

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Les Trobman, General Counsel
Jessica Zuba, Deputy Executive Administrator, Water Supply and Infrastructure
Clay Schultz, Director, Regional Water Planning and Development

FROM: Mireya Loewe, South Team Manager
Joe Reynolds, Assistant General Counsel
Javier Pena, Financial Analyst
Augustine Tambe, Project Reviewer

DATE: July 28, 2016

SUBJECT: Coastal Water Authority State Water Implementation Revenue Fund for Texas Board Participation Master Agreement Amendment

ACTION REQUESTED

Approve amending by resolution the State Water Implementation Revenue Fund for Texas Board Participation Master Agreement with Coastal Water Authority (Authority) to include closing on the 2016 distribution in the amount of \$136,460,000 as authorized in Texas Water Development Board (TWDB) Resolution No. 15-075A, and authorize the Executive Administrator to execute future amendments for distribution of the remaining funds committed in TWDB Resolution No. 15-075A.

BACKGROUND

On July 23, 2015, the TWDB, through adoption of TWDB Resolution No. 15-075A (Attachment 4, the Resolution), approved the Authority’s application for the TWDB’s participation in the Luce Bayou Interbasin Transfer Project (Project) in an amount not to exceed \$276,740,000 from the Board Participation Account of the State Water Implementation Revenue Fund for Texas. TWDB’s purchase of an interest in the Project under the commitment was to be made in three installments:

- a) \$66,565,000 in 2015;
- b) \$136,460,000 in 2016; and
- c) \$73,715,000 in 2017.

On November 20, 2015, the TWDB and the Authority executed a Master Agreement setting forth the terms and conditions of their respective participation in the project. On July 14, 2016, the Authority requested closing on the 2016 installment of the Board Participation funds to be evidenced by an amendment to the Master Agreement.

KEY ISSUES

Amendments to the Master Agreement for Multi-year Commitments

The commitment in the Resolution was for the full \$277 million to be taken in three installments that were specified in the Resolution, and the Resolution authorized the Executive Administrator to negotiate and execute the terms of the Master Agreement. But the Resolution did not contain language that specifically authorizes the Executive Administrator to execute amendments to the Master Agreement for the 2016 and 2017 cycles.

The Master Agreement acknowledges the installment funding and provides for amendments to the Master Agreement. But it does not specifically indicate how the future installments will be approved, nor does it clearly provide authorization for amendment without Board action. Staff considers the language adequate, but proposes taking this action to provide specificity. Therefore, the Executive Administrator recommends that, in addition to the Board providing for the next funding phase, the Board clarify its delegation of authority to the Executive Administrator relating to amendments of a master agreement for multi-year funding of a project.

Project Status

The Authority currently is compliant with all conditions of TWDB Resolution 15-075A and all covenants in the Master Agreement. A review of its 2015 Annual Audit and the Authority's contract with the City of Houston for the Luce Bayou Inter-basin Transfer Project indicates that the Authority's financial condition has not changed adversely in the past year.

The Authority has begun construction on its first contract. Design for the next portion is complete, and plans and specifications are currently under review.

RECOMMENDATION

The Executive Administrator recommends:

1. authorizing the Executive Administrator to execute future amendments to the Master Agreement as contemplated by the terms of that Agreement; and
2. approving, by resolution, the request from Coastal Water Authority to amend the Master Agreement to include closing on the \$136,460,000 2016 Board Participation from the State Water Implementation Revenue Fund for Texas, as authorized in TWDB Resolution No. 15-075A.

Attachment(s):

1. Resolution (16-__)
2. Letter from the Authority of July 14, 2016
3. Draft Amendment No. 1 to the Master Agreement
4. Resolution No. 15-075A

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN AMENDMENT TO THE MASTER AGREEMENT WITH COASTAL
WATER AUTHORITY FOR THE LUCE BAYOU INTERBASIN TRANSFER
PROJECT WITH FUNDS FROM THE STATE WATER IMPLEMENTATION
REVENUE FUND FOR TEXAS

(16-)

WHEREAS, at its July 23, 2015 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 15-075A, made a commitment to acquire and sell an ownership interest in the Luce Bayou Interbasin Transfer Project, not to exceed 80% of the total Project cost in an amount not to exceed \$276,740,000 from the Board Participation Account of the State Water Implementation Revenue Fund for Texas (SWIRFT), all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, the TWDB and Coastal Water Authority (Authority) executed a Master Agreement on November 20, 2015 that set forth the duties, responsibilities, and liabilities of the TWDB and the Authority with regard to the Board Participation commitment; and

WHEREAS, by letter dated July 14, 2016, the Coastal Water Authority (Authority) has requested that the TWDB approve an amendment to the Master Agreement incorporating the 2016 distribution of funds in the amount of \$136,460,000 into the Master Agreement; and

WHEREAS, the TWDB hereby finds that the amendment(s) to the terms of the Master Agreement is reasonable and that the request is in the public interest and will serve a public purpose; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law;

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

1. The Executive Administrator is authorized to execute future amendments to the Master Agreement as contemplated by the terms of that agreement.
2. Further, the Board approves the request from Coastal Water Authority to amend the Master Agreement to include closing on the \$136,460,000 2016 Board Participation from the State Water Implementation Revenue Fund for Texas, as authorized in TWDB Resolution No. 15-075A.
3. All other terms and conditions of TWDB Resolution No. 15-075A shall remain in

full force and effect.

APPROVED and ordered of record this the 11th day of August, 2016.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator



COASTAL WATER AUTHORITY

1801 Main Street, Suite 800
Houston, Texas 77002

Phone: 713-658-9020
Fax: 713-658-9429

July 14, 2016

Mr. Jeff Walker
Executive Administrator
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78701

Dear Mr. Walker,

The Texas Water Development Board (the "Board") has previously committed to provide financial assistance to the Coastal Water Authority ("CWA") a total of \$276,740,000 through the Board Participation Account of the State Water Implementation Revenue Fund for Texas, with the Board having advanced \$66,565,000 in 2015, and being scheduled, subject to the availability of bond funds for such purpose, to purchase an ownership interest in the Luce Bayou Interbasin Transfer Project from CWA at a Board Participation amount of \$136,460,000 by December 30, 2016, and \$73,715,000 by December 30, 2017.

This letter is CWA's formal request to proceed with Board Participation in the amount of \$136,460,000, to be closed before December 30, 2016.

Sincerely,



Donald R. Ripley, P.E.
Executive Director

cc: Mr. Wayne Klotz, President, Board of Directors
Ms. Susan Bandy, City of Houston
Mr. John Baldwin, Chief Financial Officer

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**TEXAS WATER DEVELOPMENT BOARD
AND
COASTAL WATER AUTHORITY**

AMENDMENT NO. 1

Under the authority granted by, and in compliance with, the provisions of Texas Water Code § 15.435(c)(4) 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), as amended, the Texas Water Development Board (TWDB), duly acting by and through its Executive Administrator, and Coastal Water Authority (Authority) entered into a Master Agreement (Agreement) for the TWDB’s participation in the Luce Bayou Inter-basin Transfer Project, TWDB Project No. 51008 (the Project), effective November 20, 2015. The Agreement is amended as follows:

ARTICLE I. RECITALS

The TWDB and the Authority (the Parties) agree that the following representations are true and correct and form the basis for this Amendment No. 1:

1.1 At its meeting on July 23, 2015, the TWDB, through adoption of TWDB Resolution No. 15-075A, approved the Authority’s application for the TWDB’s participation in the Project in an amount not to exceed \$276,740,000 (the Commitment) from the Board Participation Program of the SWIRFT.

1.2 Resolution No. 15-075A authorized the TWDB and the Authority to close on the first distribution of \$66,565,000 from the Commitment in 2015; and the Agreement provided for the delivery of \$136,460,000 in 2016 and \$73,715,000 in 2017.

1.3 The TWDB and the Authority, through a Financing Agreement, effective _____, 2016, have agreed to close on the 2016 portion of the Commitment in the amount of \$136,460,000.

1.4 The Parties agree that amending certain sections of the Agreement and the Schedule of the Authority’s Payments, by which it agrees to purchase the TWDB’s ownership interest in the Project, is reasonable and necessary to reflect the adjustments in principal and interest due as a result of the second distribution from the Commitment.

ARTICLE II. AMENDMENTS

THEREFORE, in consideration of the performance of their mutual covenants, as set forth in the Agreement and this Amendment, and pursuant to the authority provided in § 2.1 of the Agreement, the Parties have agreed to amend the Agreement as follows:

2.01. Section 2.1 TWDB ACQUISITION OF OWNERSHIP is amended to read as follows:

“The TWDB agrees to participate in this Project by acquiring an undivided interest of up to 80% 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 of \$66,565,000 for the 2015 Cost of Acquisition and \$136,460,000 for the 2016 Cost of Acquisition, pursuant to the Resolution and this Agreement. The TWDB's undivided ownership interest in the Project will cost not more than 80% of the total project cost, which is expected to be \$361,869,000, to be allocated for the costs of the Design Stage and the Construction Stage, in any manner determined to be acceptable by the Executive Administrator, in accordance with the provisions of this Agreement. If the costs of the Project exceed \$361,869,000, the TWDB may consider, in its sole discretion, providing additional funds, if requested by the AUTHORITY in writing, and if the TWDB's Cost of Acquisition does not exceed 80% of the total Project, then the TWDB and the AUTHORITY will amend this Master Agreement to evidence the increased Cost of Acquisition, the change in percentage of ownership, and to provide additional Schedules to reflect the AUTHORITY'S obligation to purchase the TWDB increased ownership interest. For the purposes of this Agreement, it is expressly understood that the TWDB is purchasing an undivided interest, to the extent permitted by law, in the entire Project, including real estate purchased for site acquisition, facilities constructed for the transport of surface water, and all related appurtenances and any structures of the Project.”

2.02. The first paragraph of Section 2.3, DELIVERY OF TWDB FUNDS, is amended to read as follows.

“The TWDB shall deliver to the Construction Fund and/or the Escrow Account up to \$66,565,000 for the 2015 Cost of Acquisition and \$136,460,000 for the 2016 Cost of Acquisition, subject to the availability of funds and satisfactory documentation that the AUTHORITY has met all prerequisites for the delivery of TWDB funds under this Agreement, the TWDB's rules, and the Resolution authorizing this TWDB participation in the Project. The Executive Administrator, or his or her designee, 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 release of funds from the Escrow Account to the Construction Fund for the Construction Stage, as provided below, after the AUTHORITY 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 the TWDB's Executive Administrator and by a duly authorized representative of the AUTHORITY to indicate agreement, and such agreed Schedules shall be appended to and incorporated into this Agreement.”

2.03 Attachment C, the Schedule of Authority Payments referenced in §§ 3.4 and 3.9.C of the Agreement, is amended to reflect the additional TWDB participation in the Project. The Agreement is amended so that a new Schedule of Authority Payments reflecting the 2016 Coast of Acquisition in the amount of \$136,460,000, attached as 1st Amended Attachment C, replaces the original Attachment C for all purposes, including specifically the reference to “Attachment

C” in the definition of the term “Schedules.” The Parties agree that any reference in the Agreement as amended to Attachment C shall be deemed a reference to the 1st Amended Attachment C.

2.04 In accordance with § 9.7 of the Agreement, except as modified by this Amendment No. 1, all terms and conditions of the Agreement remain in full force and effect. Consistent with § 9.5 of the Agreement, no further modification or amendment of any provision of the Agreement or any Amendment to it shall be effective unless such modification is in writing and signed by a duly authorized representative of each Party, expressly stating that such writing is intended to be a modification of the Agreement or its Amendments. The failure of any Party to insist upon strict performance of any of the terms, provisions, or conditions of the Agreement or its Amendments shall not be construed as a waiver or relinquishment for the future performance or enforcement of any such term, provision, or condition or any other term, provision, or condition.

This Amendment is effective when both Parties have executed this Amendment.

TEXAS WATER DEVELOPMENT BOARD

COASTAL WATER AUTHORITY

Jeff Walker
Executive Administrator

D. Wayne Klotz
President

Date: _____

Date: _____

FIRST AMENDED ATTACHMENT C
Payment Schedule

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FROM COASTAL WATER AUTHORITY
FOR THE TEXAS WATER DEVELOPMENT BOARD'S
ACQUISITION AND SALE OF AN INTEREST IN
LUCE BAYOU INTERBASIN TRANSFER PROJECT WITH FUNDS
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS**

(15-075A)

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 Coastal Water Authority (Authority), has filed an application with the TWDB requesting that TWDB acquire an interest in the Luce Bayou Interbasin Transfer Project, Project No. 51008 (Project), not to exceed eighty percent (80%) of the total Project cost, in order to enable excess capacity for the optimum regional development of the Project, using Board Participation Account from the SWIRFT; and

WHEREAS, the Authority will finance at least twenty percent (20%) of the total Project costs with proceeds other than proceeds from the Board Participation Account from the SWIRFT, in compliance with 31 TAC § 363.1308; and

WHEREAS, by separate Resolution the TWDB is considering a request from Coastal Water Authority for the TWDB to provide financial assistance through the TWDB's proposed purchase of \$23,260,000 Coastal Water Authority Contract Revenue Bonds, Proposed Series 2018, Project No. 51008; and

WHEREAS, the portion of the Project currently being funded by the TWDB is expected to cost \$300,000,000, of which the TWDB's share, pursuant to this commitment, will not exceed \$276,740,000; and

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

WHEREAS, the Authority has offered a pledge of contract revenues as sufficient security for its obligation to purchase the TWDB's interest in the Project; 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 City of Houston and Harris County; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular whether the project as set forth in the application meets the criteria provided by Texas Water Code § 15.434(b); 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 TWDB staff 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 revenue 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 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. the Authority 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);
9. that the Authority 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, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3); and
10. that the Executive Administrator issued an Environmental Determination on February 24, 2014, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

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 Luce Bayou Interbasin Transfer Project, not to exceed eighty percent (80%) of the total Project cost, based on an application filed by Coastal Water Authority, in an amount not to exceed \$276,740,000 from the Board Participation Account of the State Water Implementation Revenue Fund for Texas, in accordance with the schedule proposed below.
 - a) \$66,565,000 2015 Board Participation to expire on December 31, 2015;
 - b) \$136,460,000 2016 Board Participation to expire on December 31, 2016; and
 - c) \$73,715,000 2017 Board Participation to expire on December 31, 2017.
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 Authority.

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 Authority'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 Authority 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;

The Following Conditions Must Be Included in the Master Agreement:

4. the Master Agreement must contain a provision that the pledged revenues from the Authority may not be pledged to the payment of any additional obligations of the Authority unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged revenues will be sufficient for the payment of the Authority's obligation to purchase the TWDB's interest in the Project and the additional obligations;
5. 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;
6. 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;
7. loan proceeds shall not be used by the Authority 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 Authority 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 Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
8. the Master Agreement must include a provision stating that the Authority 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;

Contract Revenue Pledge

9. prior to the execution of a financing agreement, the Authority must submit executed contracts between the Authority and the contracting parties regarding the contract revenues pledged to the payment of the Authority'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 Authority's revenue obligations;

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

Conditions to Close or for Release of Funds:

12. prior to closing, the Authority 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 Authority 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 the sale of bonds to finance the Project, the Authority and the TWDB will execute a Master Agreement which will set forth the responsibilities, duties and liabilities of each party;
15. prior to closing, and if not previously provided with the application, the Authority 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 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 Authority 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; and
17. prior to the sale of bonds to finance the Project, the Authority shall execute a separate financing agreement, approved as to form and substance by the Executive Administrator and shall submit that executed agreement to the TWDB at a date determined by the Executive Administrator.

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

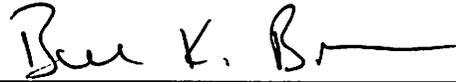
1. the Authority must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the

final environmental finding of the Executive Administrator; and

2. the Authority must comply with terms and conditions of U.S. Army Corps of Engineers Permit No. SWG-2009-00188, including the special conditions set out therein.

APPROVED and ordered of record this the 23rd day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 7-23-15

ATTEST:



Kevin Patteson
Executive Administrator

**MASTER AGREEMENT
BETWEEN
TEXAS WATER DEVELOPMENT BOARD
AND
COASTAL WATER AUTHORITY**

**REGARDING BOARD PARTICIPATION
IN LUCE BAYOU INTER-BASIN TRANSFER PROJECT
PROJECT NO. 51008**

Disclaimer: This is a working document and is provided as a courtesy. All information contained herein is subject to change upon further review of the TWDB.

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**MASTER AGREEMENT
BETWEEN
TEXAS WATER DEVELOPMENT BOARD
AND
COASTAL WATER AUTHORITY**

WHEREAS, the Texas Water Development Board, (the "TWDB"), a Texas agency created pursuant to Article 3, 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 AUTHORITY, a conservation and reclamation district duly created pursuant to Article XVI, Section 59 of the Texas Constitution and lawfully operating under Ch. 601, 1967 Tex. Gen. Laws, 1381, as amended from time to time, and Tex. Water Code Ch. 49, is proposing to develop a new water transmission project known as the Luce Bayou Inter-basin Transfer Project, TWDB Project No. 51008; and

WHEREAS, the Project will consist of the construction of a raw water conveyance system to transfer water from the Trinity River to Lake Houston; and

WHEREAS, the Project is a recommended water management strategy in the 2012 State Water Plan and in the 2011 Region "H" Regional Water Plan; and

WHEREAS, at its meeting on July 23, 2014, the TWDB, through adoption of TWDB Resolution No. _____ (Attachment A, referred to herein as the Resolution), approved the AUTHORITY's application for the TWDB's participation in the Project in an amount not to exceed \$276,740,000 from the Board Participation Program of the SWIRFT; and

WHEREAS, under 31 TAC § 363.1308, the AUTHORITY will finance at least twenty percent (20%) of the Project and the TWDB may finance up to eighty percent (80%) of the Project; and

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

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and in contemplation of and in accordance with the applicable laws of the State of Texas, the AUTHORITY, acting by and through its undersigned representatives as duly authorized by a resolution of its Board of Directors, and the TWDB, acting herein by and through its undersigned representative, as duly authorized by a TWDB Resolution, enter into this Agreement and mutually agree as follows:

ARTICLE 1. DEFINITIONS AND CONSTRUCTION

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

- (1) “*Additional Obligations*” means additional debt or other obligations for which the AUTHORITY pledges a parity lien on the same Contract Revenues as pledged herein.
- (2) “*Agreement*” means this Master Agreement.
- (3) “*Application*” means the AUTHORITY’s application to the TWDB for Board Participation under SWIRFT for TWDB Project No. 51008, together with all attachments and any amendments thereto.
- (4) “*AUTHORITY*” means the COASTAL WATER AUTHORITY or its successors or assigns which succeed it as to any rights, powers or duties under this Agreement.
- (5) “*Authority Act*” means Article 16, Section 59 of the Texas Constitution and Chapter 601, Acts 60th Legislature, Regular Session, 1967, as amended.
- (6) “*Call Date*” means the date prior to which the AUTHORITY cannot purchase the TWDB’s portion of the Project, as set forth in the Schedules.
- (7) “*Construction Fund*” means a separate account created under § 2.2 of this Agreement and maintained at the depository bank of the AUTHORITY 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. Funds in the Construction Fund may be used only for Project Costs or for the AUTHORITY’s purchase of the TWDB’s interest in the Project.
- (8) “*Construction Stage*” means that stage of the Project that involves the physical construction of the Project, including pumping station, transmission lines, and open canal.
- (9) “*Contract Revenues*” means all the “Contract Revenues of the System” as defined in the debt instruments authorizing the AUTHORITY’s outstanding Prior Lien Revenue Obligations.
- (10) “*Cost of Acquisition*” means 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.
- (11) “*Date of Acquisition*” means each date that TWDB delivers funds to the Construction Fund and/or the Escrow Account for the acquisition of an undivided interest in the Project.

- (12) *“Escrow”* means the TWDB’s transfer of funds to the Escrow Agent until such funds are authorized for release to the AUTHORITY by the Executive Administrator.
- (13) *“Escrow Account”* means 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 AUTHORITY’s purchase of the TWDB’s interest in the Project.
- (14) *“Escrow Agent”* means the third party appointed to hold the escrow funds until such funds are authorized for release to the AUTHORITY.
- (15) *“Event of Default”* means the non-performance or violation by the AUTHORITY 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 AUTHORITY of the non-performance or violation.
- (16) *“Executive Administrator”* means the Executive Administrator of the TWDB.
- (17) *“Force Majeure”* means 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.
- (18) *“Operation and Maintenance Expenses”* means all reasonable and necessary current costs of operation and maintenance of the 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 any other supplies, services, administrative costs, and equipment necessary for the use or operation of any property, and payments made by the AUTHORITY in satisfaction of judgments or other liabilities resulting from claims not covered by Issuer’s insurance. Depreciation shall not be considered an item of Operation and Maintenance Expense.
- (19) *“Parties”* or *“Party”* means the TWDB or the AUTHORITY and their authorized successors and assignees.
- (20) *“Pledged Revenues”* means those revenues pledged to the payment of the AUTHORITY’s obligation to purchase the TWDB’s interest in the Project, as provided in Section 3.2 herein.
- (21) *“Prior Lien Revenue Obligations”* means all bonds, notes, or other obligations of the AUTHORITY whether now outstanding or hereafter issued, payable from and secured by a first lien on and pledge of the Contract Revenues.
- (22) *“Project”* means the construction of a raw water conveyance system to transfer water from the Trinity River to Lake Houston, as described in the Application. *“Project”* does not include any water rights owned by the City of Houston.

- (23) *"Projects Contract"* means that certain "Projects Contract Between the City of Houston, Texas, and the Coastal Water Authority," as amended by the "First Supplement to Project Contract Between City of Houston, Texas, and the Coastal Water Authority," in form and substance acceptable to the TWDB.
- (24) *"Project Costs"* means costs of the Project associated with its construction, bond issuance costs, and all other costs and expenditures which under standard principles of accounting would constitute a capital cost of the Project, including specifically but not limited to: 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 constructing the well field infrastructure; 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.
- (25) *"Resolution"* has the meaning given to the term in the preamble to this Agreement.
- (26) *"Schedules"* means the payment schedule(s) attached hereto from time to time, which show the payments that the AUTHORITY is obligated to make in order to purchase the TWDB's interest in the Project. Each Schedule is associated with the funds delivered by TWDB upon each Date of Acquisition. Such Schedules shall, at a minimum, detail the interest rate to be paid by the AUTHORITY, the TWDB's source of funds, and the Call Date associated with the AUTHORITY's purchase obligation.
- (27) *"State"* means the State of Texas.
- (28) *"System"* means all of the AUTHORITY's existing water storage, treatment, transportation, distribution, and supply facilities, including all well fields, dams, reservoirs, and other properties, which heretofore have been acquired or constructed with the proceeds of all bonds or other obligations ever issued by the AUTHORITY that have been payable from or secured by a lien on or pledge of any part of the Contract Revenues of the System, or with revenues from the System, together with all future improvements, enlargements, extensions, and additions to any of the foregoing (and all future new facilities) acquired or constructed with the proceeds from the sale of any bonds or other obligations or any contingency fund therefor, or any water supply facilities which are deliberately and specifically, at the option of the AUTHORITY, made a part of the System by resolution of the AUTHORITY, and all repairs to or replacements of the System. The System does not include any facilities acquired or constructed by the AUTHORITY that are not issued as Additional Bonds under any of the AUTHORITY's bond resolutions, and that are payable from any source, contract, or revenues whatsoever other than the Contract Revenues pledged by the AUTHORITY.
- (29) *"TAC"* means Texas Administrative Code.
- (30) *"TCEQ"* means 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.

- (31) “*TWDB*” means Texas Water Development Board or any other board, commission or agency which succeeds it as to any rights, powers or duties under this Agreement.
- (32) “*TWDB Cost of Acquisition*” means the total of the payments made by TWDB to the AUTHORITY for purchase of an undivided interest in the Project pursuant to this Agreement, less any purchases of TWDB's interest by the AUTHORITY.
- (33) “*TWDB Rules*” means the applicable rules and regulations of the TWDB set forth in Title 31 Texas Administrative Code Part 10.
- (34) “*Water Permit*” means the Water Use Permit No. 5826 and Certificate of Adjudication 08-4261, as amended, issued to the City of Houston by the TCEQ.

ARTICLE 2. BOARD PARTICIPATION

§2.1 TWDB ACQUISITION OF OWNERSHIP. The TWDB agrees to participate in this Project by acquiring an undivided interest of up to 80% 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 of \$276,740,000, pursuant to the Resolution and this Agreement. The TWDB's undivided ownership interest in the Project will cost not more than \$276,740,000, to be allocated for the costs of the Construction Stage, 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 \$276,740,000, the TWDB may consider, in its sole discretion, providing additional funds if requested by the AUTHORITY in writing, and if the TWDB's Cost of Acquisition does not exceed 80% of the total Project, then then the TWDB and the Authority will amend this Master Agreement to evidence the increased Cost of Acquisition, the change in percentage of ownership, and to provide additional Schedules to reflect the Authority's obligation to purchase the TWDB increased ownership interest. For the purposes of this Agreement, it is expressly understood that the TWDB is purchasing an undivided interest, to the extent permitted by law, in the entire Project, including real estate purchased for site acquisition, facilities constructed for the well field infrastructure, and all related appurtenances and any structures of the Project.

§2.2 ESCROW ACCOUNT AND CONSTRUCTION FUND. Prior to the delivery of TWDB funds, the AUTHORITY will create: (i) a Construction Fund; to be held by the AUTHORITY, and (ii) 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, are to be used only for Project Costs or for the AUTHORITY's purchase of the TWDB's interest in the Project. Funds in the Escrow Account may be released by the Escrow Agent 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 “*PFLA*”), 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 \$276,740,000 subject to the availability of funds and satisfactory documentation that the AUTHORITY has met all prerequisites for the delivery of TWDB funds under this Agreement, the TWDB's rules, and the Resolution authorizing 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 release of funds from the Escrow Account to the Construction Fund for the Construction Stage, as provided below, after the AUTHORITY 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 the TWDB's Executive Administrator and by a duly authorized representative of the AUTHORITY to indicate agreement, and such agreed Schedules shall be appended to and incorporated into this Agreement.

A. **DESIGN STAGE:** After 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 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.

B. **CONSTRUCTION STAGE:** After the Design Stage and Site Acquisition Stage releases have been completed, and 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 of 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. 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 an undivided ownership interest in the Project along with the right to its use, as well as an undivided ownership right in all applicable operating permits with respect to the Project. The percentage of the TWDB's undivided ownership interest in the Project is initially set at 35% and shall remain at 35% until additional funding is provided under § 2.1 and this Master Agreement is amended or supplemented; or until all Stages of the Project are complete and final accounting is performed under § 2.5 of this Agreement; or upon a determination by the TWDB that the Project will not be completed, and a final accounting is performed under § 2.5 of this Agreement.

It is expressly understood that the TWDB is purchasing an undivided interest, to the extent permitted by law, in the entire Project, including real estate purchased by site acquisition, facilities constructed for the Project infrastructure, and all related appurtenances and any structures of the Project. TWDB's ownership interest in the Project does not provide the TWDB with any ownership right in the AUTHORITY's water permit. The TWDB's undivided interest in the Project shall include, but not be limited to, the right to develop, produce, and sell water from the Project to the extent of the amount of water in the TWDB's undivided interest, subject to the AUTHORITY's preferential right to purchase the TWDB's interest under § 3.8 of this Agreement. The AUTHORITY, upon request of the TWDB,

will execute and record any conveyances and assignments which may be necessary to place title of the Project in the TWDB, with the exception that the AUTHORITY shall hold title to any land and facilities that are part of the Project in trust for the TWDB to the extent of the TWDB's interest in the Project. Upon written request of the TWDB, the AUTHORITY shall execute and record documents necessary to convey or assign title to the Project land and facilities to the extent of the TWDB's ownership interest in the Project. The AUTHORITY acknowledges that the TWDB's interest shall constitute an ownership interest whether or not the TWDB ever requires execution of any conveyance documents to evidence such interest.

§2.5 CALCULATION OF TWDB OWNERSHIP INTEREST. The AUTHORITY shall provide TWDB a final accounting of all Project Costs within six (6) months of completion of all Stages of the Project and the issuance of a certificate of approval under 31 TAC § 363.55, or upon a determination by 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 80% , the AUTHORITY 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 80% of the total Project Cost. The TWDB shall have the right to determine the schedule and method by which the funds are remitted 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 final accounting and any actions taken to adjust the parties' ownership interests, the TWDB shall then own that percentage interest in the Project not to exceed 80%, and the AUTHORITY shall own the remainder, not less than 20%. 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 amount of water transported by the Project, in accordance with § 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 the proceeds of tax-exempt obligations issued by the TWDB. As required by the Resolution, the AUTHORITY has provided a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator of the TWDB as to any impact of the Project, or the use thereof and the AUTHORITY's payments under this Agreement (**Attachment B**) on the excludability of interest on obligations issued by the TWDB to fund its undivided interest in the Project from gross income of the owners of such obligations for federal income tax purposes. The AUTHORITY 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 a Form 8038-G in connection with the execution of this Agreement by the AUTHORITY in connection with the financing of the AUTHORITY's interest in the Project; and (2) the adoption of written procedures relating to arbitrage compliance, private business use and record retention.

- B. At each Date of Acquisition, the AUTHORITY must submit a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator of the TWDB as to any impact of the Project, or the use thereof, and the AUTHORITY's payments under this Agreement on the tax-exempt status of TWDB bonds.
- C. To the extent that TWDB and the AUTHORITY use proceeds from tax-exempt obligations to finance all or a portion of their respective interests in the Project, the TWDB and the AUTHORITY 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 AUTHORITY agrees to make timely payments of arbitrage rebate to the United States required to be made by section 148 of the Internal Revenue Code.

ARTICLE 3. AUTHORITY'S PURCHASE OBLIGATION

§3.1 PURCHASE BY AUTHORITY. The AUTHORITY will purchase TWDB's 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 therein.

§3.2 PLEDGE BY AUTHORITY.

- A. In order to secure its obligations hereunder, including the ultimate purchase by the AUTHORITY of 100% of the TWDB's ownership interest in the Project, under the authority of the Authority Act, Texas Water Code § 49.108, and other applicable law, the AUTHORITY pledges and grants to the TWDB as security for the payments hereunder, Contract Revenues of the System in such amounts as may be necessary, when and as required by this Agreement, and the Schedules incorporated herein, to purchase the TWDB's ownership interest in the Project.
- B. The AUTHORITY agrees that it shall be unconditionally obligated to purchase 100% of the TWDB's interest in the Project with the Contract Revenues of the System regardless of whether the AUTHORITY actually acquires or completes the Project, or whether the AUTHORITY actually approves, purchases, receives, accepts, or uses the Project; and such purchase shall not be subject to any abatement, set-off, recoupment, or counterclaim. The TWDB shall be entitled to rely on this Agreement and representation, 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.
- C. The Obligations of the AUTHORITY under this Agreement shall be a special limited obligation of the AUTHORITY, payable from the sources described herein, and shall be enforceable as provided under this Agreement.
- D. The Pledged Revenues from the AUTHORITY may not be pledged to the payment of any Additional Obligations of the AUTHORITY unless:

- (1) the AUTHORITY demonstrates to the Executive Administrator's satisfaction that the Pledged Revenues will be sufficient for the payment of the AUTHORITY's obligation to purchase the TWDB's interest in the Project and the Additional Obligations, and
- (2) the Authority delivers to the Executive Administrator an executed certificate that Contract Revenues will be sufficient for the purpose described in clause (1) of this Section.

The governing body of the AUTHORITY may not take action to authorize or approve the issuance of Additional Obligations unless it has delivered the certificate described in clause (2) of this Section and received written notification from the Executive Administrator that the AUTHORITY has satisfactorily made the demonstration described in clause (1) of this Section to the extent permitted by law.

- E. The AUTHORITY shall submit annual audits of contracting parties for the Executive Administrator's review.
- F. The Projects Contract is approved, executed, and in effect. The Authority must maintain and enforce the Projects Contract so that revenues paid to the Authority by the City are sufficient to meet the revenue requirements of the Authority's obligation to purchase the TWDB's interest in the Project that are being supported by the pledged Contract Revenues and, prior to beginning operations and maintenance of the Project, must enter into additional contractual obligations with the City, in form and substance acceptable to the TWDB, so that payments from the City are sufficient to pay all of the Authority's revenue obligations arising from the operation and maintenance of the Project. The TWDB reserves the right to compel compliance of this obligation by mandamus or any other appropriate means including those under Texas Water Code § 6.114.

§3.3 PRICE OF SALE TO AUTHORITY. The TWDB agrees to sell its ownership interest to the AUTHORITY at the following price, to-wit: 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 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 TWDB's ownership interest in the Project to the AUTHORITY, 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 AUTHORITY, less any payments received by the TWDB from the lease of the Project or sale of capacity therefrom.

The AUTHORITY 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 AUTHORITY shall be the dates on which the AUTHORITY provides payment to TWDB to acquire part or all of the TWDB's ownership interest in the Project. After all principal and accrued interest under the Schedules have been paid, the AUTHORITY's scheduled payments of principal under the Schedules or the AUTHORITY's partial

purchases of TWDB's ownership interest made pursuant to § 3.4 or § 3.5 of this Agreement shall constitute the purchase of a proportion of the TWDB's ownership interest, such proportion to be calculated by dividing such principal payment by the TWDB Cost of Acquisition, provided the AUTHORITY 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 AUTHORITY PAYMENTS. The AUTHORITY agrees to purchase the TWDB's ownership interest in the Project beginning with the first scheduled principal payment and in accordance with all subsequent scheduled principal payments on the Schedules attached to this Agreement as **Attachment C** and any revisions made thereto pursuant to this Agreement. The AUTHORITY 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, to the following:

TEXAS COMPT - AUSTIN
ABA# 114900164
BNF = ACCT#463-6005-80
ATTN: TWDB - _____

The AUTHORITY also agrees to make scheduled interest payments prior to the first scheduled principal payments as provided on the Schedules and any revisions thereto pursuant this Agreement.

In exchange for having a preferential right to purchase the TWDB's ownership interest in the Project, the AUTHORITY agrees to pay all deferred interest and accrued interest attributed to the Project prior to the AUTHORITY's purchase of any ownership interest.

§3.5 EARLY PURCHASE BY AUTHORITY. The AUTHORITY shall have the right, the Schedules notwithstanding, to make an early purchase of all or a portion of the TWDB's 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 AUTHORITY 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 Schedules.

§3.6 LEASE OR PURCHASE UPON AUTHORITY'S USE OF TWDB OWNERSHIP.

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

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

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

The transportation of water shall be metered by the AUTHORITY at locations acceptable to the Executive Administrator as may be necessary to accurately determine water transported by 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 AUTHORITY as mutually agreed to by TWDB and the AUTHORITY. It shall be the responsibility of the AUTHORITY to ensure that such meters are installed prior to delivery of water from the Project and to monitor the accuracy of the meters at a minimum on an annual basis. If at any time the accuracy of the metering equipment is more than two percent (2%) in error, the AUTHORITY will, as soon as possible, correct the inaccuracy. 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 AUTHORITY and the TWDB.

- B. METHOD OF AUTHORITY'S LEASE OR PURCHASE OF TWDB INTEREST.** In the event the AUTHORITY begins using any portion of the TWDB's ownership interest in the Project, either prior to or after any Call Date, the AUTHORITY will, at the TWDB's option, either: (1) lease from TWDB that portion of the TWDB's ownership interest that the AUTHORITY is using; or (2) upon approval of TWDB, issue revenue bonds to the TWDB as consideration to purchase that portion of the TWDB's ownership interest that the AUTHORITY is using; or (3) purchase the TWDB's ownership interest with money. The sales price of any of TWDB's ownership interest under this Section shall be determined in accordance with §3.3 of this Agreement.
- C. PROVISIONS RELATING TO PURCHASE USING REVENUE BONDS AS CONSIDERATION.** If the AUTHORITY issues revenue bonds to be purchased by the TWDB as consideration to purchase all or a part of the TWDB's ownership interest in the Project in accordance with Section 15.435(c)(4), the principal amount of the revenue bonds shall be equal to the price for purchasing all or a portion of such ownership interest. The revenue bonds must be non-callable prior to the Call Dates of the Schedules. Terms and maturities of such revenue bonds will be subject to TWDB approval at the time of purchase. The revenue bonds may, at the TWDB's option, either be on a parity with, or subordinate to, the outstanding Contract Revenue Bonds.
- D. LEASE PAYMENTS.** If the AUTHORITY 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 AUTHORITY's use of TWDB's 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 of Texas 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 AUTHORITY's calculation in which the AUTHORITY has used a portion of the TWDB's ownership interest.

§3.7 PROJECT SITE REVENUES. In exchange for the AUTHORITY's agreement to assume operation and maintenance costs of the Project, revenues derived from leases or other agreements related to the Project lands may be applied to pay costs of operation and maintenance for the Project and/or insuring the TWDB'S interest pursuant to § 5.2 of this Agreement, to the extent permitted by law. Any revenues not annually used for such purposes will be deposited into an account of the AUTHORITY and applied to pay the costs of operation and maintenance for the Project, insurance costs for the Project, including insuring the TWDB's interest, or utilized as contingency funds for operation and maintenance of the Project. Such revenues will be accounted for in the AUTHORITY's annual comprehensive audits and budgets and provided to the TWDB when such comprehensive audits and budgets are provided pursuant to this Agreement.

§3.8 PREFERENTIAL RIGHT TO LEASE AND PURCHASE. Pursuant to this Agreement, the AUTHORITY has a preferential right to lease the TWDB's undivided ownership interest in the Project, and the TWDB may not lease its interest in the Project without the AUTHORITY's consent. Upon an Event of Default, however, the AUTHORITY shall lose its preferential right to lease the TWDB's interest in the Project, and the TWDB may lease its interest in the Project without the AUTHORITY's consent.

The AUTHORITY has a right of first refusal prior to any sale of the Board's interest in the project and the TWDB may not sell or transfer its interest in the Project to any other party besides the AUTHORITY without the AUTHORITY's consent, which shall not be unreasonably withheld. Upon an Event of Default by the AUTHORITY, however, the TWDB may sell or transfer its interest in the Project without the AUTHORITY's consent.

The sale, transfer, or lease of the TWDB's interest in the Project to any entity other than the AUTHORITY would be subject to the requirement that the TWDB obtain the approval of the Attorney General as to the legality of any contract for such sale, transfer, or lease.

§3.9 PURCHASE AND LEASE SCHEDULES.

- A. **PURCHASES - SCHEDULES.** The AUTHORITY obligates itself and agrees to purchase the TWDB's 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 AUTHORITY shall deliver a Schedule for the AUTHORITY's purchase of the TWDB's 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 AUTHORITY for the purchase of the TWDB's ownership interest in the Project are subject to TWDB approval. In addition, at

each purchase of the TWDB's ownership interest by the AUTHORITY pursuant to § 3.5 or § 3.6 of this Agreement, the schedule of payments in the Schedules shall be amended to reflect the reduction in the TWDB's ownership interest in the Project.

- B. **LEASES.** The schedule for the AUTHORITY's lease payments for the use of the TWDB's ownership interest in the Project will be calculated in accordance with the terms of this Agreement. The TWDB and the AUTHORITY agree that upon each lease of the TWDB's ownership interest by the AUTHORITY pursuant to § 3.6 of this Agreement, and prior to each payment date in the Schedules, the schedule of payments established in the Schedules will be amended to credit each lease payment by the AUTHORITY 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 AUTHORITY shall proceed with all studies and planning in an expeditious manner, and provide for construction and operation of the Project on a reasonable schedule.

§4.2 AUTHORITY RESPONSIBILITIES. The AUTHORITY shall perform the duties and functions required of it and governing its operations, 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.

§4.3 SUPERVISION OF CONSTRUCTION. During the construction of the Project, the AUTHORITY 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. 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 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 AUTHORITY shall prepare and file with TWDB quarterly reports on the status of the Project, including the Site Acquisition, Design and Construction Stages. Reports shall be provided to:

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

ARTICLE 5. OPERATION AND MAINTENANCE

§5.1 OPERATION AND MAINTENANCE. It is understood and agreed by the parties to this Agreement that the AUTHORITY 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 AUTHORITY shall take whatever measures are reasonable and prudent to insure 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 AUTHORITY binds itself to take such action as may be necessary to insure that the Project is adequately maintained and protected, and shall keep in good and operable state of repair the physical properties comprising the Project.

§5.2 INDEMNIFICATION.

- A. **GENERAL INDEMNIFICATION.** To the extent permitted by law, the AUTHORITY shall indemnify and hold the TWDB and the State of Texas 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 AUTHORITY, arising out of the activities and work conducted pursuant to this Agreement. The AUTHORITY 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 AUTHORITY shall utilize any and all other funds and resources lawfully available as may be required to indemnify and hold the TWDB and the State of Texas 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY, its contractors, consultants, agents, officials and employees as a result of design and construction activities undertaken to complete this Project.

§5.3 INSURANCE. For so long as the TWDB maintains an ownership interest in the Project, the AUTHORITY agrees to maintain insurance in the type and amount that, in the reasonable judgment of the AUTHORITY and consistent with the standard practices of the AUTHORITY and in the industry, is necessary to protect the AUTHORITY, the TWDB, and employees and officials of the TWDB from liability arising out of this Agreement and the Project, including but not limited to worker's 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 AUTHORITY maintains single limit coverage limits of \$1,000,000 with excess liability coverage of \$4,000,000. These coverage limits are reviewed by the AUTHORITY's Board of Directors from time to time and may be adjusted as necessary. The AUTHORITY will require that all consultants and contractors involved with the project to maintain liability, automobile and workers compensation coverage in amounts necessary to protect the AUTHORITY and the TWDB and naming the AUTHORITY and TWDB as additional insured. The AUTHORITY 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 ownership interest in the Project. Although the AUTHORITY does not currently intend 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 AUTHORITY shall keep and maintain complete records, accounts and financial statements pertaining to the operation of the Project in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. The AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants within 135 days from the end of the AUTHORITY's fiscal year. 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 AUTHORITY 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 AUTHORITY shall allow representatives or designees of the Texas State Auditor, Texas Attorney General or 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 AUTHORITY shall return all files and records to the TWDB. The AUTHORITY 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 AUTHORITY 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 AUTHORITY of its intent to take over and operate and

maintain the Project so as to provide the AUTHORITY with the opportunity to remedy the problem(s) identified by the TWDB. The AUTHORITY shall remain liable for any expenditure made by TWDB with respect to notice, remedies, operation and maintenance of the Project.

ARTICLE 6. SALE AND LEASE OF PROPERTY BY AUTHORITY

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

§6.2 LEASE OF AUTHORITY PROPERTY. Subject to the provisions of § 6.3 of this Agreement, the AUTHORITY 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 AUTHORITY. No lease shall be made which will result in any damage to or substantial diminution of the value of any of the property that is part of Project, or which 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 AUTHORITY of real property in which the TWDB has an interest under this Agreement shall require prior approval of the TWDB. 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 AUTHORITY insofar as the rights of third parties may be concerned. The AUTHORITY, 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 ownership interest in the Project.

§6.4 SALE OF CERTAIN ITEMS. The AUTHORITY 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 AUTHORITY 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.

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 AUTHORITY has satisfied all of its obligations hereunder and all of the TWDB's undivided ownership interest in the Project has been purchased by the AUTHORITY.

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:

Executive Director
Coastal Water Authority
1801 Main Street, Suite 800
Houston, Texas 77002
Phone Number: 713.658.1915
Fax Number: 713.658.9429
Email Address: dripley@coastalwaterauthority.org

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

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

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

§8.3 TITLE COVENANTS. The AUTHORITY covenants that it will obtain title insurance to any land to be purchased for the Project. The AUTHORITY warrants, by executing this Agreement, that any and all title objections referenced by any title insurance commitment policy entered into that may impair the Project will be cured to the satisfaction of the Executive Administrator. Additionally, if required by the TWDB, the AUTHORITY agrees to provide a policy of title insurance for the benefit of the TWDB in the event that the TWDB requires the execution of documents evidencing the TWDB's ownership interest in the Project.

§8.4 PLEDGE COVENANTS. The AUTHORITY hereby covenants that it has the lawful power to pledge its Contract Revenues to the TWDB, on a parity lien basis, to the payment of its obligations pursuant to this Agreement in the manner herein contemplated and has lawfully exercised such power under the Authority Act, Texas Water Code § 49.108, and other applicable laws.

ARTICLE 9. LAWS GOVERNING THE AGREEMENT; REMEDIES

§9.1 RULES AND APPLICATIONS INCORPORATED IN AGREEMENT. The TWDB and the AUTHORITY agree that the Application for Board Participation filed by the AUTHORITY, as finally approved by TWDB, are incorporated herein as a part of this Agreement and the AUTHORITY agrees to be bound by TWDB rules, the Resolution, and the representations made in its Application. The AUTHORITY 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. It is expressly understood by and between the parties hereto that the provisions of this Agreement are subject to the applicable provisions of the Constitution and laws of the State of Texas, and federal laws and regulations. The AUTHORITY agrees 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 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 AUTHORITY agrees that the TWDB shall have available to it the remedies of mandamus and specific performance, even if failure of performance of the AUTHORITY could be adequately compensated through some other method. The AUTHORITY's opportunity to cure shall be no less than 30 days from the date the AUTHORITY receives notice from the TWDB, and shall continue as long as the AUTHORITY uses good faith and diligence to cure any defect accurately identified by the TWDB. Specific remedies available to the TWDB include, but are not limited to, the TWDB's right to:

- A. by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the TWDB under the Agreement and all rights of the TWDB, at law or in equity, whether or not any non-performance or violation has become an Event of Default, relating to the purchase, ownership, and lease or sale of the Project or TWDB's interest in the Project, including to the AUTHORITY'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 AUTHORITY to charge and collect moneys adequate to carry out the terms of the Agreement;
- B. by action or suit in equity require the AUTHORITY 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 AUTHORITY in written form. Any such amendment shall be executed in the same manner as this Agreement was originally executed.

§9.6 SEVERABILITY. The TWDB and the AUTHORITY 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, constitutes the entire agreement between the Parties with respect to the matters described herein.

§9.8 ARBITRATION. It is expressly understood that neither the AUTHORITY nor the TWDB shall, without its 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.

§9.9 FORCE MAJEURE. If, by reason of Force Majeure, any Party hereto shall be 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.

§9.10 SECURITY INTEREST IN CONTRACT REVENUES. The Parties expressly agree that the TWDB has a perfected security interest under Chapter 1208, Government Code, which provides that no filing, registering, recording or publication of this Agreement is required to establish a pledge of the Contract Revenues or to perfect, protect or maintain the lien created hereby on the Contract Revenues. In the event Chapter 1208, Government Code, is amended at any time while any obligations remain outstanding under tills Agreement, such that the lien on the Contract Revenues is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, the Authority agrees to take such action to comply with the applicable provisions of Chapter 9, Business & Commerce Code, to maintain perfection of the lien on and pledge of the Contract Revenues under tills Agreement. Notwithstanding the applicability of Chapter 1208, Government Code, the TWDB has the right to further protect its lien created hereby on the Contract Revenues by appropriate filing with the Secretary of State.

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

TEXAS WATER DEVELOPMENT BOARD

By: _____
Name: Kevin Patteson
Title: Executive Administrator
Date: _____

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on the ____ day of _____, 20__, by Kevin Patteson 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

COASTAL WATER AUTHORITY

Executive Director
Date: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ in his/her capacity as _____, on behalf of _____.

(SEAL)

Notary Public, State of Texas

ATTACHMENT A
TWDB RESOLUTION

DRAFT

ATTACHMENT B

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

DRAFT

ATTACHMENT C

SCHEDULES

DRAFT

ATTACHMENT D

FORMAT FOR DETERMINATION OF AUTHORITY USE OF TWDB OWNERSHIP

DRAFT