

**Lower Colorado River Authority**  
**AGRICULTURAL INTERRUPTIBLE WATER SERVICE CONTRACT RULES**

~~Board Approved—January 2020~~DRAFT 2021

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## I. PURPOSE

The purpose of the Agricultural Interruptible Water Service Contract Rules (Rules) is to provide guidance and establish procedures for the administration of LCRA's agricultural interruptible water service contracts (Contracts). The Rules also include the Standard Terms and Conditions for Contracts, which are incorporated by reference into the Contracts. The LCRA Board of Directors may amend the Rules from time to time. Sales of water by LCRA are subject to, among other things, water availability, the policies of LCRA, the LCRA Water Management Plan, the LCRA Drought Contingency Plan for interruptible agricultural customers, and the requirements of the Texas Water Code and rules of the Texas Commission on Environmental Quality.

## II. STANDARD TERMS AND CONDITIONS FOR CONTRACTS

The following are standard terms and conditions that are incorporated by reference into the Agricultural Interruptible Water Service Contracts

### A. DEFINITIONS

1. Agricultural Season – the portion of the calendar year in which water may be supplied for interruptible agricultural purposes, subject to availability as specified in the contract, Drought Contingency Plan, and/or the Water Management Plan. For purposes of contracting and the evaluation of water availability, the Agricultural Season may be split into a First Agricultural Season and a Second Agricultural Season.
2. Canal Operating Procedures – the guidelines LCRA staff generally follow while operating irrigation canals. These guidelines are not enforceable against LCRA.
3. Contracted Field – an individual field described in a contract. The Customer may contract for multiple individual fields under one contract, or may have separate contracts for individual fields.
4. Customer – a customer of LCRA with an Agricultural Interruptible Water Service Contract.
5. First Agricultural Season – for contracts for rice is the period from the start date as defined in the Contract until the harvest of first crop; for all other agricultural purposes of use, the First Agricultural Season is the period from the start date as defined in the Contract until August 15.
6. Minimum Charge for Acreage – where applicable, a fee that accrues at the time CUSTOMER signs a contract that is based on the number of acres under contract. Fees payable under the Minimum Charge for Acreage under contract will be credited towards water use fees on the same acreage.
7. Minimum Charge for Interruptible Stored Water Allocated – where applicable, a fee that accrues at the time CUSTOMER signs a contract that is based on the amount of interruptible stored water allocated to CUSTOMER under the contract. Fees payable under the Minimum Charge for Interruptible Stored Water Allocated under contract will be credited towards water use fees under the same contract. Notwithstanding the Minimum Charge for Interruptible Stored Water Allocated, interruptible stored water remains subject to being curtailed or cut off during the season, consistent with the terms of the contract.

8. Per Acre Duty – the amount of water that will be delivered to the CUSTOMER during the Agricultural Season or portion thereof, as defined in the Contract, above which Surcharges may apply as specified in the Contract.
9. Second Agricultural Season – for contracts for rice is the period from the first watering after the harvest of first crop rice until October 15; for all other agricultural purposes of use, the Second Agricultural Season is the period from August 16 to October 15.
10. Supplemental Purposes – the use of agricultural interruptible water for purposes other than rice or turf irrigation. Such uses include row crop, alternate crops, aquaculture and wildlife management, or any other agricultural use of water as that term is defined by Chapter 11 of the Texas Water Code.

## B. WATER SUPPLY

### 1. Interruptible Water.

The water supplied under the Contract is interruptible and subject to being cutoff as described in the Contract and these Rules. LCRA shall have no obligation to deliver water during periods outside of the Agricultural Season. LCRA will not make water available until the Contract is fully executed and returned to the LCRA office.

LCRA's obligation to supply water may be limited as specified in the Contract (including as specified in these Rules), consistent with the Water Management Plan and/or existing contractual obligations. LCRA will allocate interruptible stored water as determined under the Drought Contingency Plan for Interruptible Agricultural Customers and these Rules. LCRA's obligation to supply water to customers without an interruptible stored water allocation in Gulf Coast or Lakeside or non-rice customers in Garwood is limited to periods in which water is available in the canals and not needed for customers with stored water allocations in Gulf Coast or Lakeside or rice customers in Garwood. LCRA is not obligated to divert water into the canals specifically for such customers; however, LCRA may divert water into the canals for such customers if water is available at the river pump station in excess of LCRA's other commitments and pumping capacity is available to capture such water.

### 2. Source and Availability of Supply.

Interruptible water supplied under the Contract will only be water that is available from time to time to LCRA for diversion and use for agricultural (including irrigation) purposes in accordance with LCRA's applicable run-of-river water rights (Certificates of Adjudication Nos. 14-5475 [Lakeside], 14-5476 [Gulf Coast], and 14-5434 [Garwood]), as such rights have been and may be amended from time to time, and LCRA's water rights for Lakes Buchanan and Travis (Certificates of Adjudication Nos. 14-5478 [Lake Buchanan], and 14-5482 [Lake Travis], as such rights have been and may be amended from time to time).

CUSTOMER further agrees that water supplied under the Contract is subject to availability, provided on an interruptible basis, and subject to curtailment in accordance with the terms of the Contract, these Rules, the LCRA Water Management Plan and the LCRA Drought Contingency Plan in effect on the date of the Contract (both of which are incorporated by reference herein as if set forth

fully and available electronically at <http://www.lcra.org/water>), including any amendments thereto that may be approved by the Texas Commission of Environmental Quality (TCEQ) during the term of the Contract. If CUSTOMER is within the Garwood Water Division, the Parties acknowledge that curtailment is subject to the Purchase Agreement between LCRA and the Garwood Irrigation Company, dated July 20, 1998. Further, supply may be limited as required by Section 11.039 of the Texas Water Code or any other orders of TCEQ that may affect LCRA's operation of the Colorado River.

3. Agricultural Season.

Within the calendar year, the period in which water may be available for interruptible agricultural purposes is March 15 to Oct. 15. The Agricultural Season for a particular Contract will be defined in the Contract. (See *also* Sec. II.A.: First Agricultural Season and Second Agricultural Season.)

4. High Point of Land.

LCRA shall not be obligated to furnish water to irrigate any high point of land so much above other lands as to be higher than the water in the lateral supplying water to the particular area, or if the high point would necessitate the water level in the canal be held at a higher level than normal or higher than a safe operating level.

5. Point of Delivery

The Point of Delivery for purposes of calculating amounts of water used under the Contract shall be as follows:

- a. For deliveries from LCRA-owned canals, the point at which the water is diverted from the canal onto CUSTOMER's property identified in the Contract.
- b. For deliveries where water is diverted onto the CUSTOMER's property identified in the Contract from a canal that is not owned or controlled by LCRA, the quantity of water will be measured, or estimated by LCRA, based upon the point at which water is diverted from the private canal onto CUSTOMER's field.

6. Unlawful Taking

CUSTOMER, his agents and employees shall not willfully open, close, change or interfere with any headgate or water box without the consent of LCRA. Additionally, CUSTOMER, his agents and employees shall not willfully use water or conduct water through his ditch or upon his land to which he is not entitled. In the event CUSTOMER, his agents and/or employees have willfully opened, closed, changed or interfered with any headgate or water box, delivery of water to CUSTOMER will be terminated for the remainder of the crop year. Furthermore, such action shall be considered a violation of Texas Water Code Section 11.083.

7. Addition Acreage or Purposes of Use

Under no circumstances shall LCRA be obligated to provide water for the irrigation of acreage in excess of the acreage indicated in the Contract ("Excess Acreage") or for additional agricultural purposes of use not specified in the Contract and for which a separate contract has not been executed. In such event, CUSTOMER is subject to surcharges as set forth in the Contract, and LCRA reserves the right to cut off all delivery of water to CUSTOMER for the remainder of the crop year.

## 8. Unforeseen Conditions

If, at any time during the Agricultural Season, any condition occurs in connection with the supply of water of which CUSTOMER deems it necessary to notify LCRA, CUSTOMER shall promptly give written notice to the Irrigation Coordinator or LCRA office, stating the nature of such condition. LCRA shall promptly investigate said matter and take such action thereon as it deems appropriate. In the absence of such notice from CUSTOMER, it shall be presumed that LCRA is performing under the Contract to CUSTOMER's satisfaction.

## C. CONSERVATION OF WATER AND WASTE

CUSTOMER agrees and binds himself not to cause, permit or in any other manner allow water furnished by LCRA hereunder to be wasted, used in a careless manner, or used in quantities that significantly exceed those amounts used (on an acre-feet per acre basis) by similarly situated agricultural water users in the area. CUSTOMER is responsible for preparing the acreage and any personal lateral(s) for the delivery of water. LCRA reserves the right to inspect CUSTOMER's acreage and lateral(s) prior to delivery. If LCRA determines improvements are needed to prevent the waste of water, CUSTOMER will be contacted and CUSTOMER must make improvements prior to delivery of water. Furthermore, LCRA reserves and is hereby granted the right to enter CUSTOMER's land and cut off all delivery or diversions of water to said land if CUSTOMER causes, permits or allows such wasteful use of water to occur.

## D. TERM

### 1. Term.

The term of the Contract is for the period from the date of the execution of the Contract until all payments are received consistent with these Rules and the terms of the Contract. LCRA's obligation to supply water is limited to the Agricultural Season as defined in the Contract and these Rules.

### 2. Termination

In the event that CUSTOMER fails to comply with LCRA's Drought Contingency Plan or otherwise violates any provision of the Contract, LCRA may terminate the Contract without recourse unless CUSTOMER takes reasonable measures to cure such default within seven (7) days of CUSTOMER's receipt of written notice of such default. In the event LCRA terminates the Contract as provided herein, CUSTOMER shall suspend immediately upon such termination all withdrawal of water from the Colorado River, or any tributaries thereof, or irrigation canals operated by LCRA under the Contract. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized withdrawals by CUSTOMER. In the event LCRA terminates the Contract, CUSTOMER shall remain liable for all payments due. LCRA shall not be liable for any damages resulting to CUSTOMER'S crops as a result of such termination.

## E. CONTRACT ADMINISTRATION

### 1. Notice and Invoices

LCRA will send all invoices and notices to CUSTOMER executing the contract, regardless of whether multiple parties have an interest in the land or crop being

served under the Contract. CUSTOMER shall provide LCRA with an email address for receipt of communications from LCRA.

2. Agreement to Pay

CUSTOMER agrees and covenants to pay LCRA at the applicable rates specified in the Contract. CUSTOMER acknowledges that amounts owed under the Contract will be determined by LCRA in accordance with this Section II.E. A cutoff, suspension or disruption of the supply of water under this Contract shall not relieve CUSTOMER's obligation to make payments for water delivered under this Contract.

3. Payment.

For water provided for rice or turf irrigation, amounts owed by CUSTOMER are net and are payable on the sooner of: (1) Dec. 10 immediately following the Agricultural Season, (2) upon the sale of CUSTOMER's crop, or (3) on the date CUSTOMER receives his loan from the Farm Service Agency.

For water provided for Supplemental Purposes, charges are due within 30 days of the monthly invoice.

The payments described herein shall be paid to LCRA at its Local Office, as follows:

Gulf Coast Division Address: 100 7<sup>th</sup> St., Bay City, Texas 77414

Lakeside Division Address: 209 S. McCarty Ave., Eagle Lake, Texas 77434-2432

Garwood Division Address: 7859 State Highway 71, Garwood, Texas 77442

4. Failure to Pay.

In the event CUSTOMER fails to make payment by the payment date established by Section II.E.3, CUSTOMER shall then pay a late payment charge of 5 percent of the unpaid amount of the invoice. For each calendar month or fraction thereof the invoice remains unpaid, PURCHASER shall pay interest at the rate of 1.5 percent per month on the unpaid portion of the invoice. In the event CUSTOMER attempts to pay LCRA by check, draft, or any other similar instrument and the instrument is returned or refused by the bank or other similar institution as insufficient or non-negotiable for any reason, CUSTOMER shall be assessed and must pay to LCRA, per each returned instrument, the returned instrument fee set by LCRA's Board of Directors for LCRA water contracts, currently \$25 per returned instrument. In the event CUSTOMER fails to make payment by the payment date established by Section II.E.3, CUSTOMER further agrees to pay all costs of collection and reasonable attorney's fees, regardless of whether suit is filed. Further, CUSTOMER agrees that LCRA shall have no obligation to enter into a subsequent contract to provide interruptible water to CUSTOMER (including to a business entity in which CUSTOMER holds an interest) in the event of an outstanding balance owed to LCRA under the Contract. (See Section III.A.)

5. Computation of Charges.

Determination of the number of acres irrigated by CUSTOMER for purposes of tracking the amount of acreage supplied water under the Contract shall be made on the basis of the entire area within CUSTOMER's outside levee or farmed tract, as applicable, and shall be determined by LCRA using: (a) existing survey

information; (b) new survey information gathered by LCRA (in electronic GIS files or other forms) in the case of new fields that have not been irrigated previously with water supplied by LCRA or fields that have not been irrigated in such a long time that old boundaries and acreage figures are questionable; or (c) from the County Farm Service Agency. CUSTOMER, by signing the Contract, authorizes the release by the County Farm Service Agency of information to verify acreage, and the name and address associated with the acreage.

LCRA will provide CUSTOMER with weekly or bi-weekly water use reports. CUSTOMER has seven (7) days from the date of LCRA's weekly or bi-weekly water use report to dispute any volumes or charges under the report, such disputes to be identified in writing to LCRA at the address indicated in Section II.E.3. If no dispute is filed with LCRA within this time period, CUSTOMER will be deemed to agree the volumes and/or charges are correct, and full payment as provided in the Contract and these Rules will be required. Should there be a disagreement between LCRA and CUSTOMER as to the acreage contained in said survey or the volumes of water delivered, such disagreement shall be resolved by the dispute resolution procedures set forth in Section II.I of these Rules. If no dispute is filed with LCRA pursuant to those procedures and the time period contained therein, CUSTOMER will be deemed to agree to LCRA's determination of acres irrigated and volumes of water delivered.

If CUSTOMER's crop has not matured or has been abandoned by the closing date of the Agricultural Season, CUSTOMER shall nevertheless remain liable for all payments owed to LCRA under the Contract.

6. Surcharges.

CUSTOMER is subject to surcharges as specified in the Contract, including: in the event that CUSTOMER is delivered water in excess of any applicable Per Acre Duty; in the event that CUSTOMER is delivered water to irrigate acreage in excess of that identified in the Contract, or to irrigate acreage for purposes other than that specified in the Contract; and/or in the event CUSTOMER drains a field within five days of the last delivery.

7. Disputes Relating to Charges Billed.

In the event that CUSTOMER disputes the charges billed during the Agricultural Season in writing within thirty (30) days from the date of LCRA's billing notice and LCRA and CUSTOMER are unable to resolve such dispute, then LCRA and CUSTOMER both agree that such dispute shall be resolved through dispute resolution in accordance with the dispute resolution procedures set forth in Section II.I of these Rules. However, CUSTOMER agrees that any dispute related to the computation of acreage or the volume of water delivered must be resolved pursuant to Section II.E.5, above. If no dispute is filed with LCRA within the time periods established in section II.I. or II.E.5, as applicable, CUSTOMER will be deemed to agree that the charges billed are correct, and full payment as provided in the Contract and these Rules will be required.

F. SECURITY

1. Security Agreement.

For value received hereunder, CUSTOMER grants LCRA a security interest in the crops and any proceeds from said crops to secure any and all payments due the LCRA under the Contract. The lien created by this Security Agreement is in addition to any statutory lien provided for under the Texas Business and Commerce Code and the Texas Water Code.

2. Financing Statement.

CUSTOMER grants LCRA the authority to file a Financing Statement (Form UCC-1) in order to perfect the lien on the crops granted by CUSTOMER to LCRA hereunder. Lien Waivers will be made out jointly to CUSTOMER and LCRA unless CUSTOMER has paid to LCRA all applicable charges in accordance with the Contract. LCRA cannot accept payment for outstanding charges by post-dated check or other payment arrangement contingent upon CUSTOMER's receipt of a loan disbursement.

3. Warehouse Storage.

Until all of the charges and payments under the Contract have been fully paid and satisfied, all harvested farm products shall be stored in the name of the CUSTOMER in a public bonded warehouse or warehouses agreeable to LCRA.

G. CUSTOMER PREPARATIONS AND OPERATIONS

1. CUSTOMER's facilities shall be installed, operated and maintained by CUSTOMER at CUSTOMER's sole risk. Nothing in the Contract shall be construed as authorizing CUSTOMER, or recognizing that CUSTOMER has any right, to install any equipment or improvements on property owned or controlled by LCRA or third parties.
2. CUSTOMER shall be responsible for protection of the CUSTOMER's land from flooding during land preparations, planting and harvest. CUSTOMER is responsible for removing all dams prior to requesting water. CUSTOMER is responsible for installing dams if CUSTOMER desires to not have water leaked onto CUSTOMER's field. If CUSTOMER damages a measurement structure, LCRA will repair the structure and bill CUSTOMER for the repair cost.
3. All canals, laterals, ditches, and other facilities belonging to CUSTOMER shall be built and maintained according to the specification of LCRA. All of the facilities owned by CUSTOMER, or owned by LCRA or others but used for the benefit of only one customer, shall be kept clean and unobstructed and be maintained by such customer so as to properly perform the purposes for which the facilities were constructed. If CUSTOMER shall fail to maintain and keep clean and unobstructed all such facilities, LCRA may do so and charge the expense thereof to CUSTOMER. Furthermore, LCRA has the right to not deliver water via facilities that are not maintained and kept clean and unobstructed.
4. CUSTOMER shall prepare CUSTOMER's field levees and perimeter (outside) levee so as not to allow water to escape the field during normal field flood condition; i.e., levee height and compaction must be adequate to contain irrigation water. If CUSTOMER fails to contain water and willfully or knowingly allows water to escape the field, LCRA may cease delivery of water immediately. The resumption of water delivery starts after water is controlled or contained, and water is ordered following



the ordering procedures. Water will be delivered to customers in the order in which customers' orders were received.

5. CUSTOMER agrees that filling land with water prior to drainage is counter to conservation. CUSTOMER shall notify the LCRA at least six (6) days prior to draining. CUSTOMER shall not drain water out of lands under Contract within five (5) days of the last water delivery. In the event that a field is drained within five days of the last water delivery, CUSTOMER is subject to a surcharge as specified in the Contract.

#### H. GENERAL PROVISIONS

1. Force Majeure.

LCRA shall not be held liable or responsible for any delay or failure to perform that may be caused by Force Majeure. The term "Force Majeure" as used herein shall mean situations or conditions beyond the control of LCRA that render LCRA unable, wholly or in part, to carry out its obligations under the Contract. Such Force Majeure includes but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any of kind of the government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, or partial, or entire failure of water supply.

2. Indemnification.

CUSTOMER will indemnify and save LCRA, its directors and employees, harmless from any and all claims, demands, damages, losses, expenses and costs (including reasonable attorneys' fees) whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property arising from or in any way connected with the acts or omissions of CUSTOMER related to or arising out of the Contract.

3. LIMITATION OF LIABILITY.

- a. LCRA SHALL NOT BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. THE TOTAL LIABILITY OF LCRA ARISING OUT OF THIS CONTRACT SHALL NOT EXCEED THE FEES AND CHARGES ACTUALLY PAID TO LCRA BY THE CUSTOMER UNDER SAID CONTRACT.
- b. THE PARTIES AGREE THAT THERE ARE HAZARDS AND UNCERTAINTIES INCIDENT TO SUPPLYING WATER BY MEANS OF PUMPS AND CANALS, INCLUDING, WITHOUT LIMITATION, WEAR AND TEAR TO EQUIPMENT, SABOTAGE, ACCIDENT, INJURY OR DAMAGE TO MACHINERY, CANALS, OR DAMS, FLOODING OR OVERFLOW OF THE COLORADO RIVER OR LCRA CANALS, FAILURE OR SHORTAGE OF WATER SUPPLY CAUSED BY NATURAL CONDITIONS, AS WELL AS ALL OTHER RISKS THAT COULD PREVENT LCRA FROM PROVIDING WATER UNDER THIS AGREEMENT OR DISRUPT SUCH SERVICE OR OTHERWISE CAUSE DAMAGE TO CUSTOMER. THEREFORE, THE PARTIES HEREBY ALLOCATE THE RISK OF LOSS ATTENDANT TO THE PROVISION OF WATER AS FOLLOWS:

CUSTOMER AGREES THAT LCRA SHALL NOT BE HELD LIABLE, AND CUSTOMER HEREBY RELEASES AND DISCHARGES LCRA FROM ANY LIABILITY, FOR DAMAGES SUSTAINED BY CUSTOMER ATTRIBUTABLE TO THE FOREGOING HAZARDS AND UNCERTAINTIES.

- c. THE FOREGOING LIMITATIONS ON LIABILITY AND RELEASES CONTAINED IN SECTIONS II.H.3.a AND II.H.3.b ABOVE SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY), WARRANTY, INDEMNITY, CONTRIBUTION, OR ANY OTHER THEORY OF LIABILITY.
4. HOLD HARMLESS AGREEMENT AND WAIVER RELATED TO SPECIFIC PUMP EQUIPMENT AND CANALS.

CUSTOMER ACKNOWLEDGES THAT, DUE TO DECADES OF USE AND NORMAL WEAR AND TEAR, AND DESPITE LCRA'S CONTINUED AND DILIGENT MAINTENANCE AND REPAIR EFFORTS, THE PUMPS AND RELATED MECHANICAL EQUIPMENT (COLLECTIVELY, "EQUIPMENT") USED BY LCRA TO DELIVER WATER UNDER THE TERMS OF THE CONTRACT ARE INCREASINGLY UNRELIABLE. CUSTOMER FURTHER RECOGNIZES THAT, DESPITE LCRA'S CONTINUED AND DILIGENT MAINTENANCE AND REPAIRS TO ITS CANAL SYSTEMS, CANAL SYSTEMS ARE SUBJECT TO FAILURE, INCLUDING, BUT NOT LIMITED TO LEAKS, OVERFLOW, AND FLOW OBSTRUCTIONS. CUSTOMER ACKNOWLEDGES THAT, GIVEN THE CONDITION OF THIS EQUIPMENT AND THE POTENTIAL FOR FAILURE IN CANAL SYSTEMS, IT IS QUITE POSSIBLE THAT SUCH EQUIPMENT AND/OR CANALS, OR PORTIONS THEREOF, MAY BECOME INOPERABLE, UNSAFE TO OPERATE, AND/OR IRREPARABLE AT ANY TIME AND THAT, AS A RESULT, LCRA MAY BE UNABLE TO DELIVER WATER, OR SOME PORTION THEREOF, PURSUANT TO THE TERMS OF THE CONTRACT. CUSTOMER AGREES THAT LCRA MAY RELY ON THE BEST ENGINEERING JUDGMENT OF ITS STAFF TO DETERMINE WHETHER A PARTICULAR PIECE OF EQUIPMENT OR CANAL SEGMENT HAS BECOME INOPERABLE, UNSAFE TO OPERATE, AND/OR IRREPARABLE. IN THE EVENT THAT SUCH EQUIPMENT OR CANAL SEGMENT IS DETERMINED TO BE INOPERABLE, UNSAFE TO OPERATE, OR IRREPARABLE, LCRA SHALL UNDERTAKE COMMERCIALY REASONABLE MEASURES TO REMEDY THE PROBLEM(S) AND RESTORE SERVICE AS SOON AS IS REASONABLY PRACTICABLE IN LIGHT OF ALL THE FACTS AND CIRCUMSTANCES BASED UPON LCRA'S BEST ENGINEERING JUDGMENT; HOWEVER, CUSTOMER ACKNOWLEDGES THAT LCRA DOES NOT GUARANTEE THAT SUCH REMEDIAL MEASURES WILL BE COMPLETED WITHIN ANY SPECIFIC TIME PERIOD. IF REMEDIAL MEASURES ARE REQUIRED, CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT LCRA MAY MAKE AN IMMEDIATE MODIFICATION TO THE RATES CHARGED UNDER THE CONTRACT IN ORDER TO EXPEDITIOUSLY RECOVER THE COSTS OF TAKING SUCH ACTIONS.

IN LIGHT OF THE FOREGOING, CUSTOMER HEREBY AGREES TO RELEASE AND HOLD LCRA HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY OR DAMAGES TO THE CUSTOMER OR ITS PROPERTY RESULTING FROM THE

FAILURE OF LCRA TO DELIVER WATER BECAUSE THE ABOVE-REFERENCED EQUIPMENT OR CANALS ARE INOPERABLE, UNSAFE TO OPERATE, OR IRREPARABLE.

CUSTOMER FURTHER ACKNOWLEDGES THAT THIS SECTION SHALL NOT PROVIDE THE EXCLUSIVE MEANS OF LIMITING LCRA'S POTENTIAL LIABILITY FOR LCRA'S INABILITY TO SUPPLY WATER, BUT RATHER CUSTOMER ACKNOWLEDGES THAT ANY APPLICABLE PROTECTIONS FROM LIABILITY AFFORDED TO LCRA PURSUANT TO SECTIONS II.H.3 (LIMITATION OF LCRA LIABILITY) OR II.H.1 (FORCE MAJEURE) ARE OF FULL FORCE AND EFFECT.

5. No Third-Party Beneficiary.

The parties hereto are entering into the Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

6. Quality of Water.

LCRA makes no representation as to the quality of the water made available under this Contract. CUSTOMER HEREBY RELEASES LCRA AND AGREES TO HOLD IT HARMLESS FROM ANY AND ALL CLAIMS THAT CUSTOMER HAS OR MAY HAVE AGAINST LCRA RELATED TO THE QUALITY OF WATER DELIVERED UNDER THE CONTRACT OR FOR ANY DIMINUTION IN OR IMPAIRMENT OF THE QUALITY OF WATER MADE AVAILABLE UNDER THIS CONTRACT.

7. Pesticide Application.

Texas Department of Agriculture (TDA) regulates the application of pesticides. CUSTOMER agrees to comply with TDA regulations. Additionally, at least 24 hours prior to the application of pesticides and herbicides, CUSTOMER shall provide notice to the LCRA Irrigation Coordinator.

8. Modifications or Amendments

Any modification of or amendments to the Contract, as well as any waiver of a party's rights or remedies under the Contract, must be in writing to be effective. No representative of either party is authorized to modify or amend any provision of the Contract or to waive any rights or remedies under it except in writing. Failure, neglect, or delay by a party to enforce the provisions of the Contract or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under the Contract and will not in any way affect the validity of the whole or any part of the Contract or prejudice such party's right to take subsequent action.

9. Customer Confidentiality

Section 182.052 of the Texas Utilities Code requires government-operated utilities to notify customers of their right to confidentiality. CUSTOMER is hereby informed of the right to request confidentiality of your address, telephone number, social security number and information relating to the volume or units of utility usage and the amounts billed to or collected from you for utility usage, as contained in our records. If CUSTOMER has made such a request of confidentiality and LCRA

receives an open records request for the information described above, LCRA shall notify CUSTOMER of any filings made to keep such information confidential, and shall keep the information confidential unless required or mandated by law. Please note that the Texas Attorney General has opined that the protections in Section 182.052 only apply to natural persons and do not apply to artificial entities such as corporations or partnerships.

#### I. DISPUTE RESOLUTION

1. CUSTOMER IS OBLIGATED TO FOLLOW THESE DISPUTE RESOLUTION PROCEDURES AND THE DEADLINES CONTAINED HEREIN AS A PREREQUISITE TO CUSTOMER BRINGING ANY SUIT RELATING TO A CUSTOMER DISPUTE OF ANY KIND.
2. In the event CUSTOMER disputes the volume of water used in a Customer Use Summary report, CUSTOMER shall notify the applicable LCRA Irrigation Division Office of such dispute in writing at the address specified in Section II.E.3, within the timeframe defined in Section II.E.5. In the event CUSTOMER disputes the charges billed (but not the volume of water used), CUSTOMER shall notify LCRA of such dispute in writing at the address specified in Section II.E.3, within the timeframe defined in Section II.E.7. In the event of any other dispute or claim brought by CUSTOMER, CUSTOMER shall notify the applicable LCRA Irrigation Division Office of such dispute or claim in writing at the address specified in Section II.E.3, within thirty (30) days of the incident or occurrence giving rise to such dispute or claim.
3. LCRA's Director of Irrigation Operations shall review such dispute and respond to CUSTOMER within two weeks with a proposed resolution, if appropriate.
4. In the event CUSTOMER is not satisfied with the Director of Irrigation Operations proposed resolution, within fourteen (14) days of the issuance of such proposed resolution, CUSTOMER shall appeal such resolution in writing to LCRA's Vice President, Water Operations. CUSTOMER's written appeal should state the factual and legal basis for the appeal.
5. In the event CUSTOMER is not satisfied with the decision of the Vice President, Water Operations, within fourteen (14) days of the issuance of such decision, CUSTOMER shall request in writing, and the parties shall engage in, non-binding mediation with a mediator selected by the parties as though it were referred through the operation of the Texas Alternative Dispute Resolution Procedures Act, Title 7, Chapter 154, Texas Civil Procedures and Remedies Code. Should the parties be unable to agree to a mediator, CUSTOMER shall request the appointment of a mediator from the Presiding Judge of the Travis County District Court.

#### J. CHOICE OF LAW, VENUE, AND WAIVER OF JURY TRIAL

1. This contract shall be governed in all respects by the internal laws of the State of Texas, excluding its rules regarding conflicts of law, and the jurisdiction and venue for any proceeding arising out of or relating to this Contract shall be solely in Travis County, Texas.
2. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY

HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

### III. CONTRACTING RULES

#### A. GENERAL

1. LCRA shall have no obligation to enter into a contract with a Customer (or a business entity in which Customer holds an interest) with an outstanding balance under a contract from the current or a previous agricultural season. LCRA will not allocate interruptible stored water and/or acreage to a Customer (or business entity in which Customer holds an interest) with an outstanding balance as of Feb. 1. This provision also applies in the event the landowner has an outstanding balance.
2. The following customers shall be required to prepay the Minimum Charge at the time of contract execution:
  - a. a customer that on Feb. 1 of the current year had an unpaid balance from a prior season;
  - b. a customer on property owned by a landowner that on Feb. 1 of the current year had an unpaid balance from a prior season; or
  - ~~c.~~ a customer that was not a customer of LCRA in the prior year, unless the landowner is a party to the contract. If the landowner is a party to the contract along with a tenant farmer, the landowner shall be jointly liable for payment of all charges accruing under the contract.
- ~~2.3.~~ Customer shall ensure that the name on the Farm Service Agency Application matches the name on the Contract.
- ~~3.4.~~ LCRA will not receive orders for, nor supply water to, any acreage that is not under contract.
- ~~4.5.~~ An applicant for water for Supplemental Purposes that is limited to run-of-river water only may submit an application at any time after March 15.

#### B. FIRST AGRICULTURAL SEASON

1. Customers for rice and turf with a Customer Acreage History under the Drought Contingency Plan must submit final intentions with a completed application, no later than Feb. 1. All contracts for first crop rice or turf customers with a Customer Acreage History must be signed and returned by Customer to LCRA by March 10. LCRA reserves the right to not enter into any such contracts which have not been executed and returned within that timeframe.
2. In the event interruptible stored water is available for allocation after allocating to customers with a Customer Acreage History, such allocations will be made to other rice and turf customers pro rata based upon final acreage intentions. Rice and turf customers that do not have an acreage history must submit final intentions with a completed application by Feb. 15. All contracts for rice and turf customers that do not have an acreage history must be executed and returned to LCRA within seven (7) days from the date LCRA provides the contract to Customer.

3. Unless and until all interruptible stored water is allocated within a division, a customer for Supplemental Purposes shall obtain an allocation of interruptible stored water with an amount as specified in Section III.B.4 below. In the event interruptible stored water is available for allocation after allocating to rice and turf customers, such allocations will be made to customers for Supplemental Purposes based upon final acreage intentions. An applicant for water for Supplemental Purposes seeking to be allocated any interruptible stored water that is not allocated to rice or turf customers must submit final intentions with a completed application by March 10. All contracts or contract amendments for Supplemental Purposes that include an interruptible stored water allocation must be executed and returned to LCRA within seven (7) days from the date LCRA provides the contract or amendment to Customer. In the event the executed contract or amendment has not been returned within that timeframe, Customer will not be allocated any interruptible stored water. In the event unallocated interruptible stored water remains after allocating to customers with applications on file on March 10, such allocations will be made on a first-come-first-served basis until all water is allocated, or July 31, whichever comes first.
4. Applicants seeking interruptible stored water allocations in the First Agricultural Season shall contract for a minimum of 0.5 acre-feet per acre, if available, and will be limited to the following amounts in acre-feet per acre:

	First Agricultural Season
Rice at Gulf Coast	3.75
Rice at Lakeside	3.25
Turf	1.75
Row crop / pasture	1.0
Aquaculture	3.0
Wildlife Management	NA

#### C. SECOND AGRICULTURAL SEASON

1. In the event Customer has used all or part of its allocation of Second Agricultural Season interruptible stored water to finish First Agricultural Season, the portion of the Second Agricultural Season allocation used in the First Agricultural Season will be deducted from the amount available during the Second Agricultural Season.
2. A Customer for rice will not receive an allocation of interruptible stored water for second crop if Customer has not taken delivery of water on any fields for first crop by June 30.
3. Interruptible stored water will be allocated to rice and turf customers that are being serviced with water as of June 30, pro rata, based on the number of acres being serviced during the First Agricultural Season. A customer may assign all or part of the Second Agricultural Season interruptible stored water allocation to another customer within the same division by providing the LCRA agricultural division office

with documentation of the assignment on a form acceptable to LCRA by no later than Sept. 28. The party receiving the assignment will be responsible for entering into a contract that includes the assigned allocation; however, the total allocation under the contract will continue to be limited consistent with these rules, including the acre-foot per acre minimum and limits in Section III.C.7. All contracts for rice and turf customers, or contracts for customers for Supplemental Purposes that received an assignment of an interruptible stored water allocation must be signed and returned by Customer to LCRA by Sept. 1. In order for a rice or turf customer to receive an assignment of an interruptible stored water allocation after Sept. 1, such customer must have signed and returned a contract by Sept. 1. In the event such contracts are not signed by Sept. 1, the interruptible stored water allocation will be made available to other customers. LCRA reserves the right to not enter into any such contracts which have not been executed and returned within that timeframe.

4. Unless and until all interruptible stored water is allocated within a division, a customer for Supplemental Purposes shall obtain an allocation of interruptible stored water with an amount as specified in Section III.C.7 below. In the event interruptible stored water is available for allocation after allocating to rice and turf customers, such allocations will be made to customers for Supplemental Purposes based upon final acreage intentions. An applicant for water for Supplemental Purposes seeking to be allocated any interruptible stored water that is not allocated to rice or turf customers must submit final acreage intentions with a completed application by Aug. 1. All contracts or contract amendments for Supplemental Purposes which include an interruptible stored water allocation must be executed and returned to LCRA within seven (7) days from the date LCRA provides the contract or amendment to Customer. In the event the executed contract or amendment has not been returned within that timeframe, Customer will not be allocated any interruptible stored water. In the event unallocated interruptible stored water remains after allocating to customers with applications on file on Aug. 1, such allocations will be made on a first-come-first-served basis until all water is allocated, or Sept. 30, whichever comes first.
5. LCRA will not enter into contracts for Supplemental Purposes after Oct. 1 of any year.
6. Water will not be provided to a field for second crop rice if irrigation of water on such field for first crop is still occurring on or after Aug. 15.
7. Applicants seeking interruptible stored water allocations in the Second Agricultural Season shall contract for a minimum of 0.5 acre-feet per acre, if available, and will be limited to the following amounts in acre-feet per acre:

	Second Agricultural Season
Rice at Gulf Coast	2.5
Rice at Lakeside	2.0
Turf	1.0
Row crop / pasture	0.5

Aquaculture	1.5
Wildlife Management	2.5

#### IV. CANAL OPERATING PROCEDURES

##### A. ORDERING AND DELIVERY PROCEDURES

1. To ensure the most efficient and economical distribution of water, Customer acknowledges and agrees that LCRA shall have sole control of the distribution of the water supply provided under the Contract and shall control all LCRA canals, flumes, drains, and laterals, in accordance with these Rules. In the event terms of the Contract (including Standard Terms and Conditions) and these Canal Operation Procedures conflict, the Contract controls.
2. LCRA's office is open 7 a.m. to 3:30 p.m. Monday through Friday with the exception of holidays. Regular working hours for Irrigation Coordinators (IC) are Monday through Sunday from 7 a.m. to 3:30 p.m. Under normal operating procedures, no changes in the irrigation system will be made after 2 p.m. on weekdays and 11 a.m. on weekends and holidays. Any request for a system change outside of the hours specified for receiving orders in the Contract will be charged a cost recovery rate as specified in the Contract.
3. The IC will make all changes. In the event Customer makes any changes, delivery of water to Customer will be terminated for the remainder of the calendar. (See *also* section II.B.6.)
4. Each IC will have a mobile phone for communication with Customer. While Customer is taking water, Customer shall maintain daily communications with the IC to assist the IC's in daily planning and overall management of the system. Customer shall keep the IC informed of any problems pertaining to watering his field. Customer also shall coordinate fertilizer and chemical application with the IC so he can efficiently plan water ordering and distribution.
5. IC's will log all requests for water. Customer must place a water order a minimum of one (1) day before the water is requested at his field. Turf farms must call the IC before beginning to take water. Customer can only have one open order for water for a delivery structure at a time. (Customer may have open orders for multiple structures or fields at a time.)
6. An IC has a maximum of six (6) days to deliver water to a rice or turf field and a maximum of twelve (12) days to deliver water to a customer for Supplemental Purposes with an interruptible stored water allocation. Day one starts the day water was requested for and not the day water was ordered. (Example: if a rice customer orders water on Monday for Wednesday, then the IC has six days from Wednesday to deliver the water.) Customer acknowledges that the delivery flowrate may vary from the flowrate requested as a result of canal constraints or other operational considerations. Pump changes will be coordinated with water orders and, under normal conditions, water orders will be filled as soon as water is available. A request for switching water constitutes a new order for water. (Example: Water is being delivered to a customer on one field and Customer requests that this water be



switched to another field. This switching constitutes a new order and will be filled in the order in which it was received.) If water has not been furnished prior to the commencement of the sixth day, Customer shall give notice at LCRA's office not less than 12 hours before water is actually desired stating the specific lands to be watered and the facilities to be used, the time when water is desired on each tract, and the time, place, circumstance, and IC or LCRA employee to whom notice was first given. In such event, Customer continues to be prohibited from making any changes as specified in Section IV.A.3 of these Rules.

7. If the IC is delivering water to a field and water is observed running out the bottom of the field, the IC will attempt to notify Customer. However, if the water continues to run out, the IC will shut the water off and give it to the next customer on the order list.
8. The IC has 24 hours from the time water was ordered off to actually turn a delivery structure off. Measurement will not stop until the structure is physically off. (Example: If Customer requests water to be turned off at 10 a.m. Monday then the IC has 24 hours from 10 a.m. Monday to turn the water off. Measurement of the water will stop when the water is physically turned off.) Under normal operating conditions water will be turned off the day requested; however, canal operations require no additional changes be made until the following day.
9. Rainfall Procedures: In instances of high rainfall, all deliveries will be logged off when pumps are turned off. It is the responsibility of the IC to determine if pumping operations will be stopped due to rainfall. Field delivery structures will be turned off at the discretion of the IC. Efforts will be made to maintain all canal levels. Start-up after rainfall will be coordinated with water orders, along with rainfall analysis of the division.
10. All field water delivery data collected by the IC will be entered into the billing system on the second business day following collection, except for data collected on Thursday, Friday and Saturday, which will be entered on Monday. Water use reports will be made available to Customer via an online portal or by other means on a weekly basis for contracts with an interruptible stored water allocation or at least bi-weekly basis for all other contracts. Customer shall notify LCRA in writing within seven (7) business days after the date of the water use reports if Customer disputes the volume. (See Section II.E.5.)
11. IC's will run their line creating a reasonable routine. This will allow Customer to determine an approximate time when the IC will pass Customer's fields or normal meeting location. Once this schedule is established it will only be deviated from if problems develop.
12. Normal operating procedures require the IC make all changes to the irrigation system in the morning. Measurements are taken each day for all structures delivering water. Structures opened in the morning will be measured when the head stabilizes. Depending on the circumstances, structures may be opened in the morning or afternoon. (Example: If the canal needs to build up head pressure the IC will set the mainline canal in the morning and turn water into the field in the afternoon. In this instance, the first measurement may be taken the next morning and this measurement will be recorded for the previous day and the day the measurement was taken.)

13. IC's ride the canals in the afternoon to monitor changes made in the morning and collect measurements from structures opened that morning. IC's check canals for levels, trash, leaks and unauthorized discharges. When pumping volumes are low on an IC's canal and no water orders were filled that morning, the evening run may be eliminated at the discretion of the IC.

14. All pump changes will be made at the discretion of the IC.

## B. MEASUREMENT PROCEDURES

1. If the customer feels measurement techniques affect the ability to deliver adequate water to the field, the customer should communicate with the IC and the local LCRA office to determine if measurement procedure can be improved.

### 2. Water Box

In preparing water box for measurement, care must be taken that the structure is clean and free of large debris. Water boxes come in varying widths and depths ranging from 30 inches to 72 inches. Metal weir blades are attached to water boards to create a sharp, crested orifice opening. The depth to the bottom weir blade is recorded and placed in the computer records. If the depth of the weir blade changes, then the depth must be changed in the computer. A metal weir blade is attached to a water board and used for the top weir blade. The depth of the weir opening is set with spacers. Spacers are two-by-two's cut from 1 inch to 9 inches in length and attached to survey lathes. Upstream and downstream measurements are taken at reference marks set on the sidewall of the water box. Measurements are taken at these points with a metal ruler that measures the depth of water to the hundredth of a foot. The upstream and downstream measurements are taken once each day. These measurements, the time and the date are recorded on the daily log sheet. When the water level is below the top weir blade an open channel flow measurement must be taken.

### 3. Pipe

A pipe can be measured ideally running full or partially full. The area of the pipe submerged is calculated by measuring the depth of flow in the pipe with a measurer ruler. The velocity of the water moving through the pipe is measured with a Global Flow Meter. The velocity measurement is taken by moving the Global Flow Probe vertically through the center of the pipe from the top of the flow to the bottom for a period of 40 seconds or until the average velocity stabilizes. By multiplying the cross sectional area by the average velocity, the flow in cubic feet per second is calculated. Measurements can be taken through a controlled section such as a water box with all the boards pulled in the same manner as a pipe. The depth of flow is measured and multiplied times the width to calculate a cross sectional area. The average volume in cubic feet per second is obtained by multiplying the cross sectional area times the average velocity that is obtained with a Global Flow Meter.

### 4. Grainland Meter

A Grainland Meter is an impeller based measurement device to measure relifts and wells. It requires a full discharge pipe ideally free of debris. The Irrigation Coordinator will record the totalizer readings as necessary. This will generally be on a weekly basis and these readings will be used to determine the total water usage at the end of the agricultural season.