



**RIVERBEND RESOLUTION NO. 20200624-01**

**AUTHORIZING THE EXECUTIVE DIRECTOR/CEO SIGNATURE AUTHORITY TO EXECUTE WATER SUPPLY CONTRACTS WITH MEMBER ENTITIES OF RIVERBEND WATER RESOURCES DISTRICT**

**WHEREAS**, Riverbend Water Resources District (“Riverbend”), created in 2009, is a conservation and reclamation district created under and essential to accomplish the purpose of Section 59, Article XVI, Texas Constitution, as set forth in Title 6, Special District Local Laws Code, Subtitle L, Municipal Water Districts, Chapter 9601, and is comprised of member entities (collectively referred to as “the Member Entities”); and

**WHEREAS**, Riverbend and the Member Entities have collectively worked toward Riverbend becoming the regional wholesale water provider and for Riverbend’s procurement of funding for new regional water infrastructure and improvements; and

**WHEREAS**, Riverbend and the Member Entities have also collectively worked to develop a Water Distribution and Supply Contract that will provide for long-term regional water service to the region; and


**WHEREAS**, Riverbend finds that entering into the Water Distribution and Supply Contract with each Member Entity will provide for a long-term regional water supply and the necessary infrastructure improvements for each Member Entity.

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director/CEO shall be and is immediately granted signature authority to implement the purposes and intent of this resolution, including but not limited to execution of the Water Distribution and Supply Contract containing the material terms set forth in the template attached hereto as Exhibit A, and all related coordination with the Member Entities for full execution and implementation of same.

**PASSED and APPROVED this 24<sup>th</sup> day of June 2020**

  
\_\_\_\_\_  
Sonja Hubbard, President

ATTEST:

  
\_\_\_\_\_  
Marshall Wood, Secretary

Attached: Water Distribution & Supply Contract Example

## WATER DISTRIBUTION AND SUPPLY CONTRACT

THIS WATER DISTRIBUTION AND SUPPLY CONTRACT (“Contract”), made and entered into by and between the Riverbend Water Resources District, a conservation and reclamation district and body politic and corporate, having been created under Article XVI, Section 59 of the Texas Constitution (“Riverbend”) and the City of Leary, Texas (“Member Entity”). Riverbend and Member Entity may be referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, Member Entity is a General Law Type A city under the laws of the State of Texas located in Bowie County, Texas; and

WHEREAS, in 1969, the City of Texarkana, Texas entered into a “Water Supply System Sale-Purchase-Financing Agreement” with Lake Texarkana Water Supply Corporation (“LTWSC”), attached hereto as **Exhibit A**, for the provision of regional water service through the purchase of various assets set forth in Schedule A of that agreement (“Company Facilities”), including the raw water intake at Wright Patman Lake and the New Boston Road Water Treatment Plant located in Texarkana, Texas; and

WHEREAS, also in 1969, the City of Texarkana, Texas, entered into multiple water supply contracts attached hereto as **Exhibit B** with, respectively, the City of Annona, Texas, the City of Avery, Texas, the City of DeKalb, Texas, the City of Hooks, Texas, the City of Maud, Texas, the City of New Boston, Texas, and the City of Wake Village, Texas (“the Texas contracting cities”), for provision of potable water by means of Company Facilities; and

WHEREAS, LTWSC’s bonded indebtedness was retired, LTWSC was involuntarily dissolved effective March 21, 2007, the Texas contracting cities exercised their respective rights under the **Exhibit B** contracts for a proportionate undivided ownership interest in Company Facilities calculated per formula and other criteria set forth in the contracts, and Texarkana, Texas, conveyed such interests to each of the Texas contracting cities; and

WHEREAS, on May 6, 2008, the Texas contracting cities and the City of Texarkana, Texas, entered into an Interlocal Cooperation Agreement establishing a governance group to work cooperatively to create a new water district that would benefit all of the parties to the agreement, and developing enabling legislation that would lead to the creation of Riverbend; and

WHEREAS, effective June 19, 2009, Riverbend was created by the Texas Legislature as a conservation and reclamation district, created under and essential to accomplish the purpose of Section 59, Article XVI, Texas Constitution, codified at Title 6, Special District Local Laws Code, Subtitle L, Municipal Water Districts, Chapter 9601, with statutory powers including the authority to acquire any and all storage rights and storage capacity in a reservoir or other water sources inside or outside the boundaries of Riverbend, and to acquire the right to take water from that reservoir or source, subject to the rights or permits held by municipalities or other persons; and

WHEREAS, in 2010, the City of Texarkana, Texas, and the Texas contracting cities entered into extensions of the 1969 water supply contracts, attached hereto as **Exhibit C**; and

WHEREAS, in 2011, the Texas Legislature reconstituted the Riverbend Board of Directors to be comprised of five (5) qualified voters who are residents within Riverbend's territory, as appointed by the local governing bodies of the Riverbend Member Entities pursuant to Sections 9601.005 and 9601.051 of the Texas Special District Local Laws Code; and

WHEREAS, Riverbend has identified regional water infrastructure projects under the Riverbend Regional Water Master Plan Study, attached hereto as **Exhibit D**, to be completed in order to improve and operate the Company Facilities; and

WHEREAS, Riverbend has also conducted a regional rate study identifying rates for the distribution and provision of water service in a take-or-pay arrangement pursuant to an agreed upon volume of water supply to Member Entity and other surrounding entities for the purpose of supporting the issuance of bonds; and

WHEREAS, as provided in section 21 of the **Exhibit B** contracts, the Texas contracting cities and the City of Texarkana, Texas, agreed that when LTWSC had been retired and proportionate undivided ownership interests in Company Facilities had been conveyed, they would provide appropriate arrangements for continued operation and maintenance of Company Facilities according to circumstances at the time; and

WHEREAS, circumstances today demonstrate aging Company Facilities, increased regional need for potable and non-potable water, and economic development opportunities that may be advanced by construction of regional water infrastructure improvements, and therefore the Parties desire to enter into this Contract to effectuate the improvement of Company Facilities pursuant to the Riverbend Regional Water Master Plan Study (the "Planned Improvements") and provide for regional water service, including that needed by Member Entity; and

WHEREAS, Member Entity acknowledges that Riverbend will be requesting funds from the Texas Water Development Board and/or other state and federal entities in the form of bonded indebtedness, and that this Contract and all other contracts with surrounding entities will be used to support and secure these funds to pay for the Planned Improvements and the operation and maintenance of the regional water distribution system; and

WHEREAS, Member Entity acknowledges that any additional regional improvements or enhancements beyond the Planned Improvements must be approved by separate written agreement, and that this Contract is intended to cover only the Planned Improvements as specifically defined herein; and

WHEREAS, Member Entity and Riverbend acknowledge the obligations of the City of Texarkana, Texas, to continue to supply water through Company Facilities to other contracting entities; and

WHEREAS, Member Entity intends to fix and collect such rates and charges and/or provide for other funds legally available and reasonably assured for the purpose of tendering payment to Riverbend for the Planned Improvements and continued operation and maintenance of Company Facilities (collectively, “Regional Water System Facilities”, as more specifically defined below); and

WHEREAS, said operation and maintenance of Regional Water System Facilities shall include, by separate agreement with the City of Texarkana, Texas, Riverbend’s access to Company Facilities, use of certain water rights obtained by Texarkana, Texas, set out in Certificate of Adjudication No. 03-4836 issued by the Texas Commission on Environmental Quality (“TCEQ”) or its predecessor agency, and use of storage space in Wright Patman Lake as specified in contracts between the United States Government and Texarkana, Texas (Contract No. DACW29-68-A-0103 and Contract No. DACW29-69-C-0019); and

WHEREAS, both Riverbend and Member Entity, acting through their duly constituted governing bodies, have mutually agreed upon the terms and conditions of this Contract; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings set forth herein, the Parties agree and contract as follows:

#### SECTION 1: DEFINITIONS

Terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

- (A) “Advances” means the advance payments, if any, made by Member Entity for initial Riverbend operations pursuant to that 2011 Amendment to Water Purchase Contract, attached hereto as **Exhibit E**, that were paid upfront in exchange for dollar-for-dollar Water Payment Credits that apply to Member Entity’s water purchases at such time as Riverbend begins selling water to Member Entity upon completion of the new water treatment plant portion of the Planned Improvements.
- (B) “Connection” means a single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system, as set forth in Title 30, Texas Administrative Code, Part 1, Chapter 290, Subchapter D, Section 290.38, as it may be renumbered or amended.
- (C) “Effective Date” means the date of last execution by the Parties to this Contract, as set forth in Section 16(m).
- (D) “Excess Water Sold” means any additional water purchased by Member Entity above the Minimum Quantity.
- (E) “Fiscal year” means the twelve month period beginning October 1 and ending September 30, or such other twelve month period as designated by Riverbend.
- (F) “Gpm” means gallons per minute, U.S. standard liquid measure.

- (G) “Minimum Quantity” means the minimum amount of water that shall be purchased by Member Entity per each fiscal year during the Term of this Contract.
- (H) “Minimum Monthly Payment” means the base payment that is calculated according to Section 3 and is automatically billed to Member Entity each month during the Term of this Contract.
- (I) “Planned Improvements” means the construction, improvements and betterments to the regional water treatment and distribution facilities as specifically identified in the attached **Exhibit F**.
- (J) “Point of Delivery” means the master meter location at which Member Entity takes delivery of the wholesale treated water from Riverbend, the location of which is specifically set forth in **Exhibit G**.
- (K) “Regional Capital Improvement Fund” means funds which are restricted to be used for costs of depreciation, rehabilitation and/or repair of the Planned Improvements, and specifically limited to the maximum treatment and distribution capacity of the Planned Improvements. Funds allocated to the Regional Capital Improvement Fund shall only be from those rates in place during the same fiscal year as the transfer of funds to the Regional Capital Improvement Fund.
- (L) “Regional Water System Facilities” means all regional water distribution and treatment facilities previously referred to as “Company Facilities,” together with the Planned Improvements, including Riverbend’s operation and maintenance thereof, and any outstanding debts related to all such facilities.
- (M) “Riverbend Member Entity(ties)” means those entities specifically listed as members of Riverbend under Section 9601.005(a) of the Texas Special District Local Laws Code, as it may be renumbered or amended, and those additional member entities as of the Effective Date of this Contract, including the City of Annona, the City of Avery, the City of DeKalb, the City of Hooks, the City of Leary, the City of Maud, the City of Nash, the City of New Boston, the City of Redwater, the City of Texarkana, Texas, the City of Wake Village, the Central Bowie Water Supply Corporation, the Oak Grove Water Supply Corporation, and the TexAmericas Center. The term shall also include any members added pursuant to Section 9601.005(b) of the Special District Local Laws Code, as it may be renumbered or amended.
- (N) “Riverbend territory” means all of that territory in the Cities of Annona, Avery, DeKalb, Hooks, Leary, Maud, Nash, New Boston, Redwater, Texarkana, Texas, Wake Village, Central Bowie Water Supply Corporation, Oak Grove Water Supply Corporation, and the TexAmericas Center, and shall also include the territory of any municipality, county, or other political subdivision that joins the district as a member, and all that territory added to that of a Riverbend Member Entity by annexation or

other means, as set forth in Section 9601.006 of the Special District Local Laws Code, as it may be renumbered or amended.

- (O) “TCEQ” means the Texas Commission on Environmental Quality, or its predecessor or successor agency, as applicable.
- (P) “Term” means the duration of this Contract as set forth in Section 6.
- (Q) “Transition Date” means the date when the Riverbend Board of Directors determines that Riverbend has the capability to provide potable water in agreed-upon quantities to Member Entity and all other Member Entities by means of the Regional Water System Facilities, as more specifically described in Section 12.
- (R) “Total Monthly Payment” means the Minimum Monthly Payment plus any additional payments required under Section 3, if any, due to Riverbend each month.
- (S) “Ultimate Rule Curve” means “the total operating rule curve storage space” as currently defined or amended in Article 1, section “c”, of the contract between the United States of America and Texarkana, Texas, Contract No. DACW29-68-A-0103, and as authorized by the State of Texas as necessary to implement the permanent lake level of Wright Patman Lake.
- (T) “Water Payment Credit(s)” means the dollar-for-dollar reduction of the total annual payment owed for the Minimum Quantity that is applied through a pro rata reduction to each Minimum Monthly Payment, which shall be disbursed by Riverbend in recognition of and based upon the Advances, if any, paid by Member Entity in accordance with Section 3(g).

## SECTION 2: QUANTITY OF WATER; POINT OF DELIVERY; TITLE

- (a) Minimum Take-or-Pay Quantity. Riverbend will make available to Member Entity at the Point of Delivery defined herein in Subsection (e), and Member Entity agrees to purchase and take at said Point of Delivery, wholesale treated water in an amount not less than 16,693,940 gallons per fiscal year, provided at the Rate of Delivery and pressure stated below in Section 2(j). Member Entity agrees to make the Minimum Monthly Payments calculated as set forth in Section 3 as consideration for such distribution and provision of wholesale treated water and Riverbend’s operation and maintenance of the Regional Water System Facilities during the Term. The Minimum Quantity is based upon the 2017-2018 volumes recorded and set forth in **Exhibit H**. The Minimum Monthly Payments represent monthly installment fees paid in a take-or-pay arrangement for the entire Minimum Quantity of water over the course of the fiscal year. The Minimum Quantity may be adjusted upward in the event Riverbend determines additional water is available, and such increase in the Minimum Quantity amount shall be approved through separate written agreement between the Parties. Any additional water available for sale by Riverbend from the Planned Improvements shall be allocated at the time the water is or becomes available as follows, listed in sequential order of priority:

- (1) First to Riverbend Member Entities, or their respective lessees or grantees, that have submitted written requests for additional or new water to Riverbend pursuant to Section 15, and prioritized among Riverbend Member Entities, or their respective lessees or grantees, based on the order of receipt by Riverbend;
  - (2) Next to existing third-party contract customers of Riverbend that have submitted written requests for additional water to Riverbend, and prioritized among third party contract customers based on the order of receipt by Riverbend; and
  - (3) Lastly, to new third-party contract customers.
- (b) Supply of Water to Member Entity from Other Contracts. Nothing in this Contract shall prevent Member Entity, or any other Riverbend Member Entity, from entering into a water supply contract with any other supplier of water that provides treated water through the supplier's (or Member Entity's) own facilities.
- (c) Unit of Measurement. The unit of measurement for water delivered hereunder shall be each 1,000 gallons of water, U.S. Standard Liquid Measure.
- (d) Additional Water Beyond Minimum Quantity. For all wholesale, treated water provided to Member Entity in excess of that to which it shall be entitled under the Minimum Quantity from the Planned Improvements (the "Excess Water Sold"), Member Entity shall pay the same rate per 1,000 gallons of Excess Water Sold as that established for water sold under the Minimum Quantity. Any Excess Water Sold shall only be delivered by Riverbend on an as-available basis pursuant to Section 2(a), and shall not change the Minimum Quantity set forth herein in any given fiscal year unless otherwise agreed to by the Parties in writing.
- (e) Point of Delivery. The Point of Delivery for the Minimum Quantity or Excess Water Sold to Member Entity shall be as delineated as the location set forth in **Exhibit G** to this Contract.
- (f) Title to all water supplied hereunder shall remain in Riverbend up to the Point of Delivery. Upon passing through Riverbend's meter(s) existing and installed at the Point of Delivery, such title to the water shall pass to Member Entity at all stages of water treatment, uses, reuses, and wastewater treatment and disposition unless otherwise agreed by Member Entity in writing. To the extent permitted by law, the Parties shall be responsible for and agree to SAVE AND HOLD THE OTHER PARTY HARMLESS from all claims, demands and causes of action which may be asserted on account of the transportation, delivery and disposal of said water while title remains in such Party.
- (g) Delivery Limitations. The Parties acknowledge and agree that Member Entity cannot be guaranteed any specific quantity or pressure of water whenever Riverbend's supply of water is limited or when the Regional Water System Facilities may become inoperative or in need of maintenance and repair. Riverbend shall give Member Entity reasonable notice of any possible interruption in the quantity or pressure of water. In the event of a temporary

shortage of water, Riverbend shall distribute the available supply to Member Entity as required by state law, including but not limited to Section 11.039 of the Texas Water Code, as it may be amended or renumbered. In the event of the implementation of water delivery and use restrictions pursuant to Riverbend's Drought Contingency Plan, as amended from time-to-time, which is developed and implemented under Section 11.1272 of the Texas Water Code, as it may be amended or renumbered, Riverbend will limit and restrict Member Entity in the same manner as that for all Riverbend Member Entities and on a pro rata basis. Accordingly, Member Entity shall adopt a Water Conservation Plan and Drought Contingency Plan consistent with those of Riverbend, as they may be amended from time-to-time.

- (h) Limitation on Resale. Except as provided herein, Member Entity shall not sell water supplied by Riverbend other than for retail water service to the Member Entity's current and future customers. Member Entity acknowledges and agrees that Riverbend has or will issue bonds, the interest of which is excludable from the gross income of the owners thereof for federal income tax purposes ("Tax Exempt Bonds"), and that such tax-exempt status will allow Riverbend to borrow funds at interest rates that will be lower than otherwise available to Riverbend, thereby lowering costs to Member Entity and the other Riverbend Member Entities. Certain laws may impose restrictions on the use of proceeds of any such Tax Exempt Bonds and on the use of the facilities and property financed by the Tax Exempt Bonds. As such, and except as provided in Section 2(i), Member Entity will not enter into any water supply contract other than with a retail customer for the provision of water service by Member Entity unless it has notified Riverbend in writing of its intent to enter into such contract and received approval from Riverbend. This section shall be of no further effect upon the retirement of all bonded indebtedness.
- (i) Other Contracts. Nothing in this Contract shall prevent Member Entity, or any other Riverbend Member Entity, from entering into water supply contracts with a supplier that provides treated water other than through Company Facilities that is commingled with other treated water in the Regional Water System Facilities.
- (j) Rate of Delivery and Pressure. Riverbend agrees to make available to Member Entity at the Point of Delivery wholesale treated water in the amounts required by Member Entity up to a rate of delivery of water, which shall be no less than 31.7 gallons per minute at any instant in time. Riverbend shall design and operate its facilities to ensure that treated water is provided to Member Entity at the Point of Delivery at not less than 35 pounds per square inch gauge measurement.

### SECTION 3: PAYMENTS FOR WATER

- (a) Calculation of Minimum Monthly Payment. All payments by Member Entity to Riverbend prior to the Transition Date shall be based only on debt service under Subsection (1) of this section and the payments made pursuant to the agreement in **Exhibit E**. Payments made prior to the Transition Date shall be billed and paid pursuant to Section 3(d). Beginning 30 days prior to the Transition Date, the Minimum Monthly Payment shall be billed monthly as a price per 1,000 gallons of the Minimum Quantity of water purchased by the



Member Entity on a take-or-pay basis for the fiscal year. The rate per 1,000 gallons of water shall consist of the sum total of the following, and as divided into monthly installments for the total Minimum Monthly Payment:

- (1) Debt Service. All amounts required for amortization of the Planned Improvements, including all bonds issued to provide and complete the Planned Improvements to Regional Water System Facilities pursuant to the terms and conditions of the bond authorizing resolutions and including, without limitation, the payment of all principal and interest, fees and charges of paying agents, and for the maintenance of any reserve, contingency or other funds necessary to pay the debt service of Riverbend. It is expressly understood, however, that after all bonds and all interest thereon have been completely paid and discharged, the provisions of this subsection (a)(1) item shall no longer apply in the computation of a rate per 1,000 gallons of water included in the Minimum Monthly Payment.
  - (2) Advanced Rate Reduction Fund. All amounts that accumulate towards the reduction of rates for the purpose of keeping the price per 1,000 gallons of water lower over time in order to prevent rate increases in excess of one-hundred twenty five percent (125%) in such rate per 1,000 gallons of water in a future fiscal year.
  - (3) Maintenance and Operation Expenses. All amounts required by Riverbend for the maintenance, operation and administration of all Regional Water System Facilities. Such expenses shall also include all water storage and water rights expenses as a pass through cost to be included in the calculation of maintenance and operation expenses. In order to determine the actual costs of operating and maintaining the Regional Water System Facilities for the purpose of computing the amount to be paid by Member Entity, Riverbend agrees that it will keep detailed and accurate accounts showing all direct expenses of operation and maintenance, including but not limited to labor and materials, power and pumping costs, purification and transmission costs. In addition, indirect expenses such as insurance, administration and supervision, transportation clearing account, general administrative expenses, including labor and supplies, utilities, rents, and all other expenses shall be accounted for and allocated to operation and maintenance of the Regional Water System Facilities.
- (b) Rates Based on Cost of Service. All rates charged under this section shall be set to recover the cost of service, based on generally accepted rate making principles, including but not limited to those set forth in the American Water Works Association (“AWWA”) Manual M1 on water rates. As part of the budget and planning process set forth in Section 3(f), each year Riverbend shall conduct a Capital Matrix Study that includes recommended regional wholesale rates based on costs of service in determining the regional rate. A copy of the most recent Capital Matrix Study conducted by Riverbend as of the Effective Date of this Contract is attached hereto as **Exhibit I** and incorporated herein for all purposes. The estimated rates per 1,000 gallons of the Minimum Quantity as of the Effective Date of this Contract are based upon a rate study conducted by Riverbend and are set forth in **Exhibit J**, which is attached hereto and incorporated herein for all purposes. Such rates

set forth in **Exhibit J** are general estimates of the rates projected as of the Effective Date, and are not intended to replace the annual budget and official rate setting process set forth in Section 3(f). In addition, Member Entity, along with the other municipal Riverbend Member Entities, approved funding resolutions related to the regional rates and the rate-making process, copies of which are attached hereto as **Exhibit K** and incorporated herein for all purposes.

- (c) **Riverbend Payments.** Riverbend shall also pay the same rate per 1,000 gallons of water as Riverbend Member Entities for all retail treated water sold to Riverbend customers. Pursuant to the budget process set forth in Section 3(f), Riverbend shall set a rate per 1,000 gallons for any raw, untreated water sold for industrial or any other purposes, and any revenues of such raw water sales shall be used to offset the costs of Riverbend's expenses set forth in Section 3(a)(3) calculated to form the rate per 1,000 gallons of wholesale treated water.
- (d) **Monthly Payment Schedule and Billing.** Riverbend shall bill Member Entity monthly for the Total Monthly Payment owed to Riverbend. Such Total Monthly Payment shall include the Minimum Monthly Payment plus any additional costs for additional services or Excess Water Sold during the previous calendar month. Each bill shall be delivered by Riverbend to Member Entity not later than the 15th day of each calendar month, and Member Entity shall make payment of the entire balance of the bill not later than the 15th day of the following month in which the bill is received. All payments shall be received not later than the payment deadline at the Riverbend office address set forth in Section 15.
- (e) **Late Payment.** In the event Member Entity fails to make any payments at the times herein specified, interest on such past due amounts shall accrue at the rate of five percent (5%) per month, or the maximum rate allowed by law, whichever is less, to be prorated as necessary, from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made timely, Riverbend shall have the remedies available under Section 16(j). Nothing in this Contract shall be construed as relieving Member Entity of its obligation to make the payments required by this section.
- (f) **Riverbend Budget.** Not later than August 1st of each fiscal year, commencing with Riverbend's fiscal year in which this Contract becomes effective, Riverbend shall provide Member Entity with a copy of Riverbend's proposed budget for the following fiscal year, showing the budgeted rate per 1,000 gallons on an annual and monthly installment basis, and all components thereof, to be paid by Member Entity for the following fiscal year. Such proposed budget shall also include a detailed report showing all costs and all revenues received under Section 3(a) for the as-current fiscal year. The detailed reporting for budget purposes shall also include Riverbend's sales of raw water for the as-current fiscal year, if any, and the rate at which such raw water was sold. The budget shall also include the percentage of Member Entity's and the Other Member Entities' obligated Minimum Monthly Payments based upon the percentage of each entity's Minimum Quantity to the total water sold to Riverbend Member Entities, for those budget years when such information is applicable. Member Entity shall have thirty (30) days to review and provide written comments on the proposed budget. Riverbend shall adopt its fiscal year budget as soon as

practicable following the expiration of the thirty (30) day comment period. Depreciation shall be budgeted for in each applicable annual budget, and all depreciation values set aside will be maintained in the Regional Capital Improvement Fund. Each annual budget and the financial statements reflecting the balance of the Regional Capital Improvement Fund shall include a line item showing the starting and ending balances of depreciation for each fiscal year. Riverbend will also conduct a comprehensive financial audit at the conclusion of each fiscal year as required by the laws governing Riverbend. The beginning and ending budget balances as of the Effective Date are set forth in **Exhibit L**, which is attached hereto and incorporated herein for all purposes. All payments made pursuant to the agreement in **Exhibit E** shall continue until such time as the Minimum Monthly Payment applies as set forth herein. All fees paid to Riverbend under the **Exhibit E** agreement by Member Entity in the form of Advances to be exchanged for Water Payment Credits for the purchase of water in future years shall be discontinued through the budget process at such time as the new water treatment plant portion of the Planned Improvements is completed and operational and Member Entity begins paying the Minimum Monthly Payment as set forth herein. Water Payment Credits shall be exchanged by Member Entity in accordance with Section 3(g).

- (g) True Up. Beginning with the first budget cycle after the new water treatment plant portion of the Planned Improvements is completed and operational, Riverbend shall annually review its official audit to conduct a “true-up” review for the year to which the audit applies to determine whether there was any over-recovery or under-recovery of operational costs during that fiscal year in relation to Member Entity’s actual usage as compared to the Minimum Quantity paid for on a take-or-pay basis in advance as provided herein. Any over-recovery or under-recovery of costs shall be carried over as a credit or debit owed to Member Entity or Riverbend, as applicable, to the costs included in the budget that are considered to determine the rate and annual payment owed by Member Entity for the following fiscal year. Such annual true up shall also include an exchange of Member Entity’s Advances for Water Payment Credits, if redeemable pursuant to the annual true up review, whereby the total dollar amount of Advances paid by Member Entity shall be credited to the total dollar amount owed for the following fiscal year, applied on a prorated basis through a pro rata reduction in each Minimum Monthly Payment for the year; provided, however that the maximum amount of a Water Payment Credit in one year shall not exceed ten percent (10%) of the total Advances/total Water Payment Credits amount owed to Member Entity. Riverbend shall provide such Water Payment Credits in this manner each year until the Water Payment Credits have been fully disbursed to Member Entity.
- (h) Raw Water and Industrial Water Sales by Riverbend. Except as otherwise provided in any agreement entered into pursuant to Section 2(a), all raw, untreated water not allocated to a Riverbend Member Entity, or their respective lessees or grantees, shall remain in the exclusive possession and control of Riverbend for the benefit of Riverbend Member Entities, or their respective lessees or grantees, whether such benefit be in the form of reservation of water for future use and/or sales to third parties which shall benefit Member Entities pursuant to Subsection (i). Any raw, untreated water available shall be prioritized for sale by Riverbend in accordance with the sequential order set forth in Section 2(a).

- (i) No Subsidizing of Third Party Customers; Priorities on Applying Profits or Excess Revenues. In the event the Regional Water System Facilities are used to provide industrial, commercial, wholesale, raw water, and/or any other type of water distribution or service to third parties that are not a Riverbend Member Entity or their respective lessees or grantees (the “Third Party Sales”), the rate charged for such Third Party Sales shall include the pro rata rate for operating and maintaining the Regional Water System Facilities as that paid by Riverbend Member Entities. It is the intent that all Riverbend Member Entities receive a pro rata share or benefit pursuant to Section 13 from any use of the Regional Water System Facilities to provide Third Party Sales. Any and all profits or revenues generated either by such Third Party Sales or from the sale, lease, or any other authorization to store, divert, and/or use water developed pursuant to the implementation of the Ultimate Rule Curve, regardless of the place or purpose of use, and regardless of whether the water is stored in or diverted from Wright Patman Lake or utilized by other means, shall be applied by Riverbend as follows, listed in sequential order of priority:
- (1) First pay down any Riverbend outstanding bond obligations;
  - (2) If all bonded indebtedness has been retired, next cover a portion of the operational costs to allow for rates to be reduced for all Member Entities; and
  - (3) Remaining revenues shall be paid in dividends on a pro rata basis to Riverbend Member Entities based on percentage of interest as set forth in Section 13. Member Entity has the discretion of whether to accept such dividend in the form of a future credit on one or more Total Monthly Payment(s), through check issued by Riverbend directly to Member Entity, or through contribution to the Regional Capital Improvement Fund, as defined in Section 1(K). If Member Entity elects to have its available dividends issued by check or applied to the Regional Capital Improvement Fund, Member Entity shall specify either method by resolution of its governing body not later than October 1st of each year where a dividend payment applies after receipt of notice from Riverbend that a dividend is owed. Failure of Member Entity to provide Riverbend with a copy of such resolution by October 1<sup>st</sup> upon receiving notice of the availability of dividends shall result in the issuance of the dividend to Member Entity in the form of a future credit.
- (j) Additional Services. In the event Member Entity requests additional services from Riverbend in addition to the Planned Improvements as specifically set forth herein that will be for the exclusive benefit of the Member Entity, or a combination of Member Entity and any other Riverbend Member Entity, Member Entity and Riverbend shall execute a separate written agreement in accordance with Section 7, and any additional payment required thereunder may be billed in addition to the Minimum Monthly Payment for a Total Monthly Payment. Any such payments for additional services shall not be credited towards or change Member Entity’s obligation to pay the Total Monthly Payment as set forth herein.
- (k) Rates of Member Entity. Member Entity agrees to fix and collect such rates and charges for water services to its customers as will, in combination with any other funds legally

available and reasonably assured for the purpose, make possible the prompt payment of all payments due hereunder.

- (l) Unconditional Obligation to Pay. Member Entity recognizes that Riverbend's bonds will be payable from and secured by pledges of the sums of money to be received by Riverbend from Member Entity under this Contract, from the other Riverbend Member Entities under similar contracts, and from other Riverbend customers. In order to make such bonds marketable at the lowest available interest rate, it is to the mutual advantage of Riverbend and Member Entity that Member Entity's obligation to make the payments required hereunder be, and the same is hereby made, unconditional. Consequently, the payments required to be made by Member Entity under the terms of this Contract shall be due and payable as herein specified in any and all events and regardless of whether there shall be, for any reason, a delay in the completion of all or any part of the construction of Planned Improvements, regardless of whether the Regional Water System Facilities shall have been wholly or partially destroyed or damaged and/or whether Riverbend shall have tendered water to Member Entity. This covenant shall be for the benefit of the holders of Riverbend's tax-exempt bonds, secured in whole or in part from revenues of the Regional Water System Facilities. The agreement by Member Entity to make the payments required are separate and independent covenants and Member Entity shall have no right of offset, recoupment, or counterclaim. Member Entity agrees to operate and maintain its water system in such manner and to make such charges for the water and services supplied thereby to all customers so that the revenues derived therefrom will always be adequate to enable Member Entity to promptly make all payments due to Riverbend under this Contract. All payments so made shall be deemed expenses of maintaining and operating Member Entity's water system.
- (m) Operating Expenses. Member Entity represents and covenants that the water supply to be obtained pursuant to this Contract is essential and necessary to the operation of its waterworks system, and that all payments to be made hereunder by it will constitute reasonable and necessary operating expenses of Member Entity's waterworks system as defined in Section 1502.056 of the Texas Government Code, as amended; and that all such payments will constitute reasonable and necessary operating expenses of the Member Entity's waterworks system, under any and all revenue bond issues of Member Entity.
- (n) Payments from Water Revenues. Riverbend shall never have the right to demand payment by the Member Entity of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes levied by the Member Entity. The Member Entity's obligations under this Contract shall never be construed to be a debt of the Member Entity of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the Parties hereto that all payments due by the Member Entity hereunder are to be made from water revenues received by the Member Entity.

#### SECTION 4: WATER QUALITY

Riverbend agrees to operate the treatment and transmission facilities in such manner as is required by the laws of the State of Texas and TCEQ rules up to the Point of Delivery. It is the intent of the Parties that the water supplied under this Contract shall be treated water meeting the potable water requirements of TCEQ and Texas Department of State Health Services, and of their respective successor agencies, as applicable, including at the Point of Delivery.

#### SECTION 5: WATER MEASUREMENT

- (a) Master Meter. Riverbend shall furnish and install at the Point of Delivery by the Transition Date, as defined in Section 1(Q), an electromagnetic-type or ultrasonic-type master meter, or, as technology develops during the life this Contract, a meter with equivalent or superior accuracy and reliability, for measuring the quantity of water delivered to Member Entity under this Contract (the “Master Meter”). Riverbend will, at its sole expense, select, install, test, and maintain the Master Meter based on guidance and practices provided by the American Water Works Association in *AWWA Manual M6*, and will continue to do so at all times during the life of this Contract in conformity with all addenda, amendments, and any other updates to *AWWA Manual M6*. Both Riverbend and Member Entity shall have access to the Master Meter and related equipment and other appurtenances at all reasonable times. Riverbend will at all times keep a true record of all Mater Meter readings. Riverbend will provide Member Entity such information, at a minimum, not later than the 10th day of each month.
- (b) Meter Calibration. Riverbend will be solely responsible for operating, maintaining, testing, and calibrating the Master Meter and all related metering equipment. Riverbend will test the Master Meter calibration, including all related metering equipment, as often as it considers necessary, but in no event less than twice each calendar year. If the results of any calibration test indicate a measurement inaccuracy in excess of two percent (2%), Riverbend will correct its records that reflect the inaccuracy for a period extending back to the time such inaccuracy began, if such time is ascertainable. If the time the inaccuracy began is not ascertainable, then Riverbend will correct its appropriate records for a period extending back one-half of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If the Master Meter is out of service or in need of repair so that Riverbend cannot measure water delivery volumes within two-percent accuracy, Riverbend will correct the error in its records that indicate the amount of water it has delivered or will deliver to the Member Entity during the period the Master Meter is out of service or in need of repair by correcting the error if the percentage of the error is ascertainable by Master Meter calibration tests, or by estimating the quantity of water by the deliveries made during preceding periods under similar conditions when the meter was registering accurately. Riverbend will notify Member Entity in writing at least three business days before it conducts any accuracy testing of the Master Meter. Riverbend will allow Member Entity’s representatives and agents to be present during the testing for observation.

## SECTION 6: TERM OF CONTRACT

This Contract shall be and continue in full force and effect for a period of fifty (50) years following the Effective Date (the “Term”). This Contract shall automatically be extended for two (2) additional ten (10) year terms, unless either Party terminates it at the end of the then current Term by giving the other Party written notice of the intent to terminate at least six (6) months prior to the end of the then current Term.

## SECTION 7: MODIFICATION OF PROVISIONS

This Contract may be modified only by separate written agreement between the Parties, and only following approval of the governing bodies of both Riverbend and Member Entity. No separate written agreement shall be made between the Parties that in any way affects or alters, Member Entity’s Minimum Monthly Payment and all other payment obligations hereunder as such are based on Riverbend’s issuance of bonds.

## SECTION 8: SALES OR USE TAXES

In the event any sales or use taxes, or taxes of any similar nature, are hereafter imposed upon the sale, use, or consumption of the water received by Member Entity under this Contract, the amount of such taxes shall be borne by Member Entity, in addition to all other charges, and whenever Riverbend shall be required to pay, collect, or remit any such taxes on water received by Member Entity then Member Entity shall promptly reimburse Riverbend for such amount.

## SECTION 9: RIVERBEND USE OF MEMBER ENTITY FACILITIES

Member Entity grants permission for Riverbend to use only the Regional Water System Facilities and related infrastructure necessary to provide water to Member Entity, including only that ingress and egress reasonably necessary for access to the Regional Water System Facilities.

## SECTION 10: PLANNED IMPROVEMENTS

The Parties acknowledge and agree that some or all of the Planned Improvements are subject to the issuance of bonds, and that Riverbend is not in a position to guarantee the construction of the Planned Improvements to the Regional Water System Facilities or the date on which such Planned Improvements will be complete. Riverbend agrees, however, to make reasonable, diligent efforts to provide the Planned Improvements, but is not liable to Member Entity for any damages occasioned by delay in funding for any Planned Improvements. It is further understood that any obligation on the part of Riverbend and Member Entity is conditioned upon the successful sale of Riverbend bonds in the amounts required to provide some or all of the Planned Improvements. Member Entity acknowledges and agrees that Planned Improvements identified in **Exhibit F** are necessary for the distribution of wholesale potable water service to Member Entity and the Riverbend Member Entities.

## SECTION 11: FORCE MAJEURE

- (a) The term “Force Majeure” as employed in this Contract means acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemy, orders or actions of any kind of the government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery, partial or entire failure of water supply and inability on the part of Riverbend to deliver water hereunder, or of Member Entity to receive water, on account of any other cause not reasonably within the control of the Party claiming such inability.
- (b) If either Party is unable to carry out its obligations under this Contract because of Force Majeure, then the obligations are suspended during the continuance of the asserted inability, but for no longer period, if the Party notifies the other in writing, within 10 calendar days of the Force Majeure, describing the inability and why it interferes with the notifying Party’s obligations. The Parties shall endeavor to remove or overcome such inability with all reasonable dispatch.
- (c) The settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty. The above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lock-outs by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the Party having the difficulty. No failure of Riverbend to meet any obligation by reason of Force Majeure shall relieve Member Entity from its obligations to make the Minimum Monthly Payment as set forth in Section 3.
- (d) No damage shall be recoverable from Riverbend by reason of the suspension of delivery of water due to any of the causes above mentioned. If Riverbend’s ability to deliver water to Member Entity is affected by any of such causes, Riverbend shall promptly notify Member Entity in writing giving the particulars as soon as practicable after the occurrence of the cause or causes for such interruption.
- (e) It is expressly recognized by Member Entity that Riverbend may be compelled to make necessary alterations, repairs, or extensions of new or additional water transportation facilities from time to time during the Term of this Contract. Suspension of delivery to Member Entity due to such operation shall not be cause for claim of damage on the part of Riverbend, provided that Riverbend will make all reasonable effort to provide Member Entity with water in accordance with this Contract. Riverbend will give Member Entity as much advance notice as may be practicable of the suspension of delivery and of the estimated duration thereof.



SECTION 12: AGREEMENT BETWEEN RIVERBEND AND TEXARKANA, TEXAS;  
RIVERBEND MEMBER ENTITIES

Member Entity has contracted with the City of Texarkana, Texas, for water supply (“the current water supply contract”). Riverbend and the City of Texarkana, Texas, has or will enter into a separate contract regarding the Transition Date. Riverbend shall provide written notice to Member Entity specifying the Transition Date, which shall be delivered not less than 60 days prior to Riverbend’s scheduled delivery of water to Member Entity on the Transition Date. Member Entity agrees that it shall promptly authorize execution of the document contained in **Exhibit M** within 60 days of the Effective Date of this Contract in order for the Transition Date to also function as a termination date of the mutual obligations under the current water supply contract. Riverbend will enter into water supply contracts of similar form to this Contract with other Riverbend Member Entities for the purpose of effectuating the Planned Improvements and provision of regional water service to Riverbend Member Entities.

SECTION 13: FUTURE INTEREST IN FACILITIES

It is agreed by Riverbend that at such time as all bonds or other indebtedness incurred in connection with those facilities owned by Riverbend within the Regional Water System Facilities have been fully paid and discharged, Riverbend will, upon Member Entity’s request, convey to Member Entity an undivided interest in such facilities equal to that percentage of the amount paid by Member Entity under this Contract to discharge the principal of bond obligations issued by Riverbend, as that amount compares to the amount paid by the other Riverbend Member Entities, each of whom shall be entitled to a like conveyance representing their proportionate contributions of like nature to retire such bonds and any other indebtedness. Such conveyance is contingent on Member Entity’s full performance of this Contract through the date all bonds or other indebtedness have been fully paid and discharged.

SECTION 14: ADVISORY COMMITTEE

Member Entity may appoint one of the members of its governing body or one of its officers or employees as a member of an Advisory Committee which will be composed of one member appointed by each of the Riverbend Member Entities. The function of the Advisory Committee will be to consult and advise with representatives of Riverbend concerning the Planned Improvements and any future plans for expansion, methods for improved service, and other matters of mutual interest for regional water distribution. Said Advisory Committee may make recommendations with reference to any related matters to the Riverbend Board.

SECTION 15: NOTICES

Any formal notice, request, or demand provided for in this Contract shall be in writing and shall be considered to have been duly delivered when sent by email, with a copy also to be sent by registered or certified mail to the addresses set forth below. The date of receipt for any registered or certified mail shall serve as the date of delivery. Bills submitted by Riverbend to Member Entity may also be sent by email to the email address set forth below. Contact by phone or facsimile may

be utilized by the Parties as necessary for informal, day-to-day communication regarding the provision of water supply to Member Entity, at the information set forth below.

Any such notice to Riverbend:

Riverbend Water Resources District  
Attn: Executive Director/CEO  
228 Texas Avenue, Suite A  
New Boston, Texas 75570  
Phone: (903) 831-0091  
Facsimile: (903) 831-0096  
Email: kyledooley@rwr.org

Any such notice to Member Entity:

City of Leary  
Attn: City Administrator  
P.O. Box 1799  
Hooks, Texas 75561  
Phone: (903) 826-1653  
Facsimile:  
Email: cityofleary@windstream.net

Either Party may change the address or other contact information for notice to it by giving notice of such change in accordance with the provisions of this section.

#### SECTION 16: MISCELLANEOUS

(a) Recitals and Exhibits. Each of the recitals set forth above is true and correct, and incorporated herein for all purposes. Exhibits A through O attached hereto are incorporated hereby reference for all purposes:

- Exhibit A      1969 “Water Supply System Sale-Purchase-Financing Agreement” between Lake Texarkana Water Supply Corporation and Texarkana, Texas
- Exhibit B      1969 water supply contracts between Texarkana, Texas and the “Texas contracting cities”
- Exhibit C      2010 extensions of 1969 water supply contracts between Texarkana, Texas and the “Texas contracting cities”
- Exhibit D      Riverbend Regional Water Master Plan Study
- Exhibit E      2011 Amendment to Water Purchase Contract
- Exhibit F      Planned Improvements

Exhibit G	Point of Delivery Delineation
Exhibit H	2017-2018 True Up Showing Minimum Quantity Amount
Exhibit I	Capital Matrix
Exhibit J	Rate Study
Exhibit K	Member Entity Funding Resolutions
Exhibit L	Beginning and Ending Balances for Budget Purposes
Exhibit M	Member Entity and Texarkana, Texas Termination Agreement
Exhibit N	Insurance Coverages
Exhibit O	Resolutions Approving this Contract

(b) Insurance. As to all activities undertaken by or on behalf of the Parties, and as a separate and independent obligation hereunder, the Parties shall each carry during the Term of this Contract insurance in the amounts and for the coverages set forth on **Exhibit N**. Within thirty (30) days after the Effective Date, the Parties shall provide each other the current certificates evidencing such insurance coverages, and shall to the extent of the liabilities assumed, require that all of its insurance policies, whether or not required by this Contract, waive subrogation, be primary and noncontributing with respect to any other policies providing coverage, and add the other Party as an additional insured (except for worker's compensation coverage) for the full limits of each such policy and such additional insured coverage shall be provided on a blanket basis without restriction for the sole or concurrent negligence of the additional insureds and not being restricted (i) to "ongoing operations," (ii) to coverage for vicarious liability, or (iii) to circumstances in which the named insured is partially negligent. The Parties shall not cancel or modify such insurance coverages without the other's approval and shall immediately provide notification in writing if such insurance is terminated for any reason.

(c) Severability. The Parties hereto agree that if any of the provisions of this contract contravene or are held invalid under the laws of the State of Texas, such invalid provision shall not invalidate the entire Contract, and the Contract shall be construed as though not containing that particular provision, with the rights and obligations of the Parties to be construed and in force accordingly.

(d) Headings. The captions and headings appearing in this Contract are used merely to facilitate reference and will have no bearing upon its interpretation.

(e) Covenant of Good Faith and Fair Dealings. Riverbend and Member Entity agree to cooperate and to deal with one another fairly and in good faith at all times to effectuate the purposes and intent of this Contract. The Parties also agree to execute and deliver such

further legal documents or instruments and to perform such further acts as are reasonably necessary to effectuate the purposes and intent of this Contract.

- (f) Governing Law and Dispute Resolution. This Contract shall be construed in accordance with and governed by the laws of the State of Texas without regard to principles of conflicts of laws. Any disputes between the Parties arising under this Contract may be resolved according to the following dispute resolution procedures, which are not considered to be a condition precedent to seeking any remedies available in law or equity:
- (1) A meeting shall first be held promptly between the Parties within sixty (60) days from the date of delivery of notice pursuant to Sections 15 and subsection (j) of this section to attempt in good faith to informally negotiate a resolution of the dispute. The required attendees to a meeting held under this subsection shall be one (1) Riverbend Board of Directors representative representing Member Entity, the President of the Riverbend Board of Directors, the Riverbend Executive Director/CEO, and the Mayor and City Manager, if applicable, of Member Entity. Such negotiations may include one or both Parties securing independent auditors or consultants.
  - (2) If resolution is not readily achieved by informal negotiations under Subsection (1) of this section, the Parties may agree to select a neutral third party (“NTP”) to assist in resolution of the dispute. If used, the NTP shall be a person with expertise in the subject matter of the dispute and in the interpretation of contract documents who is immediately available and acceptable to the Parties. The NTP shall promptly convene a private meeting between representatives of the Parties to hear the Parties’ positions and render oral recommendations for resolution of the dispute. The recommendations of the NTP shall not be binding on any Party. By separate written agreement, the Parties may further define the role of the NTP and may expand the NTP to consist of a team of persons possessing the necessary expertise. Use of the NTP is voluntary. No party to this Contract will be deemed to be in breach of this Contract solely because of a refusal to utilize a NTP.
  - (3) At all times during the course of any dispute resolution, the Parties shall continue diligently and without delay to perform the respective services and obligations under this Contract.
  - (4) Each Party shall pay its own costs and expenses, including attorney’s fees, incurred during any facet of dispute resolution procedures set forth in this section. The fees and expenses of the NTP shall be divided equally between the Parties.
- (g) Authority. The Parties agree that the Contract is executed and fully performable in Bowie County, Texas. Each of the individuals signing on behalf of Riverbend and Member Entity hereby confirm that he or she has the authority to execute this Contract on behalf of the Party indicated by their signature and have the authority to bind such Party hereto. The Parties have each approved this Contract through respective resolutions of their governing bodies, attached hereto as **Exhibit O**. The Parties’ resolutions approving this Contract shall also set forth the individual authorized to sign this Contract on behalf of the Party.

- (h) Assignment; No Third Party Beneficiaries.
- (1) This Contract will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns only. This Contract may not be transferred or assigned by either Party, without the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned.
  - (2) Except as otherwise provided herein, nothing in this Contract, express or implied, confers any rights or remedies on any person or entity not a Party hereto other than the successors and assigns of the Parties hereto.
- (i) Entire Agreement. This Contract and the Exhibits attached hereto constitute the entire agreement and understanding between the Parties hereof. No provision of this Contract may be changed, modified, waived or discharged orally, and no change, modification, waiver or amendment of any provision will be effective except by separate written instrument to be executed and approved by the Parties hereto.
- (j) Remedies Upon Default.
- (1) In addition to other remedies available at law or equity, in the event of a monetary default by Member Entity hereunder, including nonpayment on a timely basis of any amount due, that continues for a period of thirty (60) days or more, then Riverbend shall give written notice to Member Entity of such default and request that such default be remedied with all reasonable dispatch. In the event that Member Entity has not cured such default within sixty (60) days after the receipt of such notice, Riverbend may suspend delivery of the Minimum Quantity to Member Entity, and may terminate this Contract and pursue all available remedies against Member Entity in law and equity.
  - (2) In the event of any non-monetary default, upon continuance of the default for a period of thirty (60) days or more, then the non-defaulting Party shall give written notice to the defaulting Party specifying the matter with respect to the default and request that the default be remedied. In the event that defaulting Party has not cured such default within sixty (60) days after the receipt of such notice, the non-defaulting Party may pursue all available remedies against Member Entity in law and equity.
  - (3) The remedies provided for herein are not exclusive, and all other remedies at law or in equity may be availed of by either Party and shall be cumulative, except as otherwise provided herein.
  - (4) To the extent permitted by law, neither Party shall be liable to the other for special, consequential, incidental, punitive, exemplary or indirect damages or lost profits whether arising in agreement, tort, strict liability, or otherwise.
- (k) Waiver. Unless specifically waived in express terms herein, no failure on the part of either Party to this Contract to require the performance by the other Party of any portion of this

Contract will in any way affect either Party's right to enforce such provision, nor will any waiver by either Party be taken or held to be a waiver of any other provision. No rights under this Contract may be waived except by separate written agreement executed by both Parties.

(l) Counterparts. This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(m) Effective Date. This contract shall become effective upon the last date of execution by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed as follows:

RIVERBEND WATER RESOURCES DISTRICT

By:

Printed Name: Kyle Dooley, P.E.

Title: Executive Director/CEO

Date:

ATTEST:

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CITY OF LEARY, TEXAS

By:

Printed Name: B.J. Martin

Title: Mayor

Date:

ATTEST:

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