

**SETTLEMENT AGREEMENT BY AND BETWEEN
THE CITY OF AUSTIN
AND THE
LOWER COLORADO RIVER AUTHORITY
REGARDING JOINT WATER RESOURCE MANAGEMENT
AND THE RESOLUTION OF CERTAIN REGULATORY
MATTERS PENDING AT THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EFFECTIVE DATE: JUNE 18, 2007

TABLE OF CONTENTS

I.	RECITALS	4
	A. General Recitals.....	4
	B. Recitals Regarding the Parties.....	5
	C. Recitals Regarding Water Rights and Collaborative Water Supply Management	7
	D. Recitals Regarding Resolution of Certain Regulatory Matters	8
	E. Recitals Regarding Existing and Future Contracts Between the Parties	9
II.	ELEMENTS OF SETTLEMENT AGREEMENT.....	10
III.	DEFINITIONS	10
IV.	WATER RESOURCE MANAGEMENT PARTNERSHIP AND SUPPLEMENTAL WATER SUPPLY AGREEMENT.	13
	A. Water Partnership	13
	B. Supplemental Water Supply Agreement	14
V.	SHARED RIGHTS TO THE BENEFICIAL USE OF RETURN FLOWS.	17
	A. Regulatory Approvals Regarding Ownership and Control of Return Flows.....	18
	B. Interruptible Indirect Reuse by Austin	19
	C. Use of Return Flows by LCRA.	22
	D. Direct Reuse.....	23
VI.	WATER NEEDS FOR AUSTIN’S STEAM ELECTRIC OR OTHER POWER PLANTS	23
VII.	CLARIFICATION OF OBLIGATIONS UNDER 1999 AGREEMENT.	24
	A. Payment Trigger.	24
	B. Accounting for Water Use under Various Water Rights.....	25
	C. Points of Diversion and Diversion Rates.....	26
	D. Town Lake Levels.	27
	E. Drought Contingency Plan.	27
	F. LCRA’s Lometa Water System	28
VIII.	RESOLUTION OF CERTAIN REGULATORY MATTERS	28
	A. LCRA’s Excess Flows Permit Application. TCEQ Application Number 5731 (“Excess Flows Application”).	28
	B. LCRA’s Garwood Application. TCEQ Application Number 15-5434E (“Garwood Application”).	29
	C. LCRA’s Application to Amend its Water Management Plan. TCEQ Application Number 5838 (“WMP Application”).....	30
	D. Bed and Banks/Indirect Reuse Permit Applications. (TCEQ Permit Application Nos. 5779, 5915, 14-5478D, & 14-5482D).....	31
IX.	GENERAL PROVISIONS	31
	A. CONSIDERATION.....	31
	B. WARRANTIES.	31
	C. MUTUAL RELEASES.	32

D.	ATTORNEYS' FEES AND COSTS.....	34
E.	BINDING EFFECT.....	34
F.	INCORPORATION OF EXHIBITS.....	34
G.	ENTIRE AGREEMENT.....	34
H.	SEVERABILITY.....	34
I.	NO THIRD PARTY BENEFICIARIES.....	35
J.	COUNTERPARTS.....	35
K.	EFFECTIVE DATE.....	35
EXHIBITS.....		37
	EXHIBIT A – COA and LCRA Water Resource Management Partnership.....	38
	EXHIBIT B – Return Flows to be Dedicated for Environmental Flow Purposes.....	43
	EXHIBIT C – LCRA Letter to TCEQ Re: Excess Flows Application.....	47
	EXHIBIT D – LCRA Letter to TCEQ Re: Garwood Application.....	48

The City of Austin (“Austin”) and the Lower Colorado River Authority (“LCRA”) enter into this Settlement Agreement Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality (“Settlement Agreement”).

I. RECITALS

A. General Recitals

(1) Austin and LCRA (the “Parties”) enter into this Settlement Agreement to carry out a new, collaborative management structure to jointly administer each entity’s individual water rights as an integrated management system so as to optimize the utilization of available water supplies for both organizations and the Lower Colorado Basin (the “Basin”).

(2) The Parties also wish to resolve disagreements over certain regulatory matters now pending at the Texas Commission on Environmental Quality (“TCEQ”), and to establish how the Parties will share the Beneficial Use of Return Flows discharged from Austin’s current and future wastewater treatment plants.

(3) The Parties also wish to clarify the Parties’ existing contractual commitments related to water supply to resolve uncertainty and reduce the potential for future disputes regarding such commitments.

(4) The Parties believe that optimizing the utilization of the Parties’ available water supplies will also work to benefit other interests in the Basin, especially downstream water users and the environmental flow needs of the Colorado River and the Matagorda Bay system.

B. Recitals Regarding the Parties

- (1) Austin holds water rights to the Colorado River totaling approximately 330,000 acre-feet of water per year (AFY). These include Certificates of Adjudication (COA) Nos. 14-5471, as amended, and 14-5489, as amended (collectively, “Austin’s Existing Water Rights.”).
- (2) The Austin Water Utility currently serves a population of approximately 830,000 people and associated businesses; currently diverts from the Colorado River approximately 165,000 AFY under Austin’s Existing Water Rights and LCRA’s Existing Water Rights for treatment at three separate water treatment plants; and currently discharges approximately 100,000 AFY of Return Flows to the Colorado River from two separate wastewater treatment plants.
- (3) Austin is currently planning and designing a fourth water treatment plant (“WTP 4”) that will draw its water directly from Lake Travis.
- (4) Austin Energy currently owns all or part of five power plants that rely in whole or in part on water drawn from the Colorado River for steam electric purposes. These include the steam electric needs for generating facilities located on Town Lake and Decker Lake; and at the Sand Hill Energy Center; the Fayette Power Project; and the South Texas Project nuclear operating plant. Depending on climate and plant operations, Austin’s water demands for these existing facilities can reach about 40,000 AFY.
- (5) Austin also uses raw water diverted from the Colorado River for purposes of irrigating certain city-owned recreational facilities, such as the sports fields located at Zilker Park in central Austin. Diversion and use of 150 acre-feet raw water is authorized to be used for these purposes on a perpetual basis by Certificate of Adjudication No. 14-

5471, with an additional amount of 1000 acre-feet authorized for use only through December 31, 2011, under COA No. 14-5471A.

(6) LCRA holds water rights to the Colorado River totaling more than 2.1 million AFY. These include the right to divert and use up to 1.5 million AFY from lakes Buchanan and Travis (COA Nos. 14-5478 & 14-5482), and another 636,750 AFY under downstream run-of-river water rights associated with the Gulf Coast (COA No. 14-5476, as amended), Lakeside (COA No. 14-5475, as amended), Garwood (COA No. 14-5434, as amended), and Pierce Ranch (COA No. 14-5477, as amended) operations. LCRA also holds several smaller water rights for Lakes Marble Falls, LBJ (including Ferguson Power Plant), and Inks (COA Nos. 14-5479, 14-5480, & 14-5481), the Lometa Reservoir (Permit No. 5715), interbasin transfer of water to the City of Leander (Permit No. 5677), and for its downstream power plant operations (COA Nos. 14-5474 & 14-5473) (collectively, "LCRA's Existing Water Rights").

(7) As a conservation and reclamation district created under Section 59, Article XVI of the Texas Constitution, LCRA is charged with the control, storing, preservation, and distribution of the waters of the Colorado River and its tributaries within its boundaries for any useful purpose, and may use, distribute and sell such water for any such purpose, as authorized by state law. Currently, LCRA has existing contractual commitments and Board resolutions committing about 510,000 AFY on a firm basis and has supplied approximately 118,500 AFY of stored water and 244,178 AFY of run-of-river water on an average interruptible basis to irrigation customers within the Gulf Coast, Lakeside, and Garwood operations and Pierce Ranch over the last eleven years. These commitments include 63,900 AFY reserved for steam electric purposes at LCRA's own power plants (Ferguson Power Plant, Sim Gideon, Lost Pines, and the Fayette Power Project). From

LCRA's Lake Buchanan and Lake Travis rights, LCRA has dedicated approximately 33,400 AFY to providing water for instream flows and freshwater inflow needs on a firm basis and has provided an average of 71,100 AFY of interruptible water supply for such purposes over the past eleven years. Further, LCRA is currently studying the feasibility of developing up to 150,000 AFY of firm water supply for the San Antonio Water System ("SAWS"). LCRA is a party to a number of agreements that also affect LCRA's management and operation of its water rights, including agreements with Austin (as identified in this Agreement), the Federal Emergency Management Agency, the Colorado River Municipal Water District, Brown County Water Improvement District No. 1, the City of San Angelo, and the STP Nuclear Operating Company.

(8) LCRA is also charged with managing the waters of the lower Colorado River basin to prevent or aid in the prevention of damage to person or property from flooding of the Colorado River and its tributaries, and may provide for the study, correcting, and control of both artificial and natural pollution of all groundwater or surface water of the Colorado River and its tributaries within its boundaries.

C. Recitals Regarding Water Rights and Collaborative Water Supply Management

(1) Austin and Central Texas continue to experience rapid population growth and development, therefore the Parties anticipate that water supply demands will continue to increase in the coming decades.

(2) Although the Parties have contractual relationships related to water supply and water management dating back to the 1930s, LCRA and Austin have more recently sought to employ independent water management strategies to meet their respective projected water supply needs. These recent efforts have given rise to a number of disputes between the Parties concerning the existing contractual relationships, the scope

and magnitude of the Parties' Existing Water Rights and new water rights being requested by the Parties.

(3) Recent studies indicate that collaborative management of LCRA's and Austin's water rights as part of an integrated system offers the Parties the opportunity to optimize the availability of the Parties' water supplies for meeting the water needs of the Parties' customers and the environment, while honoring others' existing water rights. The Parties believe this approach will, in the long-term, maximize the available water supplies and offer cost savings for the Parties' customers by increasing the flexibility available to the Parties in managing water supplies.

(4) Austin and LCRA agree that the best method for pursuing collaborative management of the Parties' water rights is to establish a formal water resource management partnership ("Water Partnership") that will evaluate and implement strategies that will optimize water supplies to meet water needs of the Parties' customers and the environment.

(5) While collaboratively managing these rights in the manner contemplated by this Settlement Agreement, the Parties shall retain full legal ownership of their respective water rights.

D. Recitals Regarding Resolution of Certain Regulatory Matters

(1) Recent regulatory activities concerning water rights have led to legal conflicts between the Parties, primarily regarding ownership and control of Return Flows.

(2) Austin and LCRA wish to resolve these pending legal conflicts so that the Parties will no longer pursue competing objectives, but will instead work in cooperation with each other to the benefit of both Parties and the Basin as a whole.

(3) The Parties agree that the measures identified in this Settlement Agreement will allow the Parties to resolve these legal conflicts.

E. Recitals Regarding Existing and Future Contracts Between the Parties

(1) Austin and the LCRA have entered into various contracts and agreements related to water supply and water management, including but not limited to the agreements dated February 5, 1938, December 15, 1966, December 10, 1987, September 17, 1998, as amended February 3, 2000, and October 7, 1999 (the “1999 Agreement”) and January 1, 2000, as amended on November 17, 2004 (“FPP/SHEC Agreement”), (collectively, the “Existing Water Sale Agreements”).

(2) The 1999 Agreement is intended to provide up to 325,000 AFY from a combination of Austin’s and LCRA’s water rights for Austin’s municipal water supply needs and other beneficial purposes, and additional supplies for steam electric purposes at Town Lake and Decker Lake.

(3) The Parties agree that clarification of the obligations set forth in the Existing Water Sale Agreements is needed to ensure the success of the Water Partnership and to avoid future disputes.

(4) Except as clarified by this Settlement Agreement, this Settlement Agreement is not intended to amend any of the Existing Water Sale Agreements.

(5) Austin will need supplemental water supplies above those contemplated by the Existing Water Sale Agreements, beginning in approximately 2050. An important component of this Settlement Agreement is securing future water supplies to meet Austin’s projected needs of up to 250,000 AFY over and above the water supply contemplated by the Existing Water Sale Agreements, as set forth in Section IV.B.

II. ELEMENTS OF SETTLEMENT AGREEMENT

In consideration of the foregoing recitals and of the mutual benefits, covenants and provisions contained in this Settlement Agreement, and to resolve their existing legal conflicts and address their mutual interest in optimizing the available water supplies and addressing future water supply needs by, the Parties agree to:

- (1) establish the Water Partnership;
- (2) develop a means to share the Beneficial Use of Return Flows;
- (3) take certain actions at the Texas Commission on Environmental Quality;
- (4) clarify the Parties' existing contractual commitments related to water supply; and
- (5) enter into a water supply agreement for supplemental water for the City of Austin.

III. DEFINITIONS

- A. Acre- Foot: The volume of water necessary to cover one acre of surface area to a depth of one foot, which is approximately 325,851 U.S. gallons.
- B. AFY: Acre-feet per year or acre-foot per year.
- C. Austin's Existing Water Rights: Defined at Paragraph I.B(1).
- D. Austin's Service Area: Encompasses: 1) the area within the Impact Fee Service Area Boundary as amended from time to time by the Austin City Council; and 2) the area within the City of Austin Extraterritorial Jurisdiction and Municipal Boundaries as amended from time to time; and 3) all retail and wholesale service areas in which service is provided by the Austin Water Utility within Travis County or any County contiguous to Travis County; and 4) other facilities such as power plants, that are owned in whole or in part by the City of Austin and for which Austin is providing only its share of the water required for the facility wherever located within the Colorado River Basin.

- E. Beneficial Use: Use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose, and shall include conserved water and water provided for instream flows or freshwater inflows to the bays and estuaries.
- F. Carriage Losses: That amount of water that is reasonably expected to be lost due to evaporation, transpiration, recharge, seepage, leakage or other similar losses in the transportation of the water from the point of discharge or release to a point downstream where diversion for Beneficial Use occurs.
- G. Conservation: Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water so that a water supply is made available for future or alternative uses. For purposes of this Settlement Agreement, the term “Conservation” does not, however, include Direct Reuse or Indirect Reuse.
- H. Demand Schedule: The projected schedule of Austin’s 100-year water demands, as agreed upon under Section IV.B(2)(a)(iii) of this Settlement Agreement.
- I. Direct Reuse: The Beneficial Use of: (a) municipal wastewater or industrial wastewater or process water that is under the direct control of a treatment plant owner or operator or industrial facility; or (b) agricultural tailwater, before such wastewater, process water or agricultural tailwater is either disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- J. Effective Date: As specified in Section IX.K.

- K. Existing Water Sale Agreements: Collective name for all previously established contracts and agreements entered into by the Parties and relating to water supply and management, as identified in Section I.E(1) of this Settlement Agreement.
- L. FPP/SHEC Agreement: The water sale contract between the City of Austin and LCRA dated February 3, 2000, and amended November 17, 2004, wherein Austin has purchased from LCRA a firm water supply to use for steam electric purposes at the Fayette Power Project (FPP) and Sand Hill Energy Center (SHEC).
- M. Indirect Reuse: The diversion of water from a watercourse, lake, or other body of state water, for Beneficial Use, including diversion into storage facilities, of a quantity of water that can be attributed to a specific quantity of Return Flows originating upstream of the diversion point.
- N. LCRA's Existing Water Rights: Defined at Paragraph I.B(6).
- O. Parties: The City of Austin ("Austin") and the Lower Colorado River Authority ("LCRA").
- P. Return Flows: Municipal wastewater or industrial wastewater or process water, or agricultural tailwater, that has been disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- Q. Supplemental Water Supply Agreement: The agreement described by Section IV.B.
- R. Water Partnership: The partnership created by Paragraph IV.A. of this Settlement Agreement.
- S. 1999 Agreement: An agreement between the Parties dated October 7, 1999, and entitled "First Amendment to December 10, 1987 Comprehensive Water

Settlement Agreement Between City of Austin and Lower Colorado River Authority.”

IV. WATER RESOURCE MANAGEMENT PARTNERSHIP AND SUPPLEMENTAL WATER SUPPLY AGREEMENT.

A. Water Partnership

(1) LCRA and Austin, as the two largest water right holders in the lower Colorado River basin, have agreed to develop a cooperative management structure, as outlined in **Exhibit A** of this Settlement Agreement. Through this new approach, the Parties will jointly evaluate and implement strategies to optimize water supplies to meet the long-term water needs of all of their customers and the environment.

(2) The Water Partnership will be organized and carried out under the terms of **Exhibit A** of this Settlement Agreement. The Water Partnership will engage in joint water supply planning and management of both entities’ individual raw water supplies as an integrated system, including all existing raw surface water supplies, including Return Flows, of each party and any future water supplies the Water Partnership approves for inclusion. When developing future water supplies, the Parties will consider the needs of their customers and the environment.

(3) The Parties acknowledge and agree that day-to-day management and coordination of the river system will remain LCRA’s responsibility. Day-to-day water/wastewater utility planning and operations will remain the responsibility of each party.

(4) The Parties agree that **Exhibit A** may be amended from time to time by written agreement of the Parties without the need to amend this Settlement Agreement.

(5) The Parties shall retain full legal ownership of their respective water rights while collaboratively managing these rights in the manner contemplated by this Settlement Agreement.

B. Supplemental Water Supply Agreement

(1) To address Austin's future water supply needs while also considering other anticipated long-term water supply needs of LCRA's customers, the Parties agree to negotiate a more detailed Supplemental Water Supply Agreement for up to 250,000 acre-feet per year wherein LCRA would agree to develop and make available to Austin and Austin would agree to pay for a supplemental firm water supply. The Parties acknowledge that such detailed agreement is subject to final approval by the Austin City Council and LCRA Board, which shall be sought on or before August 31, 2007, or at such later date if the LCRA General Manager and Austin City Manager agree in writing to a later time period for obtaining such approval.

(2) The Supplemental Water Supply Agreement must contain specific language reflecting the following general concepts, which the Parties may modify by mutual agreement prior to presenting such agreement to their respective governing bodies:

(a) Quantity, Purpose, and Location of Use

(i) LCRA agrees to work within the Water Partnership to make available to Austin an additional firm water supply for municipal, steam electric, and other beneficial purposes to supplement the water supply provided under the Existing Water Sale Agreements. Use of this supply for steam electric and other power plant purposes shall first be considered by the Water Partnership consistent with Section VI of this Agreement.

(ii) Unless otherwise agreed to by the Parties, Austin may not use the supplemental water to be made available under the Supplemental Water Supply Agreement until its firm water demand exceeds 325,000 AFY.

(iii) The timing and quantity of supplemental water that LCRA will

make available and that Austin will purchase shall be limited by an agreed upon schedule of Austin's projected 100-year water demands ("Demand Schedule"), which shall be developed by the Water Partnership on or before December 31, 2010, and updated every five years thereafter.

(iv) Austin shall use the supplemental water supply to be made available under the Supplemental Water Supply Agreement only within Austin's Service Area; however, Austin agrees that it will not supply such water on a wholesale basis to any third party entity where the wastewater derived from such water is discharged outside the Colorado River basin unless: (a) such transfer is authorized under state law; and (b) Austin includes in any contracts for new customers or any renewed contracts for entities that are existing customers on the effective date of the Supplemental Water Supply Agreement language giving LCRA the right to retrieve and return to the Colorado River basin, at its own expense, any Return Flows attributed to such transferred water.

(b) Payments. Austin shall pay for the supplemental water supply to be made available according to the following conditions:

(i) Payments Upon Initial Use. Upon initial use of water by Austin under the Supplemental Water Supply Agreement, Austin shall pay the applicable LCRA firm water rate in effect at the time Austin begins to use water under the Demand Schedule, including any charges then in effect and applicable to: (1) diversion and use of the water up to the quantities made available in accordance with the Demand Schedule; (2) setting aside water for Austin's use in accordance with the Demand Schedule, or (3) the

use of water in excess of the amount made available in accordance with the Demand Schedule.

(ii) Payment Prior to Initial Use. The Supplemental Water Supply Agreement shall set forth the circumstances under which Austin would make payments, if any, prior to the initial use of water under the Supplemental Water Supply Agreement.

(c) Regulatory Approvals Required; Future Regulations.

(i) LCRA's commitment to supply water shall be conditioned upon LCRA obtaining any and all regulatory and statutory authorizations, if any, that may be needed to allow LCRA to provide the supplemental water supply from any and all supplies the Water Partnership has identified as appropriate supply alternatives consistent with Section IV.B(2)(d). Austin shall support LCRA's efforts to obtain any such authorizations.

(ii) Notwithstanding the foregoing, the Parties shall also acknowledge and agree that, the failure to secure the legal right to divert and use Return Flows as contemplated by Section V.A of this Agreement will not serve to excuse performance of the Parties' obligations under the Supplemental Water Supply Agreement to be developed and executed, except as such obligations relate to any credit for Indirect Reuse contemplated thereby. In addition, if the Parties fail to obtain the required regulatory approvals, both Parties will use their best efforts to take any necessary actions to effectuate the terms of the Supplemental Water Supply Agreement.

(iii) Further, Austin shall agree to comply with LCRA rules and any legal requirements applicable to raw water contracts that may be in effect when

and after Austin begins to use water under the Supplemental Water Supply Agreement, including but not limited to any additional water conservation and drought contingency measures that may be required by state law.

(d) Source of Supply. Consistent with the 1999 Water Sale Agreement, the water supply to be provided by LCRA may include any source of firm water supply legally and physically available to LCRA at the time Austin's actual demand for the water arises, and may include water available, if any, under Austin's water rights and may also include any Return Flows derived from any water supplies made available to Austin, wherever located, but only as set forth by Section V.B. Water supplies to be provided shall be limited to only those which the LCRA Board has specifically approved for consideration in meeting future water needs within the LCRA service area.

(e) Austin's water rights shall be used first to supply Austin's needs under the Supplemental Water Supply Agreement, unless the Water Partnership determines that some other arrangement would serve to further optimize the water available to the Parties.

(3) No Agreement. Should the Parties fail to reach agreement on or obtain the approvals from their respective governing bodies of the Supplemental Water Supply Agreement as contemplated herein, this Settlement Agreement shall become null and void and of no further effect. In such event of termination, each party retains all rights and duties that existed prior to entering into this Settlement Agreement.

V. SHARED RIGHTS TO THE BENEFICIAL USE OF RETURN FLOWS.

Subject to obtaining any required regulatory approvals as may be necessary, the Parties agree to share rights to the Beneficial Use of Return Flows as part of the Parties' collaborative water

resource management system as set forth in this Section IV.A. If the Parties fail to obtain the required regulatory approvals, both Parties agree to use their best efforts to take any necessary actions to effectuate the terms of this Section.

A. Regulatory Approvals Regarding Ownership and Control of Return Flows

(1) Type of Authorization. To implement the Return Flows sharing arrangement contemplated by this Section V, the Parties agree and acknowledge that water rights permits or permit amendments may be required pursuant to Chapter 11 of the Texas Water Code. Within thirty (30) days after the Effective Date of the Supplemental Water Supply Agreement, the Parties agree to initiate efforts to seek from the Texas Commission on Environmental Quality (TCEQ) the permits, amendments or approvals necessary to allow the sharing arrangement for Return Flows as set forth in this Settlement Agreement. The type of regulatory approval the Parties seek shall be determined after further consultation with the TCEQ. The Parties shall mutually agree on the type of regulatory approval that will most effectively and expeditiously carry out the Return Flows sharing agreement set forth in this Section V. The types of regulatory approvals may include (in order of preference) one or more of the following:

- (a) Issuance of a new water rights permit to divert and use Return Flows whereby LCRA and Austin hold an undivided interest in such permit;
- (b) Confirmation by the TCEQ that Return Flows are state water that may be diverted and used by LCRA and Austin under LCRA's and Austin's water rights, as they exist today or may be amended in the future or hereafter obtained, and specifically including LCRA's Water Management Plan and any water rights permit ultimately issued to LCRA under Application No. 5731; or
- (c) Any other mutually agreeable means identified, upon consultation with the

TCEQ, including any contract between the Parties.

(2) Incorporation into Water Management Plan. The Parties further agree that, regardless of the regulatory mechanism ultimately used to secure the legal rights to implement the Return Flows sharing arrangement set forth in this section, such sharing arrangement will be incorporated as appropriate into LCRA's Water Management Plan, and will include any projected allocation and Beneficial Use of Return Flows by LCRA under its water rights, any dedicated use of Return Flows to meet environmental flow needs, any interruptible Indirect Reuse of such Return Flows by Austin, and an assessment of the anticipated impact of such sharing arrangement on the Combined Firm Yield of Lakes Buchanan and Travis.

B. Interruptible Indirect Reuse by Austin

Austin agrees that its Indirect Reuse of Return Flows will be on an interruptible basis as follows:

(1) Environmental Flow Criteria and Carriage Losses.

Austin shall only divert an amount of water from the Colorado River that can be attributed to Return Flows discharged by Austin upstream of the diversion point, less Carriage Losses, only when the specific environmental flow criteria as set forth in **Exhibit B** are satisfied. These environmental flow criteria are designed to assure that Austin's Indirect Reuse does not directly cause adverse impacts to instream flows or freshwater inflows to Matagorda Bay. To the extent that the Return Flows are dedicated to meeting the environmental flow criteria for bay and estuary inflows set forth in **Exhibit B** when Austin is implementing an Indirect Reuse project, such Return Flows shall not be available to either party for diversion. If, however, the Return Flows are dedicated to meeting only an instream flow criteria set forth in **Exhibit B**, such flows may be diverted in accordance with the sharing arrangement downstream of the location at which

the instream flow criteria applies to the extent that such diversions do not result in flow reductions that cause other downstream environmental flow criteria to be violated.

(2) Location and Purpose of Use.

(a) Austin shall only divert Return Flows for Indirect Reuse as set forth in this Section V.B downstream of one or more of its wastewater treatment plants.

(b) Austin shall only divert Return Flows for Indirect Reuse within Austin's Service Area to meet its own municipal water supply needs and up to 3500 acre-feet of steam electric needs at the Fayette Power Project and Sand Hill Energy Center.

(c) If Austin proposes a project to be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new location to the Water Partnership. The Water Partnership will develop approaches to the proposed new location that consider the following factors:

(i) Water quality concerns;

(ii) Streamflow conditions;

(iii) Accounting for the source of water for the proposed location; and

(iv) Any other accounting or environmental issues the Water Partnership deems appropriate.

(3) Implementation Date for Austin's Indirect Reuse.

The Parties agree that Austin's Indirect Reuse of Return Flows at the Sand Hill Energy Center and Fayette Power Project or for municipal purposes will not be implemented until:

(a) Austin has resumed payments under Article IV.H.4. of the 1999 Agreement; and

(b) any regulatory approvals, if necessary, have been obtained to allow such Indirect Reuse as set forth in Section V.A(1).

(4) Accounting Under Existing Water Supply Agreements and Supplemental Water Supply Agreement.

(a) Existing Water Sale Agreements

Notwithstanding any other interpretation of the Existing Water Sale Agreements, the Parties agree that:

(i) Each acre-foot of Return Flows that Austin Indirectly Reuses in any given year shall be counted towards the total number of acre-feet that LCRA is obligated to supply Austin under the Existing Water Sale Agreements.

(ii) Upon implementation of the sharing arrangement, LCRA agrees to provide Austin with a monetary credit on a per acre-foot basis at a one-to-one ratio, such that for each acre-foot of water diverted for Indirect Reuse LCRA shall provide a credit equivalent to the LCRA's then current firm raw water rate, as follows:

(a) Austin's Indirect Reuse at FPP/SHEC shall be credited towards LCRA's obligation to supply up to 3500 acre-feet of water under the FPP/SHEC Agreement and, for any diversions of water in excess of 3500 acre-feet, unless such diverted water is determined to have been legally available to Austin under Certificate of Adjudication No. 14-5471B, Austin shall pay LCRA for water at the applicable water rate for diversions in excess of the Maximum Annual Quantity as stated in the FPP/SHEC Agreement.

(b) Upon resumption of payments under the 1999 Agreement, for every acre-foot of Indirect Reuse implemented by Austin for purposes other than for steam electric purposes under the FPP/SHEC Agreement, LCRA shall provide a credit against the amounts owed under the 1999 Agreement.

(b) Supplemental Water Supply Agreement.

To the extent Return Flows are available for possible Indirect Reuse by Austin, after accounting for applicable environmental flow needs and Carriage Losses, and any credits provided under the Existing Water Sale Agreements as set forth above in subsection (a), Austin may implement Indirect Reuse and receive an appropriate credit against amounts owed for water use under the Supplemental Water Supply Agreement. The method for determining whether Return Flows are available for possible Indirect Reuse, including appropriate environmental flow criteria, and the appropriate credit to be provided under the Supplemental Water Supply Agreement shall be developed by the Water Partnership prior to initiating Indirect Reuse under the Supplemental Water Supply Agreement and shall give due consideration to the source of supply to be made available for Austin's use, the factors identified in subsection V.B(2)(c) for Indirect Reuse located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), and any other restrictions that may be imposed by local, state or federal law in effect at the time the water is made available that may affect the overall availability of such Return Flows for Indirect Reuse under the Supplemental Water Supply Agreement.

C. Use of Return Flows by LCRA.

The Parties agree that, whenever and to whatever extent Austin is not Indirectly Reusing Return Flows in accordance with this Settlement Agreement and to the extent Return Flows cannot be

allocated against any obligation LCRA may have to provide water for freshwater inflow or instream flow needs under its water rights, LCRA shall have the right to use Return Flows for any other Beneficial Use and to account for such Return Flows as state water available for diversion or use under its senior water rights. Such right shall not include the right to make such Return Flows available to Austin except as contemplated by Section IV.B(2)(d) and Section V.B(4) of this Agreement whereby LCRA may count such Return Flows in the total diversions made by Austin under the Existing Water Sale Agreements and the Supplemental Water Supply Agreement contemplated by Section IV.B, but has agreed to provide an appropriate credit for Austin's Indirect Reuse of such Return Flows.

D. Direct Reuse.

The Parties agree that nothing in this Agreement shall affect or reduce the Parties' rights to implement Direct Reuse.

VI. WATER NEEDS FOR AUSTIN'S STEAM ELECTRIC OR OTHER POWER PLANTS

Regarding Austin's water needs for steam electric or other power plant purposes, the Return Flows sharing arrangement contained in this Settlement Agreement is applicable only to Austin's existing water supply needs at the Sand Hill Energy Center and Fayette Power Plant. Should Austin need additional water for any of its other power plants, including new or expanded power plants in which Austin may acquire an ownership interest, the manner in which that supplemental water will be secured shall be referred to the Water Partnership for resolution. Until such time, Austin agrees that it will not use the Return Flow sharing arrangement or the Supplemental Water Supply Agreement contemplated by this Settlement Agreement to address the water supply needs of any other Austin power plants, including new or expanded power plants that Austin may add in the future unless:

(1) Austin decides to provide the needed supply from the water made available by LCRA under the 1999 Agreement at a designated Downstream Point of Diversion or other allowed diversion point under the 1999 Agreement, or

(2) Austin otherwise obtains the written consent of LCRA to provide such Return Flows to its new or expanded power plants under the Supplemental Water Supply Agreement contemplated by Section IV.B of this Settlement Agreement or some other written agreement between the Parties.

VII. CLARIFICATION OF OBLIGATIONS UNDER 1999 AGREEMENT.

A. Payment Trigger.

Article IV.H.(4) of the 1999 Agreement provides that, when the annual average amount of water diverted by Austin during any calendar period of two consecutive years exceeds 201,000 AFY for certain municipal, industrial and/or irrigation use, Austin will pay LCRA for all of such water use in excess of 150,000 AFY in all subsequent calendar years (the "Payment Trigger").

(1) The Parties acknowledge and agree that Austin is currently undertaking both aggressive Conservation programs and the construction of necessary infrastructure to implement Direct Reuse that may affect the date on which the Payment Trigger is reached. Further, LCRA acknowledges that future and certain existing Austin wholesale water supply agreements may require that, at Austin's option, Austin's customers must obtain their own raw water supply contract from LCRA in the future as a means of delaying the date on which payments by Austin will be required under the 1999 Agreement.

(2) Except for the strategies outlined in subsection (1) above, Austin agrees that it will not use alternative water supplies or implement Indirect Reuse to meet its municipal

water supply needs in a manner that would delay the date on which the Payment Trigger is reached.

(3) In the event that Austin chooses to use alternative water supplies or implement Indirect Reuse to meet its municipal water supply needs prior to the time at which Austin has resumed payments under the 1999 Agreement, Austin agrees that LCRA shall count any and all such water use as if it were water supplied by LCRA under the 1999 Agreement.

B. Accounting for Water Use under Various Water Rights

(1) The Parties agree that, notwithstanding Section IV.A of the 1999 Water Sale Agreement, all water to be used by Austin shall first be diverted and allocated against water rights held by Austin, with the remaining amounts to be allocated under any of LCRA's water supplies that LCRA may make available for use under the 1999 Water Sale Agreement, except as may otherwise be agreed upon by the Parties as part of the Water Partnership's efforts to collaboratively manage water supplies. The Parties agree and acknowledge that the exact quantity of water to be allocated from LCRA's firm supplies to satisfy LCRA's commitment under its Existing Water Sale Agreements may change over time as improvements and modifications are made to the manner in which water availability is assessed by LCRA, TCEQ, and the Texas Water Development Board.

(2) Consistent with the Parties' commitment to have a more collaborative relationship, and the obligations contained in the 1999 Agreement and state law, the Parties agree to improve communications and exchange of data and information regarding Austin's daily diversions for various beneficial purposes and to develop a

consistent method for reporting annual water use to the TCEQ to ensure that water use is being accurately accounted for under the Parties' respective water rights.

C. Points of Diversion and Diversion Rates.

The Parties agree that both LCRA and Austin have a need for flexibility in making diversions of water under various water rights and water sale agreements, including the 1999 Water Sale Agreement. To enhance this flexibility, the Parties agree as follows:

(1) Consistent with Article IV.A of the 1999 Agreement, as clarified by VII.B(1) of this Settlement Agreement, LCRA agrees that Austin may increase its allowed maximum daily peak day diversion rate from the Lake Travis Point of Diversion from 150 MGD up to 300 MGD.

(2) Under Article IV.B of the 1999 Agreement, LCRA acknowledges and agrees that Austin may divert raw water from the Colorado River or its tributaries from any reasonable location within Austin's Service Area, including Lake Travis, Lake Austin, Town Lake, and other Downstream Points of Diversion Austin may add on the Colorado River from Longhorn Dam to the Bastrop County line, without limitations on the daily and annual diversion rates and without further written approval from LCRA, except as set forth above in subsection (1) or as may be necessary to comply with any instream flow requirements set forth in the water rights under which such diversions are made. Further, the Parties agree that, if Austin proposes a project to divert above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new location to the Water Partnership. The Water Partnership will develop approaches to the proposed new location that consider the following factors:

- (i) Water quality concerns;

- (ii) Streamflow conditions;
- (iii) Accounting for the source of water for the proposed location; and
- (iv) Any other accounting or environmental issues the Water Partnership deems appropriate.

The Parties acknowledge that the addition of some diversion points or changes in diversion rates under Austin's Existing Water Rights may require the approval of TCEQ and hereby agree to cooperate in seeking such approvals as are reasonably necessary to effectuate this agreement.

(3) Austin acknowledges and agrees that LCRA needs additional flexibility to use whichever of its water rights that it deems necessary and appropriate to allow it to make water available to Austin under the 1999 Agreement from sources other than Certificates of Adjudication No. 14-5478 (Lake Buchanan) & 14-5482 (Lake Travis), as amended, and to use whichever of its water rights that it deems necessary and appropriate to make water available to other LCRA customers. The Parties hereby agree to cooperate in seeking appropriate regulatory approvals to obtain such operational flexibility.

D. Town Lake Levels.

Considering the limitations placed on LCRA's obligation to provide water for industrial cooling purposes in Town Lake under Article IV.(E) of the 1999 Agreement, the Water Partnership shall be charged with developing a proposal to address maintenance of lake levels for Town Lake after the Holly Power Plant is closed. Such proposal shall include both the source of water supply and allocation of cost for such water supply.

E. Drought Contingency Plan.

Austin agrees that, consistent with Section IV.N of the 1999 Agreement, LCRA's Water Management Plan, and state law, it must develop a drought contingency plan for use of the water

supplied under the 1999 Agreement that reflects consideration of the supply made available by LCRA and the targets and goals set forth in the LCRA Drought Contingency Plan.

F. LCRA’s Lometa Water System

Notwithstanding Special Condition 5.A(2) in Austin’s Certificate of Adjudication No. 14-5471, Austin agrees that it will not assert a priority call on any water to be supplied by LCRA to the Lometa Water System for municipal and domestic purposes from any water right that LCRA may lease or acquire that has a priority date that is junior to November 15, 1900.

VIII. RESOLUTION OF CERTAIN REGULATORY MATTERS

The Parties agree to the following:

A. LCRA’s Excess Flows Permit Application. TCEQ Application Number 5731 (“Excess Flows Application”).

(1) Within thirty (30) days of the effective date of the Supplemental Water Supply Agreement, LCRA will file a letter with TCEQ in a form substantially similar to **Exhibit C** attached hereto clarifying that LCRA will not make priority calls upon Return Flows to enhance LCRA’s right to divert any water granted in this permit during times when and to the extent that Austin is Indirectly Reusing Return Flows consistent with this Settlement Agreement unless the Parties determine such priority call is necessary to allow the diversion and Beneficial Use of such Return Flows by Austin after consultation with the TCEQ, as contemplated by Section V.A(1), nor will LCRA seek to restrict Austin’s Direct Reuse. LCRA shall request from the TCEQ a permit condition confirming this agreement.

(2) If there is a contested case hearing on the Excess Flows Application, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 Tex. Admin. Code Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that

subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

B. LCRA's Garwood Application. TCEQ Application Number 15-5434E ("Garwood Application").

(1) LCRA will ensure that the amendments sought by LCRA will not render Austin's Existing Water Rights less reliable than they would be if the Garwood Application was not granted.

(2) Within thirty (30) days of the effective date of the Supplemental Water Supply Agreement, LCRA will file a letter with TCEQ in a form substantially similar to **Exhibit D** attached hereto clarifying that it will not make priority calls upon Return Flows, to enhance LCRA's right to divert any water granted under this permit amendment during times when and to the extent that Austin is Indirectly Reusing Return Flows consistent with this Settlement Agreement unless the Parties determine such priority call is necessary to allow the diversion and Beneficial Use of such Return Flows by Austin after consultation with the TCEQ, as contemplated by Section V.A(1), nor will LCRA seek to restrict Austin's Direct Reuse. LCRA shall request from the TCEQ a permit condition confirming this agreement.

(3) If there is a contested case hearing on the Garwood Application, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 TAC Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

C. LCRA's Application to Amend its Water Management Plan. TCEQ Application Number 5838 ("WMP Application").

(1) The Parties hereby agree that LCRA does not need to amend its pending WMP Application to reflect this Settlement Agreement. Rather, LCRA agrees that it will clarify its obligations under this Settlement Agreement, including incorporation of the sharing arrangement for Return Flows in the manner set forth in Section V.A(2), as part of the next amendment of the Water Management Plan for which LCRA seeks approval from TCEQ, which is expected to be filed on or before December 31, 2010. If authorization to divert and use Return Flows consistent with this Settlement Agreement has not been secured by the time the LCRA files its next Water Management Plan, and if the Parties determine that such authority is not likely to be secured through revisions solely to the Water Management Plan, then LCRA shall seek to incorporate the Return Flows sharing arrangement into the Water Management Plan within six (6) months after such legal rights are otherwise secured. LCRA will provide Austin an opportunity to review and comment on these amendments before they are filed. For purposes of supporting the combined firm yield of Lakes Buchanan and Travis, LCRA may only rely upon Return Flows if and up to the extent that such reliance is necessary to prevent a reduction in the combined firm yield of 535, 812 acre-feet per year, as originally approved by the TCEQ's predecessor agency in its order dated September 7, 1989, considering the historical drought of record that was used to calculate such combined firm yield, and shall not impair Austin's right to implement Direct Reuse. Any reliance on an amount of Return Flows in excess of those amounts that may be necessary to support a greater combined firm yield for Lakes Buchanan and Travis, if necessary to implement this Settlement Agreement, shall be approved by the Water Partnership.

(2) If there is a contested case hearing on the WMP Application or any other amendment to the WMP, Austin will seek to become a party to that hearing pursuant to the TCEQ regulations found at 30 Tex. Admin. Code Chapter 55. Once the TCEQ determines that Austin is a party, however, Austin will participate in the hearing process only to the extent necessary to ensure that subsequent permit processing does not injure Austin's Existing Water Rights or contravene this Settlement Agreement.

D. Bed and Banks/Indirect Reuse Permit Applications. (TCEQ Permit Application Nos. 5779, 5915, 14-5478D, & 14-5482D)

Within thirty (30) days of receiving any necessary regulatory approvals to jointly use Return Flows as contemplated by Section V.A(1) of this Settlement Agreement, or a determination by TCEQ that no further authorization is required, LCRA and Austin shall file mutually agreed upon letters with the TCEQ withdrawing, with prejudice, any permit applications related to Indirect Reuse that are left pending at TCEQ at the time such regulatory approval is obtained or determined to be unnecessary.

IX. GENERAL PROVISIONS

A. CONSIDERATION.

Austin and LCRA acknowledge the adequacy of consideration as expressed by the recitations and mutual covenants in this Settlement Agreement.

B. WARRANTIES.

(1) Austin and LCRA each warrant that: (i) it has been fully informed and has full knowledge of the terms, conditions, and effects of this Settlement Agreement; (ii) it, either personally or through its independently retained attorneys, hydrologists and other consultants, has fully investigated to its satisfaction all facts surrounding the various claims, controversies and disputes, and is fully satisfied with the terms and effects of this Settlement Agreement; and (iii) no promise or inducement has been offered or made to it

except as expressly stated in this Settlement Agreement, and this Settlement Agreement is executed without reliance on any statement or representation by Austin or LCRA not expressly stated in this Settlement Agreement and without reliance on any statement or representation by any other party or any other party's agent.

(2) Austin and LCRA each warrant that the undersigned have been fully authorized to execute this Settlement Agreement on its behalf.

C. MUTUAL RELEASES.

(1) Austin does hereby release, acquit, and forever discharge the LCRA, and its officers, directors, partners, agents, attorneys, representatives, employees, affiliates, successors, assigns and insurers, from any and all claims, demands, debts, liability, damages, fees, expenses, or costs of Court, of any and every character and nature whatsoever related in any way to water supply, water rights, and the administration of water rights, whether known or unknown on the date of this Settlement Agreement, either in or arising out of the law of contracts, torts, property rights or the regulation of water, whether arising under statutory or common law, at law or in equity, directly or indirectly attributable in any way to the following: (1) the Existing Water Sale Agreements but only as those agreements relate in any way to water supply, water rights, or the administration of water rights, (2) LCRA's operation under its water rights, including the Water Management Plan, and (3) the filing of LCRA's water rights applications Nos. 14-5478D, 14-5482D, 5838, 5731, or 5434E, or (4) any other claim related in any way to water supply, water rights, and the administration of water rights that could have been brought prior to the Effective Date of this Settlement Agreement. Austin does not, however, release LCRA from any claims accruing after the Effective Date of this Settlement Agreement or the obligations created by this Settlement Agreement, nor does Austin

relinquish its right to become a party to a contested case hearing pursuant to 30 Tex. Admin. Code Chapter 55 for the regulatory matters discussed in Section VIII of this Settlement Agreement in the manner contemplated therein or for future LCRA water rights permit applications or amendments in which Austin may seek to become a party for purposes of protecting the rights and interests obtained under this Settlement Agreement, and to support any water rights applications that seek to optimize the water supplies available to the Parties, including any water rights or other permit applications to be filed by LCRA as part of the LCRA-SAWS Water Project.

(2) LCRA does hereby release, acquit, and forever discharge Austin, and its officers, directors, partners, agents, attorneys, representatives, employees, affiliates, successors, assigns and insurers, from any and all claims, demands, debts, liability, damages, fees, expenses, or costs of Court, of any and every character and nature whatsoever related in any way to water supply, water rights, and the administration of water rights, whether known or unknown on the date of this Settlement Agreement, either in or arising out of the law of contracts, torts, property rights or the regulation of water, whether arising under statutory or common law, at law or in equity, directly or indirectly attributable in any way to the following: (1) the Existing Water Sale Agreements, but only as those agreements relate in any way to water supply, water rights, and the administration of water rights, and (2) the filing of Austin's water rights applications Nos. 5779 & 5915. LCRA does not, however, release Austin from any claims accruing after the Effective Date of this Settlement Agreement or the obligations created by this Settlement Agreement, nor does LCRA relinquish its right to become a party to a contested case hearing pursuant to 30 Tex. Admin. Code Chapter 55 for future Austin water rights permit applications or amendments.

D. ATTORNEYS' FEES AND COSTS.

Each party agrees to bear its own costs and attorneys' fees.

E. BINDING EFFECT.

This Settlement Agreement shall be binding upon, and inure to the benefit of LCRA and Austin, including any affiliates, departments, or divisions thereof, and each of their respective representatives, successors, and assigns.

F. INCORPORATION OF EXHIBITS.

All Exhibits attached to this contract are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

G. ENTIRE AGREEMENT

This Settlement Agreement, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the subject matter of this Settlement Agreement. Each party agrees that the other party (and its agents and representatives) has not made, and has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

H. SEVERABILITY

In the event that any provision of this contract is held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment to the provisions of this Settlement Agreement with the view to effecting, to the extent possible, the original purpose and intent of this Settlement Agreement, and the validity and enforceability of the remaining provisions shall not be affected thereby. Notwithstanding the foregoing, however, the Parties agree and acknowledge that any termination of this Settlement Agreement resulting from the failure of the Parties to enter into a Supplemental Water Supply Agreement as contemplated by Section IV.B shall control over this section and the Parties shall have no obligations to each

other thereafter other than those existing prior to the Effective Date of this Settlement Agreement.

I. NO THIRD PARTY BENEFICIARIES.

Except as expressly provided in this Settlement Agreement, nothing will be construed to confer upon any person or entity other than the parties any rights, benefits or remedies under or because of this Settlement Agreement.

J. COUNTERPARTS.

This Settlement Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same document, and this Settlement Agreement may be executed by facsimile signatures.

K. EFFECTIVE DATE.

This Settlement Agreement shall be effective only when signed by both Austin and LCRA. The Effective Date of this Settlement Agreement shall be the latest date on which Austin or LCRA has signed the Settlement Agreement.

CITY OF AUSTIN

By: Toby Hammett Futrell
Toby Hammett Futrell
City Manager

Date: 6-18-2007

Attest: Kenneth Ramirez

Secretary: KENNETH RAMIREZ

LOWER COLORADO RIVER AUTHORITY

By: Joseph J. Beal
Joseph J. Beal, P.E.
General Manager



Date: 15 June 2007

Attest: Thomas G. Mason

Secretary: Thomas G. Mason

EXHIBITS

EXHIBIT A – COA and LCRA Water Resource Management Partnership

1. **Background:** Water is the lifeblood of Central Texas communities. Austin and LCRA have individually employed traditional water management strategies, focusing on solutions that have often unintentionally led to conflict. These conflicts, if left unresolved, may limit the ability of the Parties to meet their responsibilities as major water suppliers. As population growth and economic factors in the region increase the demand for water, the Parties recognize a different approach is needed. Collaborative water management strategies can offer new opportunities to optimize water supply solutions for the region.
2. **Vision:** Reliable and affordable water, managed in an environmentally responsible and collaborative manner, is critical to the vitality and economy of the region.
3. **Purpose:** LCRA and Austin, as the two largest water right holders in the lower Colorado River basin, have agreed to develop a cooperative management structure. Through this new approach, the Parties will jointly evaluate and implement strategies to optimize water supplies to meet water needs of their customers and the environment.
4. **Scope:** The scope of the partnership agreement will include joint water supply planning, as well as the ability to manage both entities' individual raw water supplies as an integrated system. All existing raw surface water supplies, including Return Flows, of each party will be included in this agreement. Future water supplies will be included as approved by the Executive Management Committee.

Day-to-day management and coordination of the river system including flood management, water quality protection and other functions will remain LCRA's responsibility. Day-to-day water/wastewater utility planning and operations will remain the responsibility of each party.

5. **Cooperative Management Structure.** The Parties shall establish an Executive Management Committee and Technical Water Resources Planning Subcommittee, with the following structure and responsibilities:

A. Executive Management Committee

- i. **Composition:** The Executive Management Committee (EMC) will be composed of two representatives each of Austin and LCRA, to be designated by the chief executive officer of each organization.
- ii. **Duties and Responsibilities.** The EMC will be responsible for carrying out the Purpose and Scope as follows:
 1. establishing and implementing strategic goals and policies,

2. approval of joint water supply strategies and implementation plans,
3. continued supervision and oversight of approved joint water supply strategies and implementation plans,
4. obtaining any necessary approvals from and ensuring compliance with requirements of each party's governing body,
5. coordination of communication with internal and external stakeholders,
6. ensuring adherence to the decision-making guidelines set forth below,
7. creation and general supervision of any subcommittees necessary to carry out the Purpose and Scope, and
8. developing standard operating procedures and bylaws for the EMC and any subcommittees.

B. Technical Water Resource Planning Subcommittee. A Technical Water Resource Planning Subcommittee (Technical Subcommittee) shall be established as follows:

- i. Composition: The Technical Subcommittee will be an interdisciplinary committee comprised of members appointed by the EMC.
- ii. Duties and Responsibilities. The Technical Subcommittee will be responsible for:
 1. Projections of water demands and identification of a wide array of supply alternatives, including Return Flows, and preliminary recommendation of alternatives for consideration by the EMC for further study.
 2. In consultation with the EMC, develop any necessary technical analyses and implementation plans for strategies identified for further study.

C. Decisionmaking Guidelines

- i. Consensus decisions of the EMC shall be made using interest-based problem solving, mindful of the standards and mutual interests of the Parties as set forth below.
- ii. The standards against which water supply strategies shall be evaluated include:
 1. Improve relationships between Austin and LCRA
 2. Cost effective and provides value to both Parties
 3. Obtain stakeholder input in an effort to fairly address multiple needs of the region
- iii. The mutual interests of the Parties to be addressed by any water supply strategy selected by the EMC include:

1. maintaining ownership and protecting the value of each party's individual water rights,
 2. preserving water quality and environmental health of the river and bay system,
 3. improving the Parties' relationship and building trust through enhanced information sharing, cooperation, and partnering,
 4. improving water supply certainty, including enhancing reliability and water availability, and
 5. responsible water resource management, mindful of the Parties commitment to a strong water conservation ethic.
- iv. The Parties may, by consensus, modify the standards and mutual interests to be used in making decisions under this agreement.
 - v. If the EMC cannot reach a consensus decisions on whether to pursue particular water supply strategies recommended by the Technical Subcommittee, then the EMC shall request a decision from the chief executive officers of each organization.

6. Operating Guidelines:

- A. The Parties agree to designate their representatives to the Water Partnership Executive Management Committee (EMC) within 90 days of the final approval of the Supplemental Water Supply Agreement called for in Paragraph IV.B of the Settlement Agreement. The Parties also agree to convene an initial meeting of the EMC within 120 days of execution of the Supplemental Water Supply Agreement.
- B. The initial tasks of the EMC include, but are not limited to:
 - i. Develop operating procedures and by-laws, to include but not be limited to:
 1. Set meeting schedule to initially include a minimum of one EMC meeting per quarter
 2. Set meeting logistics including chair, chair rotation schedule, meeting location, and record keeping, including meeting minutes, workplans, etc.
 3. Set schedule and process to develop scopes and workplans for tasks to be accomplished by the COA and LCRA Water Resource Management Partnership
 4. Set reporting schedule to include a minimum reporting schedule of at least one report to each the Austin City Council and the LCRA Board every two years
 5. Set regular quarterly meeting format to include, as appropriate, but not be limited to:
 - a. Report by each party on all activities that might affect either party's water rights or water supply, which may include any significant developments in the following:
 - i. status of
 - all water rights applications

- water supply development projects (current or proposed Water Management Plan status)
 - any proposed water treatment, wastewater treatment or other related facilities
 - any direct reuse projects
 - water conservation efforts
- ii. status of joint efforts and suggestions for additional joint effort opportunities
 - iii. updates on studies relevant to water supply availability
 - iv. updates on relevant environmental issues and implementation of environmental policies
 - v. relevant legislative updates including new statutes and pending legislation relating to water supply of the Parties
 - vi. Relevant administrative matters before the State Office of Administrative Hearings
 - vii. Updates on significant actions or decisions by the Texas Commission on Environmental Quality
 - viii. Update on water rates revisions
 - ix. Information on water sales, water usage, major diversions, new customers, and projected water demands (short and long-term)
 - x. Update on any LCRA Water Management Plan planned amendments
 - xi. State Region K regional water planning efforts
 - xii. Update on LCRA Board and Austin City Council actions relevant to
 - xiii. water supply availability
- b. Subcommittee reports
 - c. Other items as determined
6. Set meeting process to initially include a minimum of two work sessions per year.
- a. Work session tasks may include, but not be limited to:
 - i. develop joint basin management strategies in keeping with the mutual interests of the parties as outlined in Exhibit A. Section 5. C. iii., and updated, as needed, by the EMC.
 - ii. develop plans for joint studies and projects,
 - iii. develop any joint resolutions, proposed agreements,
 - iv. Formulate subcommittees, as needed
 - v. Evaluate on-going efforts of the COA and LCRA Water Resource Management Partnership including a re-evaluation of the

scope and purpose, including progress of efforts to meet long-term water supply needs

7. Appoint the Technical Water Resource Planning Subcommittee
8. Develop initial scope and workplan to address the following:
 - a. Develop initial scope of tasks to be accomplished in the initial two years, including but not limited to:
 - i. As per Settlement Agreement Section VII. D., develop proposal to address maintenance of Town Lake levels
 - ii. Establish process to evaluate and implement joint water management strategies to optimize water supplies
 - b. Establish coordination of reporting, operations, and diversions
 - c. Develop a list of matters to be monitored by the EMC
 - d. Develop process for determining future tasks and work plans, once initial tasks are complete, including development of demand projections ("Demand Schedule")

EXHIBIT B – Return Flows to be Dedicated for Environmental Flow Purposes

I. Environmental Flow Criteria

At the time of this Settlement Agreement, the Parties have agreed upon the following environmental flow criteria to be applied to the extent that Austin implements Indirect Reuse for purposes that involve allocations against the Existing Water Sale Agreements. Unless otherwise amended by the Water Partnership as contemplated by Section II of this Exhibit, Austin's Indirect Reuse may occur only after Return Flows are first dedicated to help meet certain freshwater inflow and instream flow needs as follows:

(1) Freshwater inflow needs. Before Austin implements any Indirect Reuse, Return Flows shall first be made available in such amounts as are necessary to provide the following monthly freshwater inflows to Matagorda Bay, as measured at the most downstream gage available on the Colorado River (currently the Bay City gage), after accounting for all flows measured in that month at such gage minus any monthly diversions made by water rights holders downstream of such gage:

(a) Critical monthly inflows: a minimum freshwater inflow of 36,000 acre-feet per month,

(b) Intermediate and Target monthly inflows: At such times as LCRA is required to help meet an intermediate or target freshwater inflow need from storable inflows into Lakes Buchanan and Travis under its Water Management Plan, Return Flows shall be provided to satisfy such intermediate or target freshwater inflow needs before any Indirect Reuse of these Return Flows, as follows:

Month	Intermediate Inflow Volume (AF per month)	Target Inflow Volume (AF per month)
January	54,000	205,600
February	54,000	194,500
March	54,000	63,200
April	54,000	60,400
May	54,000	255,400
June	54,000	210,500
July	54,000	108,400
August	54,000	62,000
September	54,000	61,900
October	54,000	71,300
November	54,000	66,500
December	54,000	68,000

(c) Any deficit in the monthly freshwater inflows to be provided from Return Flows in a given month may be made up with additional Return Flows in the first half of the immediately following month.

(2) Instream flow needs at the Bastrop, Columbus and Wharton gages. Before Austin implements any Indirect Reuse, Return Flows shall be made available in such amounts as are necessary to provide the following daily average flows at the Bastrop, Columbus and Wharton gages, after accounting for travel time from the point of Austin's discharge of Return Flows to the locations of these gages and other water projected to be present at such gages:

(a) Subsistence flows. Minimum of the following quantities of daily average flow expressed in cubic feet per second (cfs) at each of the designated locations:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	201	340	311
February	265	525	299
March	265	525	202
April	178	299	267
May	266	424	301
June	195	534	367
July	132	342	209
August	100	132	106
September	100	279	186
October	122	187	145
November	174	202	171
December	180	301	200

(b) Base-Dry Flows. At such times as LCRA is required to help meet base-dry instream flow needs from storable inflows into Lakes Buchanan and Travis under its Water Management Plan at the following locations, Return Flows shall be provided to satisfy such instream flow needs, as follows:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	303	487	487
February	306	590	590
March	265	525	525
April	277	554	554
May	559	966	974
June	404	967	972
July	335	570	570
August	187	310	310
September	228	405	405
October	237	356	356
November	273	480	480
December	300	464	464

(c) Base-Average Flows. At such times as LCRA is required to help meet

base-average instream flow needs from storable inflows into Lakes Buchanan and Travis under its Water Management Plan at the following locations, Return Flows shall be provided to satisfy such instream flow needs, as follows:

Month	Average Daily Instream Flow Need (cfs)		
	Bastrop Gage	Columbus Gage	Wharton Gage
January	418	828	828
February	480	895	895
March	480	1,020	1,024
April	613	977	999
May	796	1,316	1,380
June	708	1,440	1,495
July	590	895	895
August	368	516	516
September	409	610	610
October	418	741	741
November	410	755	755
December	435	737	737

II. Amendment to Environmental Flow Criteria

The environmental flow criteria set forth in Section I of this Exhibit B may be amended by the Water Partnership. Emphasis and weight shall be given to the environmental flow criteria contained in the then-approved LCRA Water Management Plan.

EXHIBIT C – LCRA Letter to TCEQ Re: Excess Flows Application

DATE

Via Hand Delivery

Ms. Iliana Delgado
Water Rights Permitting Team, MC-160
Water Supply Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, Texas 78711-3087

Re: Lower Colorado River Authority's (LCRA's) Excess Flows Permit Application;
TCEQ Application No. 5731

Dear Ms. Delgado:

I am pleased to inform you that the City of Austin and LCRA have reached a settlement concerning a variety of water rights matters pending before the Commission, including the above-referenced application. In accordance with the Settlement Agreement, LCRA wishes to clarify, as necessary, the intended scope of the above-referenced application specifically as it relates to return flows that may be discharged by the City of Austin. Unless the Parties otherwise agree, LCRA has no intention of enhancing its right to divert any water under this permit by making priority calls upon return flows discharged by Austin during times when and to the extent that such return flows may be authorized for indirect reuse as contemplated by the Settlement Agreement. Further, LCRA does not seek to restrict Austin's direct reuse. To the extent considered necessary by TCEQ, LCRA would request a condition to this effect be included in any permit that may be issued.

LCRA and the City of Austin would welcome the opportunity to discuss the details of our Settlement Agreement with you if you have further questions. Please feel free to call me anytime at 473-3378.

Regards,

Lyn Clancy
Associate General Counsel

cc: Ken Ramirez, Attorney for the City of Austin

EXHIBIT D – LCRA Letter to TCEQ Re: Garwood Application

DATE

Via Hand Delivery

Ms. Kathy Hopkins
Water Rights Permitting Team, MC-160
Water Supply Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 3rd Floor
Austin, Texas 78711-3087

Re: Lower Colorado River Authority's (LCRA's) Permit Application to Amend
Certificate of Adjudication No. 14-5434; TCEQ Application No. 14-5434E

Dear Ms. Hopkins:

I am pleased to inform you that the City of Austin and LCRA have reached a settlement concerning a variety of water rights matters pending before the Commission, including the above-referenced application. In accordance with the Settlement Agreement, LCRA wishes to clarify, as necessary, the intended scope of the above-referenced application specifically as it relates to return flows that may be discharged by the City of Austin. Unless the Parties otherwise agree, LCRA has no intention of enhancing its right to divert any water under this permit by making priority calls upon return flows discharged by Austin during times when and to the extent that such return flows may be authorized for indirect reuse as contemplated by the Settlement Agreement. Further, LCRA does not seek to restrict Austin's direct reuse. To the extent considered necessary by TCEQ, LCRA would request a condition to this effect be included in any permit that may be issued.

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Regards,

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