

C73555
09-0892

**WATER SUPPLY CONTRACT
BETWEEN
THE CITY OF HOUSTON AND
THE SAN JACINTO RIVER AUTHORITY**

THIS WATER SUPPLY CONTRACT ("Contract") is made and entered into by and between the City of Houston, Texas, a home-rule city which is principally situated and has its City Hall in Harris County, Texas (hereinafter called "Houston"), and the San Jacinto River Authority (hereinafter called "SJRA"), a conservation and reclamation district, body politic and corporate and a governmental agency of the State of Texas created and operating under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as amended (compiled as Vernon's Annotated Texas Civil Statutes, Article 8280-121), enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution (such series of acts being hereinafter collectively referred to as the "Act").

WITNESSETH:

WHEREAS, Houston has an undivided two-thirds (2/3) interest in the Lake Conroe Dam and Reservoir ("Project") under the Lake Conroe Contract, defined below, executed between Houston and SJRA; and

WHEREAS, SJRA has an undivided one-third (1/3) interest in the Project under the Lake Conroe Contract; and

WHEREAS, the provisions of the Lake Conroe Contract, defined below, and Water Appropriation Permit No. 1962, relative to the respective obligations of Houston and SJRA to pay their proportionate share of the annual costs of maintaining, operating and repairing the Project during its useful life constitute covenants running with the Project lands and remain in effect; and

WHEREAS, water rights held by Houston and SJRA under Water Appropriation Permit No. 1962 are recognized under Certificate of Adjudication No. 10-4963 (the "Certificate"); and

WHEREAS, Houston and SJRA are authorized to divert or release and use not to exceed 100,000 acre-feet in the Lake Conroe Reservoir ("Lake Conroe") under the Certificate; and

WHEREAS, SJRA will annually request in writing a certain quantity of Raw Water, defined below, out of Houston's Yield, also defined below, and Houston will sell SJRA such quantity of Raw Water under this Contract; and

WHEREAS, Houston is authorized to enter into this Contract pursuant to its City Charter and applicable general laws of the State of Texas, including Texas Water Code 49.068(b); and

WHEREAS, SJRA is authorized to enter into this Contract pursuant to Section 3 of the Act and Sections 49.068(b) and 49.213 of the Texas Water Code.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms are intended and used herein and shall be construed to have meanings as follows:

- (1) The term "Actual Costs" shall mean Houston's actual share of operations, maintenance and certain other costs associated with Lake Conroe, as such costs are described in Sections 4.03, 4.04, and 4.05 of the Lake Conroe Contract.
- (2) The term "Budgeted Costs" shall mean Houston's share of all budgeted costs for Lake Conroe, as such costs are described in Sections 4.03, 4.04, and 4.05 of the Lake Conroe Contract and as approved by Houston in accordance with the Lake Conroe Contract.
- (3) The term "Contract Term" is defined in Section 6.1.
- (4) The term "Director" shall mean the Director of the Department of Public Works and Engineering of the City of Houston, or any successor department, and all persons designated by the Director, to administer the sale and delivery of Raw Water to SJRA under this Contract.
- (5) The term "Effective Date" shall mean the date this Contract is countersigned by the Houston City Controller.
- (6) The term "Houston's Yield" shall mean Raw Water contained in Lake Conroe that Houston has the right to use and divert or release under the Lake Conroe Contract and the Certificate.
- (7) The term "Lake Conroe Contract" shall mean that certain written Contract between SJRA and Houston, dated May 9, 1968, concerning Lake Conroe, and any subsequent legal rights, written amendments, renewals, continuations, consolidations or restatements of same as may be approved by SJRA and Houston from time to time.
- (8) The term "LSGCD" means the Lone Star Groundwater Conservation District.

- (9) The term "MGD" is an abbreviation for million gallons of water per day. As used in this Contract, "MGD" refers to a quantity of Raw Water during a period of time expressed for convenience in terms of an average daily quantity during a calendar month (unless a different period of time is specified).
- (10) The term "Noticed Quantity" shall mean that quantity of Raw Water out of Houston's Yield that SJRA shall purchase and intends to use in the following calendar year as documented by SJRA's written notice under Section 2.2.
- (11) The term "Point of Delivery" shall mean the location at which SJRA takes delivery of Raw Water from Houston under this Contract.
- (12) The term "Point of Measurement" shall mean the location of Houston's meter at which Raw Water purchased by SJRA under this Contract is measured.
- (13) The term "Purchased Quantity" shall mean the quantity of Raw Water out of Houston's Yield delivered to SJRA under this Contract in any given calendar year.
- (14) The term "Raw Water" shall mean untreated surface water.
- (15) The term "Raw Water Rate" shall mean the price per gallon fee assessed by Houston for Raw Water delivery as adopted and amended by Houston City Council and codified in the City of Houston Code of Ordinances.
- (16) The term "Reservation Fee" is defined in Section 2.3 below.
- (17) The term "Reserved Quantity" shall mean the entire quantity of Houston's Yield remaining after the Noticed Quantity is deducted from Houston's Yield for any given calendar year.
- (18) The term "SJRA Diversion Point" shall mean a location from which SJRA or any authorized SJRA customer withdraws Raw Water from Lake Conroe other than at the Point of Delivery.
- (19) The term "SJRA's Yield" shall mean Raw Water contained in Lake Conroe that SJRA has a right to use and divert or release under the Lake Conroe Contract and the Certificate. SJRA's Yield excludes any Raw Water that was originally part of Houston's Yield.
- (20) The term "TCEQ" shall mean the Texas Commission on Environmental Quality and its successor(s).
- (21) The term "Yield" shall mean the total of Houston's Yield and SJRA's Yield.

ARTICLE II

Sale and Delivery of Water

2.1 During the Contract Term, Houston shall sell SJRA and SJRA shall pay Houston for the Noticed Quantity, on an annual basis, subject to the terms and provisions of this Contract. SJRA shall additionally pay Houston for the Reserved Quantity on an annual basis, subject to the terms and provisions of this Contract to ensure that SJRA shall have an option to purchase a portion of Raw Water out of the Reserved Quantity during each calendar year of the Contract Term.

2.2 On or before November 1st of each whole or partial calendar year during the Contract Term, SJRA shall provide Houston a written statement of the Noticed Quantity and Reserved Quantity for the following calendar year. SJRA's written declaration of the Noticed Quantity and Reserved Quantity shall be subject to the following conditions:

- (a) The Noticed Quantity shall be at least 33% of Houston's Yield by calendar year 2025 and each calendar year thereafter.
- (b) SJRA agrees that Purchased Quantity shall be equal to or exceed the Noticed Quantity or SJRA shall pay Houston the difference between (i) the Noticed Quantity and (ii) the Purchased Quantity. This subsection shall prevail over any other provision concerning payment in this Contract.
- (c) Houston may sell or otherwise commit for use all or any portion of the Reserved Quantity during the calendar year for which SJRA has provided the above notice; provided, however, that absent the written consent of SJRA, Houston agrees not to sell, commit or otherwise provide all or any portion of the Reserved Quantity (i) to a person or entity (other than Houston) subject to a groundwater reduction mandate imposed by the LSGCD, or (ii) to a person or entity for a period extending beyond the calendar year for which SJRA has provided the above statement of Noticed Quantity.
- (d) SJRA may purchase all or a portion of the Reserved Quantity during the calendar year for which SJRA has provided the above statement of Noticed Quantity under the same terms and conditions outlined in this Contract, provided that same has not been previously sold or otherwise committed for use by Houston during such calendar year.

2.3 On or before February 1st of each whole or partial calendar year during the Contract Term, SJRA shall pay Houston a reservation fee for such calendar year ("Reservation Fee"). However, Houston shall waive the Reservation Fee during any calendar year in which the Noticed Quantity is at least 75% of Houston's Yield. The Reservation Fee will be equal to an amount calculated as follows:

$$\text{Reservation Fee} = 50\% \times \text{Budgeted Costs} \times \left(\frac{\text{Reserved Quantity}}{\text{Houston's Yield}} \right)$$

2.4 On or before February 1st of each calendar year during the Contract Term, the parties shall make a true-up of accounts, taking into consideration the Reservation Fee paid by SJRA and the Purchased Quantity for the prior calendar year, as well as the Actual Costs. The amount owed by SJRA to Houston ("Debit"), or by Houston to SJRA ("Credit"), will be equal to an amount calculated follows:

$$\text{Debit or Credit} = \text{Reservation Fee} - \left[50\% \times \text{Actual Costs} \times \left(\frac{\text{Houston's Yield} - \text{Purchased Quantity}}{\text{Houston's Yield}} \right) \right]$$

- (a) Should the Reservation Fee be waived under Section 2.3 and the Purchased Quantity not exceed 75% of Houston's Yield, SJRA shall pay a Reservation Fee, in arrears, calculated as follows:

$$\text{Reservation Fee}_{\text{arrears}} = 50\% \times \text{Actual Costs} \times \left(\frac{\text{Houston's Yield} - \text{Purchased Quantity}}{\text{Houston's Yield}} \right)$$

- (b) After 2025, if the Purchased Quantity ends up being less than 33% of Houston's Yield, the Purchased Quantity shall be assumed to equal 33% during the annual true-up of accounts, and in addition to any Credit or Debit calculated pursuant to the above, SJRA shall pay Houston an additional amount so that the Purchased Quantity equals 33% of Houston's Yield.

2.5 With respect to the Purchased Quantity and Raw Water (if any) deemed to have been purchased pursuant to this Contract, SJRA shall pay Houston's prevailing Raw Water Rate in accordance with Section 47-87 of the City of Houston Code of Ordinances or any successor ordinance.

2.6 The Director shall approve Points of Delivery and Points of Measurement prior any diversion of Houston's Yield.

ARTICLE III

Measuring Equipment

3.1 At SJRA's sole cost and expense, SJRA shall furnish and install, at the Point of Measurement, measuring equipment properly equipped with meters, totalizers, lines and devices for

electricity and telephony, transmission devices, and recording devices of a type specified by the Director for measuring and recording the quantity of Raw Water delivered through the Point of Delivery in accordance with Section 3.4. SJRA shall have no other responsibility for furnishing or installing any other infrastructure, such as repeater stations or towers, that may be necessary for Houston to receive a signal from transmission devices at the Point of Measurement. Houston shall own the measuring equipment in fee upon written approval of installation by the Director.

3.2 During all reasonable hours and subject to reasonable safety and security requirements of SJRA, Houston and SJRA shall have access to the measuring equipment after providing notice to the other Party. SJRA may have access to all records pertinent to determining the measurement and quantity of Raw Water actually delivered through the Point of Delivery, but the reading of the measuring equipment for purposes of billing shall be done by Houston on a monthly basis.

3.3 Houston shall maintain the measuring equipment within the accuracy tolerance specified in Section 3.4 by periodic tests. Houston shall conduct accuracy tolerance tests at least once every 12 months and shall notify SJRA at least 48 hours in advance of the time and location at which tests are to be made. If SJRA requests an additional test within 12 months, Houston shall charge SJRA an amount equal to Houston's cost to perform such test unless the test reveals that the equipment registers more than 102% for a given flow rate. In addition, SJRA shall have the right to independently check, at its own cost, said measuring equipment at any time upon 48 hours notification to the Director, who shall have the opportunity to witness such tests. If SJRA adjusts the measuring equipment, SJRA shall pay for any tests, repairs, or corrections to the measuring equipment deemed necessary by the Director. Houston, at the Director's sole discretion, may ratify or provide written prior approval for certain adjustments to the measuring equipment by SJRA.

3.4 Should a test of the measuring equipment in question show that the equipment registers either more than 102% or less than 95% of the Raw Water delivered for a given flow rate, the total quantity of Raw Water delivered to SJRA will be deemed to be the average daily consumption, as measured by the measuring equipment when in working order, and the meter shall be calibrated to Houston standards manufacturer's specifications for meters then in use or to the American Water Works Association ("AWWA") specifications (for all other types of meters) for the given rate of flow, or shall be replaced or repaired by Houston at Houston's cost with accurate measuring equipment that is tested before it is placed in service. This adjustment shall be for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, (i) the adjustment shall be based on readings from SJRA check meters, if installed pursuant to Section 3.6, and if operating within the tolerances described above, for a period extending back to the last test of the measuring equipment, or (ii) the adjustment shall be based on average daily consumption, as described above, for a period extending back to the last test of the measuring equipment or 120 days, whichever is shorter, in the event that SJRA has not installed check meters or if such check meters are not operating within the tolerances described above.

As used in this paragraph, the expression "given rate of flow" means one of the following flow rates. The Director shall choose the "given rate of flow" based on the particular meter installation and consumption for each calibration or test:

- (a) the total quantity of Raw Water delivered during the preceding period (usually a calendar month), as reflected by the totalizer, converted to gallons per minute;
- (b) high, low and intermediate rates of flow in the flow range, as reflected by the flow recording devices;
- (c) manufacturer's specified test flow rates for the size and type of meter.

3.5 SJRA and Houston may settle disputes over the accuracy of the metering equipment by employing an independent company suitable to both SJRA and the Director. The cost of such test will be at SJRA's sole expense. The Director may accept the test results of the independent measuring equipment company, but is not required to do so unless the refusal to accept such results would be arbitrary and capricious.

3.6 SJRA may install, at its own cost and expense, such check meters in SJRA's Raw Water piping as may be deemed appropriate, and subject to reasonable safety and security requirements of SJRA, Houston shall have the right of ingress and egress to such check meters during all reasonable hours; provided, however, that billing computations shall be on the basis of the results of the measuring equipment described in Sections 3.1 through 3.5 above unless such measuring equipment is not operating within required tolerances. SJRA shall perform annual tests, at its own cost and expense, of any metering equipment that it may install under this Section to ensure that such equipment conforms to the "given rate of flow" requirements described in Section 3.4.

3.7 As of January 1 of each calendar year during the Contract Term, any Raw Water passing through the Point of Measurement shall be considered part of the Purchased Quantity for such year until the cumulative amount of the Purchased Quantity for such year equals the Noticed Quantity for such year. After the cumulative amount of Raw Water passing through the Point of Measurement equals the Noticed Quantity for that calendar year, all Raw Water passing through the Point of Measurement shall be considered to be supplied out of SJRA's Yield. At the Director's sole discretion, SJRA may purchase additional Raw Water for use out of the Reserved Quantity after SJRA begins using SJRA's Yield pursuant to Section 2.2(d).

3.8 All Raw Water diverted through an SJRA Diversion Point shall be considered to be supplied by SJRA out of SJRA's Yield and shall be accounted for as provided in the Lake Conroe Contract. In the event of a dispute between the SJRA and Houston over the amount of Raw Water withdrawn from SJRA Diversion Points, SJRA shall have the burden of production and the burden of proof to show the amount of Raw Water withdrawn.

ARTICLE IV

Title to and Responsibility for Water

4.1 Only as between the parties, Houston shall be in exclusive control and possession of, and solely responsible for, all Raw Water deliverable hereunder and solely responsible for any damage or injury caused thereby until the same shall pass through the Point of Delivery, and thereafter, SJRA shall be in exclusive control and possession thereof and solely responsible for any injury or damage caused thereby.

4.2 HOUSTON MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE QUALITY OF RAW WATER TO BE DELIVERED UNDER THIS CONTRACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SJRA HEREBY RELEASES AND DISCHARGES HOUSTON FROM ANY AND ALL FINES, DEMANDS, JUDGEMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE QUALITY OR DELIVERY OF RAW WATER UNDER THIS CONTRACT.

4.3 With respect to all Raw Water handling facilities (if any) located between the Point of Delivery and Point of Measurement, SJRA and Houston specifically agree:

- (a) that all such facilities, other than the measurement equipment itself, shall be and remain the property of SJRA, subject to the terms of this Contract;
- (b) that SJRA shall take all reasonable steps to maintain such facilities and to prevent leaks or discharges from such facilities;
- (c) that SJRA shall repair any such leak or discharge at once upon receiving notice thereof and shall pay Houston the cost of any Raw Water lost by reason of such a leak or discharge; and
- (d) that SJRA shall correct or repair any damage caused by any such leak or discharge and shall hold Houston harmless from and against any such damage and claims therefor.

4.4 SJRA SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY HOUSTON AGAINST ANY THIRD-PARTY CLAIMS ARISING OUT OF SJRA'S NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACTS OR OMISSIONS ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT, EVEN IF IT IS IMMUNE BY VIRTUE OF APPLICABLE WORKERS COMPENSATION LAWS.

ARTICLE V

Reuse

5.1 Houston agrees to a one-time reuse by SJRA of treated wastewater effluent originating as Raw Water from Lake Conroe sold to SJRA under this Contract and discharged at wastewater treatment facilities owned and operated by (i) the SJRA, or (ii) any person or entity participating in SJRA's groundwater reduction plan or similar program implemented by SJRA to facilitate compliance with LSGCD'S groundwater reduction mandates; provided, however, that:

- (a) SJRA provides Houston with written notice of such intended reuse prior to the filing of any necessary applications with the TCEQ, or any successor agency; and
- (b) Such reuse is subject to Houston's reasonable determination that SJRA's proposed reuse will have no material and adverse effect, directly or indirectly, on Houston's water rights, its ability to obtain water rights, or Houston's obligations to dedicate and maintain flows as may be required by regulatory agencies to meet environmental or other regulatory requirements (e.g., environmental flow provisions in Senate Bill 3, enacted by the 80th Texas Legislature, R.S., 2007).

5.2 The parties agree to file joint application(s) with TCEQ regarding the reuse of treated wastewater effluent originating as Raw Water out of Houston's Yield sold to SJRA under this Contract to achieve SJRA's "one-time reuse" of such effluent consistent with subsection 5.1 above and, thereafter, to retain control of all such treated wastewater effluent in order to allow the parties to use the same for other mutually acceptable beneficial purposes, including, but not limited to, the protection of fresh water inflows into bays and estuaries downstream. If reasonably deemed necessary or expedient by SJRA and Houston, such application(s) may additionally include SJRA claims for reuse rights to treated wastewater effluent originating as Raw Water out of SJRA's Yield. The parties agree that further details regarding the preparation of such joint application(s) and the sharing of the costs therefor, the scope of the joint application(s) and intended beneficial uses of said effluent, and the obligations of the parties with respect to administering any permit(s) and sharing the costs therefor, shall be the subject of a supplemental written agreement.

ARTICLE VI

Term

6.1 The term of this Contract (the "Contract Term") shall be for 80 years from the Effective Date.

6.2 If SJRA desires to negotiate a new water supply contract for Houston's Yield ("New Contract"), then prior to noon on the day 70 years from the Effective Date, SJRA may provide Houston irrevocable, written notice of its desire to enter into a New Contract. Within one year of receiving such notice, Houston shall begin good-faith negotiations with SJRA for a New Contract.

This Contract shall continue until the end of the Contract Term or until the parties enter into a New Contract, whichever is sooner.

ARTICLE VII

Environmental Considerations

7.1 On or before the first anniversary of the effective date of this Contract, SJRA shall approve and implement, and throughout the term hereof shall remain in full compliance with, a water conservation plan in accordance with the requirements of the TCEQ. Such plan (and any amendments thereto) shall be submitted to the appropriate authority as required by state law, for review and approval. In the event that the TCEQ adopts new requirements, SJRA shall adopt an amended plan and submit same to the appropriate authority for review and approval.

7.2 SJRA agrees that in the event that SJRA furnishes or sells water to a third party, the requirements of this Contract relative to a water conservation plan shall be met through contractual agreements between the SJRA and the third party or shall be contained in rules of SJRA enacted pursuant to legislative authority providing for the implementation and continued compliance with a water conservation plan consistent with the requirements of the TCEQ.

ARTICLE VIII

Remedies Upon Default

8.1 In addition to other remedies available at law or equity, in the event of a monetary default by SJRA hereunder, including nonpayment on a timely basis of any amount due hereunder, which default shall continue for a period of thirty (30) days or more, then Houston shall give written notice to SJRA of such default and request that such default be remedied with all reasonable dispatch. In the event SJRA, within forty-five (45) days after the receipt of such notice, has failed to remedy such default in full, Houston may suspend delivery of Raw Water to SJRA hereunder, and in the event such default shall continue for an additional thirty (30) days after suspension of Raw Water delivery hereunder, Houston may, by additional written notice to SJRA, cancel and terminate this Contract, whereupon all rights of SJRA and all obligations of Houston hereunder shall terminate and be at an end.

8.2 In addition to the other remedies available at law or equity, in the event of a non-monetary default by SJRA hereunder, which default shall continue for a period of thirty (30) days or more, then Houston shall give notice to SJRA specifying the matter with respect to which SJRA is in default and requesting that the default be remedied with promptness and dispatch. In the event SJRA, within forty-five (45) days after receipt of such notice, has failed to remedy the matter in default, Houston may suspend further delivery of Raw Water to SJRA hereunder, unless (i) the Director reasonably determines that SJRA has begun within seventy-five (75) days of receipt of such notice and continues without cessation substantial good faith efforts to cure the matter in default, or

(ii) SJRA, within such forty-five day time period, shall have disputed such claimed default by written notice to Houston and shall have initiated in good faith proceedings for resolution of such dispute, including proceedings for arbitration, administrative appeal, declaratory judgment or similar judicial review, and in either case, suspension of delivery of Raw Water to SJRA hereunder and/or termination of this Contract shall not be available until such dispute resolution proceedings have been finally resolved in favor of Houston and are no longer subject to appeal by SJRA.

8.3 In the event of any default by Houston in the performance of any of Houston's obligations hereunder which shall continue for a period of thirty (30) days or more, then SJRA shall give written notice to Houston specifying the matter with respect to which Houston is in default and requesting that the default be remedied with promptness and dispatch.

8.4 The failure of either party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party hereto, but the obligation of such party with respect to future performance shall continue in full force and effect.

ARTICLE IX

Force Majeure

9.1 In the event either party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Contract, or in the event SJRA is rendered unable, wholly or in part, by force majeure to operate SJRA's facilities to take or utilize Raw Water available for delivery hereunder, it is agreed that on such party's giving notice and full particulars of such force majeure to the other party as soon as practicable after occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent they are affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused as to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

9.2 The term "force majeure", as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, siltation, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, governmental, regulatory, judicial or administrative restraint or order, acts of upstream appropriators, sabotage, terrorism, explosions, breakage or damage to machinery, equipment pipelines or canals and any other incapacities of either party, whether similar to those enumerated or otherwise and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

9.3 It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty and the above requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

9.4 Houston cannot and does not guarantee constant availability of Raw Water hereunder but does agree to use its best efforts to maintain such availability. In the event of a Raw Water shortage, Houston may reduce the supply of Raw Water to be delivered under this Contract only in accordance with the laws of the State of Texas, particularly Chapter 11 of the Texas Water Code, as amended. It is further agreed that the Houston may, without liability or default, interrupt its service hereunder to make necessary alterations to or repairs in its facilities, but only if such interruption cannot otherwise reasonably be avoided. The Houston shall give reasonable prior notice of any such interruption to SJRA and, to the extent possible, the Houston shall schedule interruptions in advance after consultation with SJRA.

ARTICLE X

Addresses and Notices

10.1 Until SJRA is otherwise notified in writing by Houston, the address of Houston for both notice and payments is and shall remain as follows:

City of Houston Utility Customer Service Division
Contract Water Accounting Section
4200 Leeland
Houston, Texas 77023
Phone: 713-371-1326
Telefax: 713-371-1327
E-mail: ucslegalnotices@cityofhouston.net

Until Houston is otherwise notified in writing by SJRA, the address of SJRA is and shall remain as follows:

General Manager
San Jacinto River Authority
1577 Dam Site Road
Conroe, Texas 77304
Telefax: (936) 588-3043
E-mail: legalnotices@sjra.net

10.2 All written notices required or permitted to be given under this Contract from one party to the other, except for billing and invoices from Houston, shall be given (i) by telefax or electronic mail to the other party at the telefax number or electronic mail address set forth

above, with a hard copy of same mailed within forty-eight (48) hours by certified mail (return receipt requested), with proper postage affixed thereto and addressed to the other party at the address set forth above or at such other address as the other party may designate by written notice, or (ii) by the mailing of same by certified mail (return receipt requested) with proper postage affixed thereto and addressed to the other party at the address set forth above or at such other address as the other party may designate by written notice. Notice by telefax or electronic mail shall be effective upon actual receipt, but not later than the date of actual delivery of same by registered mail, as reflected on the corresponding return receipt. Notice by certified mail shall be effective when actually received, as reflected on the corresponding return receipt. Section 47-87 of the City of Houston Code of Ordinances shall control notices concerning billing and invoices from Houston.

ARTICLE XII

Miscellaneous Provisions

11.1 This Contract shall bind and benefit the parties and their legal successors, shall not otherwise be assignable, in whole or in part, by SJRA without first obtaining the written consent of the Director, which consent shall not be unreasonably withheld with respect to a financially responsible, government-entity assignee of SJRA. Such consent shall be signed by both the Director and the assignee, who shall agree in writing to be bound by the requirements of the Contract. Assignment under this Section shall not relieve SJRA of liability incurred by SJRA under this Contract prior to assignment.

11.2 This Contract shall be for the sole and exclusive benefit of SJRA and its permitted assignees and Houston, and shall not be construed to confer any rights upon any third party. Houston shall never be subject to any liability in damages to any customer of SJRA for any failure to perform under this Contract.

11.3 This Contract shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas and of any regulatory body having jurisdiction.

11.4 This instrument contains all the agreements made between the parties concerning the sale and delivery of Raw Water by the Houston to SJRA at the Point of Delivery set out in this Contract.

11.5 The parties agree and acknowledge that it is the intent of SJRA to purchase and/or reserve the maximum quantity of the Yield of Lake Conroe available to Houston under the Certificate for SJRA's various purposes, and therefore Houston agrees to continue to pursue the amendment to the Certificate pending before the TCEQ, which amendment is intended to permit all of the Yield to be withdrawn for municipal or mixed uses, in addition to any other authorized uses. Houston further agrees that it will not seek an amendment to the Certificate during the Contract

Term which would result in a decrease in either the annual diversion quantity or the daily diversion rate currently authorized under the Certificate without the express written consent of SJRA.

11.6 Harris County is the exclusive and proper venue for all claims arising under this Contract.

11.7 The parties agree and acknowledge that with respect to calendar year 2009, the provisions of Article II shall be superseded as provided in this section. For calendar year 2009, the Noticed Quantity shall be zero (0) acre-feet, and the Reservation Fee shall be calculated accordingly; provided, however, the amount so calculated shall then be multiplied by the result of dividing the number of remaining calendar days in 2009 on and inclusive of the Effective Date by 365. Such pro-rated Reservation Fee for calendar year 2009 shall be due within 90 calendar days following the Effective Date and shall be considered the full amount due and payable for the 2009 Reservation Fee in conducting the true-up of accounts in 2010 under Section 2.4. With respect to calendar year 2010 and any calendar year thereafter during the Contract Term, the provisions of Article II shall control.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto to have signed this Contract in multiple copies, each of which shall be deemed to be an original, but all of which shall constitute but one and the same contract, as of the date of countersignature.

ATTEST/SEAL:

By: [Signature]
Name: Lloyd B. Tisdale
Title: Secretary, Board of Directors

SAN JACINTO RIVER AUTHORITY ("SJRA")

By: [Signature]
Name: R. Gary Montgomery
Title: President, Board of Directors
Date: 9-24-2009

[SEAL]

ATTEST/SEAL:

[Signature]
City Secretary

CITY OF HOUSTON, TEXAS ("Houston")

By: [Signature] *approved by [Signature]*
Mayor of the City of Houston
Date:

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney
L.D. File No. 0800900082001

COUNTERSIGNED:

[Signature]
City Controller [Signature]

APPROVED:

8-11 [Signature] 10/12/09
Director, Department of Public Works & Engineering

DATE OF COUNTERSIGNATURE:

10-16-09