEDIES**

**§9.1 RULES AND APPLICATIONS INCORPORATED IN AGREEMENT.** The TWDB and the Corporation agree that the Application for Board Participation filed by the Corporation, as finally approved by the TWDB, is incorporated herein as a part of this Agreement and the Corporation agrees to be bound by TWDB rules, the Resolution, and the representations made in its Application. The Corporation represents that there are no material changes in the information contained in its Application and supplemental information submitted to the TWDB.

**§9.2 APPLICABLE LAW.** The Parties understand that the provisions of this Agreement are subject to the applicable provisions of the Constitution and general laws of the State of Texas, and federal laws and regulations. The Parties agree to comply with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement. The Parties hereto reserve all rights at law and in equity to enforce the performance of this Agreement, and each respectively covenants to exercise all such rights to the extent necessary to perform, or to cure any default, on the part of the respective Party.

**§9.3 REMEDIES.** The TWDB, after providing notice and reasonable opportunity to cure, retains the discretion to pursue any remedy available to it through this Agreement or other law. The Corporation agrees that the TWDB shall have available to it the remedies of mandamus and specific performance, even if failure of performance of the Corporation could be adequately compensated through some other method. The Corporation's opportunity to cure shall be no less than 30 days from the date the Corporation receives notice from the TWDB, and shall continue as long as the Corporation uses good faith and diligence to cure any defect accurately identified by the TWDB. The Corporation retains the discretion to pursue any remedy available to it through this Agreement or other law. Specific remedies available to the TWDB include, but are not limited to, the TWDB's right to:

- A. mandamus, or other suit, action, or proceeding at law or in equity, to enforce all rights of the TWDB under the Agreement and all rights of the TWDB, at law or in equity, regardless of whether any non-performance or violation has become an Event of Default, relating to the purchase, ownership, lease, or sale of the Project or TWDB's interest in the Project, including to the Corporation's obligation to purchase the TWDB's interest in the Project under the Agreement. These rights include, but are not limited to, the right to

- require the Corporation to charge and collect money adequate to carry out the terms of the Agreement;
- B. by action or suit in equity, require the Corporation to account as if it were the trustee of an express trust for the TWDB; and
  - C. by action or suit in equity, enjoin any acts which may be unlawful or in violation of the rights of the TWDB.

**§9.4 VENUE.** All amounts due and owing under this Agreement including, but not necessarily limited to, payments or damages for breach of this Agreement, shall be due and payable in Travis County, Texas, the county in which the principal offices of the TWDB are located. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in Travis County, Texas.

**§9.5 AMENDMENT.** This Agreement may be amended by agreement of the TWDB and the Corporation in written form. Any such amendment shall be executed in the same manner as this Agreement was originally executed. The receiving Party will deliver to the requesting Party written approval or disapproval of the amendment requested within 14 days of receipt.

**§9.6 SEVERABILITY.** The TWDB and the Corporation specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words in this Agreement, or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason whatsoever invalid or unconstitutional, or in contravention of any federal, state or local laws, rules and regulations, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses or words in this Agreement or their application thereto. The Parties intend that this Agreement be severable and it shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

**§9.7 ENTIRE AGREEMENT.** This Agreement, including the Application(s) for Board Participation under SWIRFT incorporated by reference herein, and all Attachments hereto constitutes the entire Agreement between the Parties with respect to the matters described herein.

**§9.8 RECITALS.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as part of the judgment and findings of the Parties herein.

**§ 9.9 ARBITRATION.** The Parties expressly agree that neither the Corporation nor the TWDB shall, without its written consent, be obligated to participate in, nor shall it be made a party to, any arbitration proceedings relating in any way to the Project or to any provisions of this Agreement.

**§10.0 FORCE MAJEURE.** If, by reason of Force Majeure, any Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such Party shall give notice and the full particulars of such Force Majeure event in writing to the other Party within a reasonable time after the

occurrence of the Force Majeure event. The obligations of the Party giving notice of such Force Majeure event may be suspended during the continuance of the event but for no longer period and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

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EXECUTED in multiple counterparts, each of which shall be deemed to be an original.

**TEXAS WATER DEVELOPMENT BOARD**

By: \_\_\_\_\_  
Name: Jeff Walker  
Title: Executive Administrator  
Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF TRAVIS

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ in his capacity as Executive Administrator of the Texas Water Development Board, an agency of the State of Texas, on behalf of said agency.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION**

\_\_\_\_\_  
Alan Cockerell  
General Manager  
Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF GUADALUPE

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ in his capacity as General Manager, on behalf of Schertz/Seguin Local Government Corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

ATTACHMENT A

TWDB RESOLUTION NO. 16-XXX

ATTACHMENT B

BOND COUNSEL OPINION REGARDING  
IMPACT OF THE PROJECT ON THE  
TAX-EXEMPT STATUS OF TWDB BONDS

ATTACHMENT C  
SCHEDULES

ATTACHMENT D

FORMAT FOR DETERMINATION OF THE CORPORATION'S USE OF TWDB  
OWNERSHIP

## WATER CONSERVATION REVIEW

Entity: \_\_\_\_\_

Review date: \_\_\_\_\_

**WATER CONSERVATION PLAN DATE:** **Approvable**      **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
<b>Baseline</b>				
<b>5-year Goal</b>				
<b>10-year Goal</b>				

**WATER LOSS AUDIT YEAR:**

Total water loss (GPCD): \_\_\_\_\_      Total water loss (percent): \_\_\_\_\_      Wholesale Water  
 Total no. of connections: \_\_\_\_\_      Length of mains (miles): \_\_\_\_\_      Connections per mile: \_\_\_\_\_  
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): \_\_\_\_\_

**WATER LOSS THRESHOLDS:**

	Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Threshold Gallons per connection per day	Real Threshold Gallons per mile per day	Real Threshold Gallons per connection per day
If population ≤ 10K, connections/mile < 32 :						
If population ≤ 10K, connections/mile ≥ 32 :						
If population > 10K :						

Does the applicant meet Water Loss Threshold requirements?      Yes      No      NA

**ADDITIONAL INFORMATION:**

**STAFF NOTES AND RECOMMENDATIONS:**

## DEFINITIONS

**Adopted** refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

**Apparent loss** refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

**Approvable** refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

**Best Management Practices** are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

**GPCD** means gallons per capita per day.

**Infrastructure Leakage Index (ILI)** is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

**NA** means not applicable.

**Produced water** is the total amount of water purchased or produced by the utility.

**Real loss** comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

**Residential GPCD** is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

**Total baseline GPCD** is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

**Total water loss** is the sum of the apparent and real water losses.

**Water loss** is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

**Water Loss Thresholds** are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss. *raft Attachment 8*

**Schertz/Seguin Local Govt. Corp.,  
Guadalupe County**



**Schertz/Seguin Local Govt. Corp.**

