

# TCEQ Interoffice Memorandum

TO: Office of the Chief Clerk  
Texas Commission on Environmental Quality

THRU: *CK* Chris Kozlowski, Team Leader  
Water Rights Permitting Team

FROM: Sarah Henderson, Project Manager  
Water Rights Permitting Team

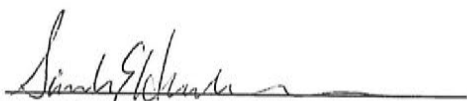
DATE: March 5, 2020

SUBJECT: Fredericksburg Development, Inc.  
WRPERM 13641  
CN605720895, RN110890480  
Application No. 13641 for a Water Use Permit  
Texas Water Code §§ 11.121, 11.143, Requiring Published and Limited  
Mailed Notice  
Unnamed tributary of Barons Creek, Colorado River Basin  
Gillespie County

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2020 MAR -5 PM 2:55  
CHIEF CLERKS OFFICE

The application and fees were received on November 12, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 5, 2020. Published notice and mailed notice to the downstream water right holders of record within the Colorado River Basin is required pursuant to Title 30 Texas Administrative Code §§ 295.151 and 295.153(c).

All fees have been paid and the application is sufficient for filing.



Sarah Henderson, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

OCC Mailed Notice Required  YES

NO

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 5, 2020

Mr. Randy Jenniges, P.E.  
Short Elliott Hendrickson  
133 Otto Eckhardt Road  
Fredericksburg, Texas 78624

RE: Fredericksburg Development, Inc.  
WRPERM 13641  
CN605720895, RN110890480  
Application No. 13641 for a Water Use Permit  
Texas Water Code §§ 11.121, 11.143, Requiring Published and Limited Mailed Notice  
Unnamed tributary of Barons Creek, Colorado River Basin  
Gillespie County

Dear Mr. Jenniges:

This acknowledges receipt, on November 12, 2019, of the referenced application and fees in the amount of \$1,323.32 (Receipt Nos. M005192A/B, copy enclosed).

The application was declared administratively complete and filed with the Office of the Chief Clerk on March 5, 2020. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning this matter please contact me via email at [sarah.henderson@tceq.texas.gov](mailto:sarah.henderson@tceq.texas.gov) or by telephone at (512) 239-2535.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Henderson".

Sarah Henderson, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Enclosure



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## TCEQ WATER RIGHTS PERMITTING APPLICATION

### ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): Frericksburg Development Incorporated

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

Y/N

- Administrative Information Report
- Additional Co-Applicant Information
- Additional Co-Applicant Signature Pages
- Written Evidence of Signature Authority
- Technical Information Report
- USGS Map (or equivalent)
- Map Showing Project Details
- Original Photographs
- Water Availability Analysis
- Worksheet 1.0
- Recorded Deeds for Irrigated Land
- Consent For Irrigation Land
- Worksheet 1.1
- Addendum to Worksheet 1.1
- Worksheet 1.2
- Addendum to Worksheet 1.2
- Worksheet 2.0
- Additional W.S 2.0 for Each Reservoir
- Dam Safety Documents
- Notice(s) to Governing Bodies
- Recorded Deeds for Inundated Land
- Consent For Inundation Land

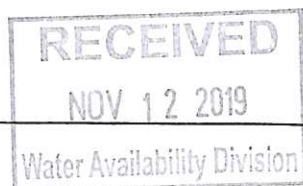
Y/N

- Worksheet 3.0
- Additional W.S 3.0 for each Point
- Recorded Deeds for Diversion Points
- Consent For Diversion Access
- Worksheet 4.0
- TPDES Permit(s)
- WWTP Discharge Data
- 24-hour Pump Test
- Groundwater Well Permit
- Signed Water Supply Contract
- Worksheet 4.1
- Worksheet 5.0
- Addendum to Worksheet 5.0
- Worksheet 6.0
- Water Conservation Plan(s)
- Drought Contingency Plan(s)
- Documentation of Adoption
- Worksheet 7.0
- Accounting Plan
- Worksheet 8.0
- Fees

**For Commission Use Only:**

Proposed/Current Water Right Number: \_\_\_\_\_

Basin: \_\_\_\_\_ Watermaster area Y/N: \_\_\_\_\_



# ADMINISTRATIVE INFORMATION REPORT

The following information is required for all new applications and amendments.

**\*\*\* Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4691.**

## 1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

- New Appropriation of State Water
- Amendment to a Water Right \*
- Bed and Banks

*\*If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.*

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

Refer to attached Memorandum with Summary of Request

---

---

---

---

---

---

---

---

---

---



Building a Better World  
for All of Us<sup>®</sup>

## MEMORANDUM

TO: TCEQ Water Rights

FROM: Randy Jenniges, P.E. (Lic. MN, ND, NE, TX, OK)

DATE: May 17, 2019

RE: Fredericksburg Development, Inc. Reservoirs  
Summary of Request  
SEH No. Frdel 146234 14.00

There are three reservoirs located on the Fredericksburg Development, Inc. site in Fredericksburg, Texas. The applicant is proposing to maintain these three reservoirs that were initially constructed for domestic and livestock purposes. The reservoir usage will be converted to recreational purposes within a planned subdivision.

The applicant is proposing to enter into an upstream water sales contract with the Lower Colorado River Authority to compensate for evaporation losses from the reservoir.

klf

p:\fj\h\heirb\134340\3-env-stdy-regs\32-permit\water rights\addendum summary of request.docx

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 1200 25th Avenue South, P.O. Box 1717, St. Cloud, MN 56302-1717  
SEH is 100% employee-owned | [sehinc.com](http://sehinc.com) | 320.229.4300 | 800.572.0617 | 888.908.8166 fax



**2. APPLICANT INFORMATION (Instructions, Page. 6 )**

**a. Applicant**

Indicate the number of Applicants/Co-Applicants 1  
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

Fredericksburg Development Incorporated

*(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)*

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?

You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : \_\_\_\_\_ ( leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Christopher Wilde

Title: Vice President

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application? Yes

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: Fredericksburg Development

Mailing Address: 1250 N.E. Loop 410, Suite

City: San Antonio

State: Texas

ZIP Code: 78209

Indicate an X next to the type of Applicant:

Individual

Sole Proprietorship-D.B.A.

Partnership

Corporation

Trust

Estate

Federal Government

State Government

County Government

City Government

Other Government

Other \_\_\_\_\_

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: 32058344436 SOS Charter (filing) Number: 802887947

**UNANIMOUS WRITTEN CONSENT IN LIEU OF ORGANIZATIONAL MEETING  
BY THE BOARD OF DIRECTORS OF  
FREDERICKSBURG DEVELOPMENT, INC.  
A TEXAS CORPORATION**

Pursuant to section 6.201 of the Texas Business Organizations Code, the undersigned, being all of the members of the initial Board of Directors of **FREDERICKSBURG DEVELOPMENT, INC.**, a Texas corporation (hereinafter "Corporation"), named in the Certificate of Formation filed with the Secretary of State of Texas, hereby adopt the following resolutions in lieu of holding an organizational meeting of the Board of Directors.

**CERTIFICATE OF FORMATION**

**RESOLVED**, that the acknowledgment of filing issued by the Secretary of State of Texas and the certified copy of the Certificate of Formation of the Corporation filed with the Secretary of State of Texas on December 19, 2017, is approved; and the Secretary of the Corporation is instructed to place same in records of the Corporation.

**BYLAWS**

**RESOLVED**, that the Bylaws submitted to the undersigned are approved and adopted as the Bylaws of the Corporation and the Secretary of the Corporation is instructed to place same or a certified copy thereof in the records of the Corporation.

**RESOLVED**, that the Secretary of the Corporation will maintain a copy of the Bylaws at the principal office of the Corporation available for inspection by the shareholders of the Corporation.

**PRINCIPAL OFFICE**

**RESOLVED**, that the Corporation's principal office be located and maintained at 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209, and that meetings of the Board of Directors from time to time may be held either at the principal office or at such other place as the board of directors shall from time to time order.

**CORPORATE RECORDS**

**RESOLVED**, that the Corporation will maintain appropriate corporate records, including but not limited to originals, copies or certified copies of the Corporation's original and any amended, corrected or restated, acknowledgment of filing, Certificate of Formation, Bylaws, minutes of meetings of shareholders and directors, and written consents of shareholders and directors.



**SEAL**

**RESOLVED**, that the Corporation shall not be required to use a corporate seal and the lack of a corporate seal shall not affect an otherwise valid contract or other instrument executed by the Corporation.

**OFFICERS**

**RESOLVED**, that the following persons are elected to the offices set forth opposite their names to serve as such at the pleasure of the Board of Directors or pursuant to the terms of any written employment agreement executed by the Corporation and the respective officer:

<u>Name</u>	<u>Office</u>
Stephen B. Wilde	President/Treasurer
Christopher Smyth Wilde	Vice President/Secretary

**SHARE CERTIFICATES**

**RESOLVED**, that the form of the share certificate presented to the undersigned is adopted to represent shares of the Corporation; that any issued certificates bear all legends and restrictions required by the Bylaws or resolution of the Corporation, contract or by law; that any issued certificates comply with any requirements of the Bylaws or resolution of the Corporation, contract or applicable law; and that the Secretary of the Corporation insert a specimen copy of said share certificate in the records of the Corporation.

**ISSUANCE OF SHARES**

**RESOLVED**, that the Corporation issue 1,000 shares of the Corporation's authorized shares of common stock at \$1.00 par value, as follows:

<u>Shareholder Name and Address</u>	<u>Number of Shares</u>	<u>Consideration</u>	<u>Value</u>
Lara Wilde Huddleston 1250 N. E. Loop 410, Suite 333 San Antonio, Texas 78209	33.33 shares	\$333.33	\$333.33
Christopher Smyth Wilde 1250 N. E. Loop 410, Suite 333, San Antonio, Texas 78209	33.34 shares	\$333.34	\$333.34
Jennifer Wilde Sargent 1250 N. E. Loop 410, Suite 333 San Antonio, Texas 78209	33.33 shares	\$333.33	\$333.33



**RESOLVED**, that the undersigned has determined that the fair value of the consideration described above is as set forth above.

**RESOLVED**, that upon receipt of the consideration, the officers of the Corporation are authorized to issue share certificates to the persons named above and to obtain, if advisable, representations from any purchaser that the shares are being acquired for investment purposes and not for distribution.

**RESOLVED**, that the Board of Directors of the Corporation may upon such terms as the Board of Directors in its discretion may determine, issue authorized shares of the Corporation for consideration consisting of any tangible or intangible benefit to the Corporation or other property of any kind or nature, including cash, promissory notes, services performed, contracts for services to be performed, other securities of the Corporation, or securities of any other corporation, domestic or foreign, or other entity.

**RESOLVED**, that any shares issued pursuant to these resolutions be offered and sold in reliance upon exemptions from registration under the Federal Securities Act of 1933 and the Texas Securities Act.

#### **ASSUMPTION OF DEBT**

**RESOLVED**, that the Corporation assume the debts and liabilities of its predecessor, Fredericksburg Development, Limited Partnership, as set forth in the records of Fredericksburg Development, Limited Partnership, and that the officers of the Corporation are authorized to take all actions necessary to evidence this assumption.

#### **ASSUMPTION OF CONTRACTS**

**RESOLVED**, that the Corporation assume the contractual obligations of its predecessor, Fredericksburg Development, Limited Partnership, that have been previously disclosed to the undersigned, and that the officers of the Corporation are authorized to take all actions necessary to evidence this assumption.

#### **BANK ACCOUNT**

**RESOLVED**, that the Corporation establish in its name one or more accounts with one or more financial institutions on such terms and conditions as may be agreed with said financial institutions, and that the officers of the Corporation are authorized to execute any resolutions required by said financial institutions for such accounts and to designate the person or persons authorized to write checks on such accounts on behalf of the Corporation.

#### **ORGANIZATIONAL COSTS**

**RESOLVED**, that the attorney's fees, filing fees and other expenses and charges incurred and that may be incurred by the Corporation or persons acting on behalf of the Corporation in

connection with the formation of the Corporation are reasonable and shall be paid or reimbursed by the Corporation.

#### **FISCAL YEAR**

**RESOLVED**, that the fiscal year of the Corporation shall begin on January 1<sup>st</sup> and end on December 31<sup>st</sup>, provided that the initial fiscal year of the Corporation shall begin as of the date hereof.

#### **ACCOUNTING METHOD**

**RESOLVED**, that the Corporation shall use the cash method of accounting.

#### **TAXES**

**RESOLVED**, that the officers of the Corporation obtain information and instructions from the Internal Revenue Service, Comptroller of the State of Texas and other applicable taxing authorities regarding withholding and other taxes.

#### **ELECTION AS SMALL BUSINESS CORPORATION**

**RESOLVED**, that the Corporation elects to be a subchapter S corporation for income tax purposes under the provisions of Section 1362 of the Internal Revenue Code, and that the officers of the Corporation are authorized to take the necessary steps to complete said election with the Internal Revenue Service.

#### **ACCOUNTABLE PLAN**

**RESOLVED**, that the Corporation establish an "Accountable Plan" whereby directors, officers and employees may receive advances for or reimbursement of expenses if: (1) the expense has a stated business purpose related to the Corporation; (2) the director, officer, or employee provides substantiation to the Corporation for all expenses; and (3) the director, officer or employee returns all excess reimbursements within a reasonable time.

**RESOLVED**, that the following methods will meet the "reasonable time" definition: (1) an advance is made within 30 days of when an expense is paid or incurred; (2) an expense is substantiated to the Corporation within 60 days after the expense is paid or incurred; and (3) an excess amount is returned to the Corporation within 120 days after the expense is incurred.

**RESOLVED**, that substantiation of business expenses will include: business purpose, business relationship (including names of persons present), cost (itemized accounting), time, and place; and auto mileage reimbursed must be substantiated by a daily mileage log which separates business and personal miles.



## LICENSES AND PERMITS

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

## QUALIFICATION IN OTHER JURISDICTIONS

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

## FURTHER INSTRUCTIONS TO OFFICERS

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

Dated to be effective on December 19, 2017.

Directors:

\_\_\_\_\_  
LARA WILDE HUDDLESTON

  
\_\_\_\_\_  
CHRISTOPHER SMYTH WILDE

\_\_\_\_\_  
JENNIFER WILDE SARGENT



## LICENSES AND PERMITS

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

## QUALIFICATION IN OTHER JURISDICTIONS

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

## FURTHER INSTRUCTIONS TO OFFICERS

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

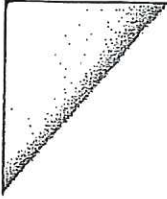
Dated to be effective on December 19, 2017.

Directors:

Lara Wilde Huddleston  
LARA WILDE HUDDLESTON

\_\_\_\_\_  
CHRISTOPHER SMYTH WILDE

\_\_\_\_\_  
JENNIFER WILDE SARGENT



**LICENSES AND PERMITS**

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

**QUALIFICATION IN OTHER JURISDICTIONS**

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

**FURTHER INSTRUCTIONS TO OFFICERS**

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

Dated to be effective on December 19, 2017.

Directors:

\_\_\_\_\_  
LARA WILDE HUDDLESTON

\_\_\_\_\_  
CHRISTOPHER SMYTH WILDE

Jennifer Wilde Sargent  
\_\_\_\_\_  
JENNIFER WILDE SARGENT



**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**FREDERICKSBURG DEVELOPMENT, INC.**  
File Number: 802887947

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic For-Profit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 12/19/2017

Effective: 12/19/2017



A handwritten signature in black ink, appearing to read "R. Pablos".

Rolando B. Pablos  
Secretary of State



Date of this notice: 12-19-2017

Employer Identification Number:  
82-3753405

Form: SS-4

Number of this notice: CP 575 A

FREDERICKSBURG DEVELOPMENT INC  
% CHRISTOPHER WILDE  
1250 NE LOOP 410 STE 333  
SAN ANTONIO, TX 78209

For assistance you may call us at:  
1-800-829-4933

IF YOU WRITE, ATTACH THE  
STUB AT THE END OF THIS NOTICE.

**WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER**

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 82-3753405. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Based on the information received from you or your representative, you must file the following form(s) by the date(s) shown.

Form 1120

04/15/2018

If you have questions about the form(s) or the due date(s) shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, *Accounting Periods and Methods*.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2004-1, 2004-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, *Entity Classification Election*. See Form 8832 and its instructions for additional information.

**IMPORTANT INFORMATION FOR S CORPORATION ELECTION:**

If you intend to elect to file your return as a small business corporation, an election to file a Form 1120-S must be made within certain timeframes and the corporation must meet certain tests. All of this information is included in the instructions for Form 2553, *Election by a Small Business Corporation*.

If you are required to deposit for employment taxes (Forms 941, 943, 940, 944, 945, CT-1, or 1042), excise taxes (Form 720), or income taxes (Form 1120), you will receive a Welcome Package shortly, which includes instructions for making your deposits electronically through the Electronic Federal Tax Payment System (EFTPS). A Personal Identification Number (PIN) for EFTPS will also be sent to you under separate cover. Please activate the PIN once you receive it, even if you have requested the services of a tax professional or representative. For more information about EFTPS, refer to Publication 966, *Electronic Choices to Pay All Your Federal Taxes*. If you need to make a deposit immediately, you will need to make arrangements with your Financial Institution to complete a wire transfer.

The IRS is committed to helping all taxpayers comply with their tax filing obligations. If you need help completing your returns or meeting your tax obligations, Authorized e-file Providers, such as Reporting Agents (payroll service providers) are available to assist you. Visit the IRS Web site at [www.irs.gov](http://www.irs.gov) for a list of companies that offer IRS e-file for business products and services. The list provides addresses, telephone numbers, and links to their Web sites.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at [www.irs.gov](http://www.irs.gov). If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

**IMPORTANT REMINDERS:**

- \* Keep a copy of this notice in your permanent records. This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you. You may give a copy of this document to anyone asking for proof of your EIN.
- \* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- \* Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub.

Your name control associated with this EIN is FRED. You will need to provide this information, along with your EIN, if you file your returns electronically.

Thank you for your cooperation.

### 3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: Randy Jenniges

Title: Professional Engineer

Organization Name: Short Elliott Hendrickson, 

Mailing Address: 133 Otto Eckhardt Road

City: Fredericksburg                      State: Texas                      ZIP Code: 78624

Phone No.: 320.333.5951                      Extension:

Fax No.: 888.908.8166                      E-mail Address: 



#### 4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name:

Title:

Organization Name:

Mailing Address:

City:

State:

ZIP Code:

Phone No.:

Extension:

Fax No.:

E-mail Address:

**5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)**

a. The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4691, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No No**

If **yes**, provide the following information:

Account number:

Amount past due:

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No No**

If **yes**, please provide the following information:

Enforcement order number:

Amount past due:

b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No Yes**

c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5).

Applicant has submitted all required TWDB surveys of groundwater and surface water? **Yes / No Yes**



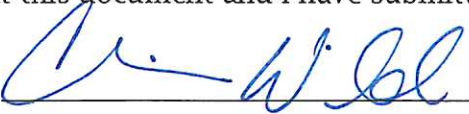
**6. SIGNATURE PAGE (Instructions, Page. 11)**

Applicant:

I, Christopher Wilde (Fredericksburg Development, Inc.) Vice President  
(Typed or printed name) (Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

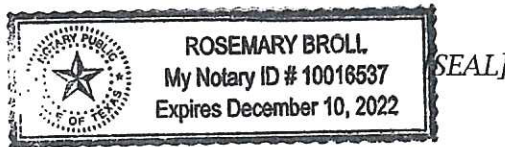
Signature:  Date: 11/11/19  
(Use blue ink)

Subscribed and Sworn to before me by the said

on this 11th day of November, 20 19.

My commission expires on the 10 day of December, 20 22.

Rosemary Broll  
Notary Public



BEXAR  
County, Texas

***If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page***



# TECHNICAL INFORMATION REPORT

## WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicants are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

*Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please call Water Availability Division at (512) 239-4691 to schedule a meeting.* Applicant attended a pre-application meeting with TCEQ Staff for this Application? Y / N Yes (If yes, date : April 17, 2019 ).

### 1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

**State Water is:** *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N Yes
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N No (If yes, indicate the Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? No Y / N*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N No (If yes, indicate the Term Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees**
- **Fees calculated on Worksheet 8.0 - see instructions Page. 34.**
- **Maps - See instructions Page. 15.**
- **Photographs - See instructions Page. 30.**

*Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).*

**Additional Documents and Worksheets may be required (see within).**



**2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)**

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. *If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. See instructions page. 6.*

Water Right (Certificate or Permit) number you are requesting to amend: N/A

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? **Y / N No** (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right

a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? **Y / N No**

*If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? **Y / N No**

*If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? **Y / N No**

*If yes, submit:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: "Marshall Criteria"**

d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? **Y / N No**

*If yes, submit: Worksheet 3.0 - Diversion Point Information Worksheet (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)*

e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? **Y / N No**

*If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet (submit one worksheet for each impoundment or reservoir)*

f. Other - Applicant requests to change any provision of an authorization not mentioned above? **Y / N No** *If yes, call the Water Availability Division at (512) 239-4691 to discuss.*

**Additionally, all amendments require:**

- **Worksheet 8.0 - Calculation of Fees; and Fees calculated - see instructions Page.34**
- **Maps - See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**



### 3. **Bed and Banks. TWC § 11.042 (Instructions, Page 13)**

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N No

*If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:*

- 1. Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
- 2. Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N No

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.*

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N No

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N No

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.*

*\*Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.*

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N No

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

*Worksheets and information:*

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)
- **Worksheet 4.0 – Discharge Information Worksheet** (for each discharge point)
- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**



**4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)**

- a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled "Addendum Regarding the State and Regional Water Plans":

See the Memorandum/ Amendment Regarding the State and Regional Water Plans.

---

---

---

---

---

- b. Did the Applicant perform its own Water Availability Analysis? Y / N No

*If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.*

- C. Does the application include required Maps? (Instructions Page. 15) Y / N Yes



Building a Better World  
for All of Us<sup>®</sup>

## MEMORANDUM

TO: TCEQ Water Rights

FROM: Randy Jenniges, P.E. (Lic. MN, ND, NE, TX, OK)

DATE: May 17, 2019

RE: Fredericksburg Development, Inc. Reservoirs  
Addendum Regarding the State and Regional Water Plans  
SEH No. Frdel 146234 14.00

Applicant proposes to maintain three reservoirs initially constructed for domestic and livestock purposes and use such reservoirs for in place recreational purposes within a planned subdivision. Recreation is a beneficial use as prescribed by the Texas Water Code and is consistent with the State Water Plan. The reservoirs are located on unnamed tributaries of Barons Creek, tributary to the Pedernales River, tributary to the Colorado River. Applicant proposes to enter into an upstream sales contract with the Lower Colorado River Authority to compensate for evaporation losses from the reservoir. Additionally, applicant will maintain reservoir outlets to pass any required environmental flows and/or pass flows required by senior water rights. Applicant will not divert water from the reservoirs.

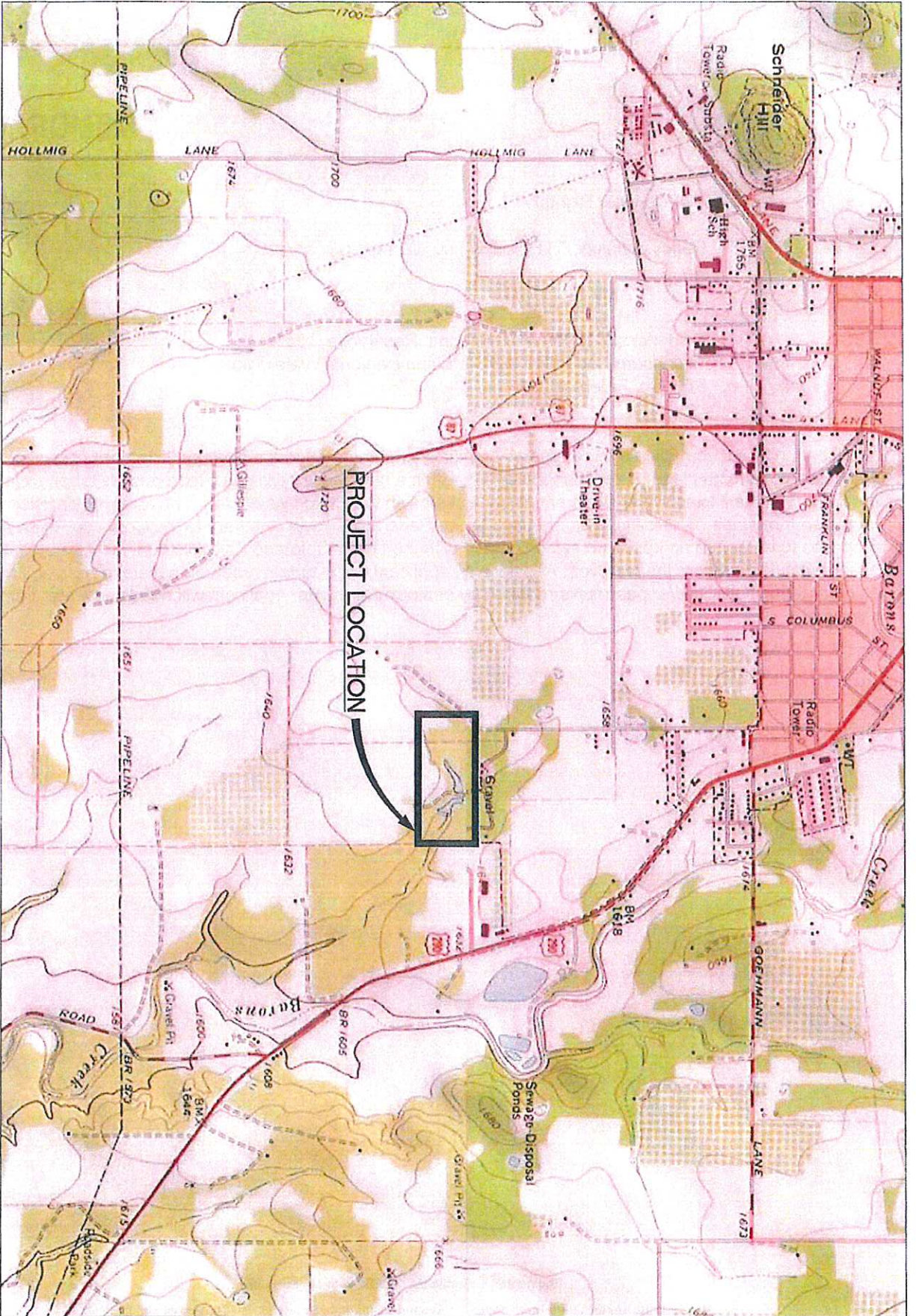
klf

p:\f\h\heirb\134340\3-env-stdy-reg\32-permit\water rights\addendum state and regional water plans.docx

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 1200 25th Avenue South, P.O. Box 1717, St. Cloud, MN 56302-1717  
SEH is 100% employee-owned | [sehinc.com](http://sehinc.com) | 320.229.4300 | 800.572.0617 | 888.908.8166 fax





PHONE: 320.229.4300  
 1200 25TH AVENUE SOUTH  
 P.O. BOX 1717  
 ST. CLOUD, MN 56302-1717  
 www.sehinc.com

FILE NO.  
 FRDEL 137621

DATE:  
 05/08/19

USGS TOPOGRAPHY MAP  
 FRIEDEN DEVELOPMENT  
 FREDERICKSBURG, TEXAS

FIGURE  
 NO.  
 1





# NORTH PONDS

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A duly LICENSED PROFESSIONAL ENGINEER IN THE STATE OF MISSISSIPPI.

*[Signature]*  
 RAYNOR & ASSOCIATES, P.C.  
 Lic. No. 37218/77 Date: 07/16/17

**SEH**  
 PHONE: 336.228.4300  
 1200 ZENITH AVENUE SOUTH  
 ST. CLOUD, MN 56302-1117  
 www.sehinc.com

**FRIEDEN DEVELOPMENT**

**NORTH POND GRADING PLAN**

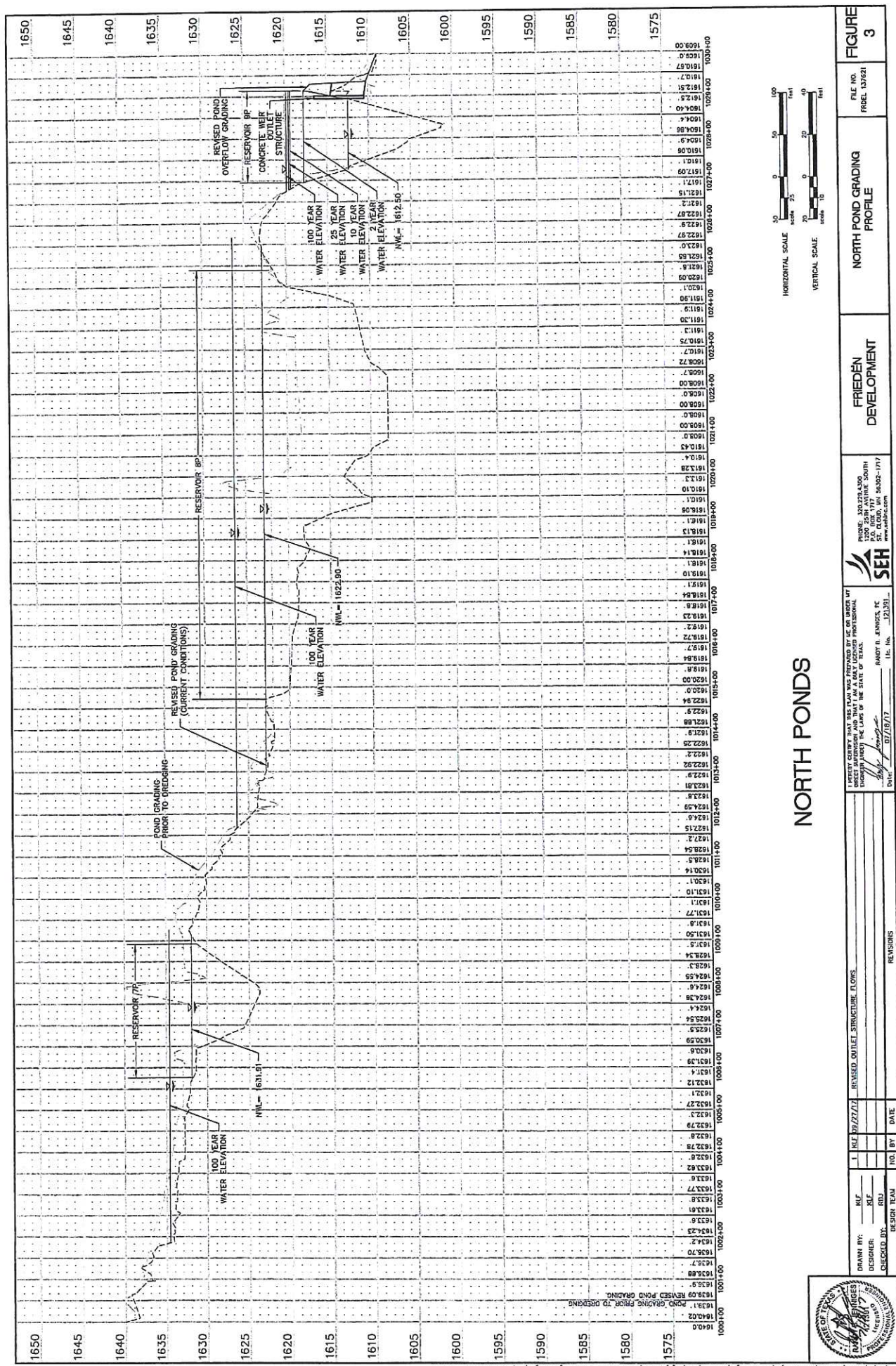
FILE NO.  
 FBREL 137623

**FIGURE 2**

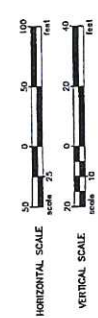
DESIGN TEAM	NO.	BY	DATE	REVISIONS
DRAWN BY: KLF				
DESIGNER: KLF				
CHECKED BY: RJM				







# NORTH PONDS



DRAWN BY: DESIGNED: CHECKED BY:	REVISED: REVISED: REVISED:	REVISIONS NO.   BY   DATE	DATE: 07/27/17 PROJECT NO.: 150301	PROJECT: NORTH POND GRADING PROFILE DRAWING NO.: 150301	PROJECT: FRIEDEN DEVELOPMENT DRAWING NO.: 150301	PROJECT: NORTH POND GRADING PROFILE DRAWING NO.: 150301
---------------------------------------	----------------------------------	------------------------------	---------------------------------------	--	---	--



SEH  
 PHONE: 360.278.0000  
 FAX: 360.278.1777  
 10000 1ST AVE SW  
 SEASIDE, WA 98138

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.  
 DATE: 07/27/17  
 PROJECT NO.: 150301

FRIEDEN DEVELOPMENT  
 NORTH POND GRADING PROFILE  
 DRAWING NO.: 150301

FIGURE 3



# WORKSHEET 1.0

## Quantity, Purpose and Place of Use

### 1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre-foot) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>
7.5 Ac-Ft	Upstream contract with the LCRA.	Recreation (Reservoir 7P)	Gillespie County
33.5 Ac-Ft	Upstream contract with the LCRA.	Recreation (Reservoir 8P)	Gillespie County
3.0 Ac-Ft	Upstream contract with the LCRA.	Recreation (Reservoir 9P)	Gillespie County

44.0 Ac-Ft Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*)

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

1. Location Information Regarding the Lands to be Irrigated

i) Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii) Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.***

***If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***



## 2. Amendments - Purpose or Place of Use (Instructions, Page. 12)

- a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**
N/A				

*\*If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."*

*\*\*If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."*

*Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.*

- b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:

i) Applicant proposes to irrigate a total of \_\_\_\_\_ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii) Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

- c. Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.
- d. See Worksheet 1.2, Marshall Criteria, and submit if required.
- e. See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

# WORKSHEET 1.1

## INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N

### 1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin. N/A
- b. Provide the quantity of water to be transferred (acre-feet). \_\_\_\_\_
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:  
\_\_\_\_\_

### 2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N

### 3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);



- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: (<http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
- (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
  - (ii) the amount and purposes of use in the receiving basin for which water is needed;
  - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
  - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
  - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
  - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- (f) proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- (g) the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

## WORKSHEET 1.2 NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for such amendments which include changes in use, changes in place of use, or other non-substantive changes in a water right (such as certain amendments to special conditions or changes to off-channel storage). These criteria address whether the proposed amendment will impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is not required for Applications in the Rio Grande Basin requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is not required for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

### 1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) – (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.



- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:  
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

## WORKSHEET 2.0 Impoundment/Dam Information

This worksheet is **required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: (Applicant's Name) Reservoir 7P
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: 7.5.
- c. The impoundment is on-channel x or off-channel \_\_\_\_\_ (mark one)
  1. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4691? Y / N Yes
  2. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / N Yes
- d. Is the impoundment structure already constructed? Y / N Yes
  - i. For already constructed **on-channel** structures:
    1. Date of Construction: 1960's
    2. Was it constructed to be an exempt structure under TWC § 11.142? Y / N Yes
      - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / N Yes
      - b. If No, has the structure been issued a notice of violation by TCEQ? Y / N No
    3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / N No
      - a. If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - b. Authorization to close "ports" in the service spillway requested? Y / N No
  - ii. For **any** proposed new structures or modifications to structures:
    1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / N Yes  
Provide the date and the name of the Staff Person August 2017, Levi Best
    2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - a. No additional dam safety documents required with the Application. Y / N Yes
      - b. Plans (with engineer's seal) for the structure required. Y / N No
      - c. Engineer's signed and sealed hazard classification required. Y / N No
      - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / N No



3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / N **Yes**

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level: 1.4.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option. Applicant has calculated the drainage area. Y/N **Yes**  
If yes, the drainage area is 0.37 sq. miles.  
*(If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4691).*

## 2. Structure Location (Instructions, Page. 23)

a. On Watercourse (if on-channel) (USGS name): Unnamed tributary of Barons Creek, tributary to the Pedernales River, tributary to the Colorado River

b. Zip Code: 78624

c. In the John Owens Original Survey No. 54, Abstract No. 537, Gillespie County, Texas.

***\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.***

***\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude 30.248428°N, Longitude -98.858338°W.

***\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***

di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Mapquest Developer Lat/ Long Finder

dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / N **Yes**

## WORKSHEET 2.0 Impoundment/Dam Information

This worksheet is **required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: (Applicant's Name) Reservoir 8P
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: 33.5.
- c. The impoundment is on-channel x or off-channel \_\_\_\_\_ (mark one)
  1. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4691? Y / N Yes
  2. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / N Yes
- d. Is the impoundment structure already constructed? Y / N Yes
  - i. For already constructed **on-channel** structures:
    1. Date of Construction: 1960's
    2. Was it constructed to be an exempt structure under TWC § 11.142? Y / N Yes
      - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / N Yes
      - b. If No, has the structure been issued a notice of violation by TCEQ? Y / N No
    3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / N No
      - a. If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - b. Authorization to close "ports" in the service spillway requested? Y / N No
  - ii. For **any** proposed new structures or modifications to structures:
    1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / N Yes  
Provide the date and the name of the Staff Person August 2017, Levi Best
    2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - a. No additional dam safety documents required with the Application. Y / N No
      - b. Plans (with engineer's seal) for the structure required. Y / N Yes
      - c. Engineer's signed and sealed hazard classification required. Y / N Yes
      - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / N Yes



3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / N Yes

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level: 4.8.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option. Applicant has calculated the drainage area. Y/N Yes  
If yes, the drainage area is  $0.1 + 0.37 = 0.47$  sq. miles.  
(If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4691).

## 2. Structure Location (Instructions, Page. 23)

a. On Watercourse (if on-channel) (USGS name): Unnamed tributary of Barons Creek, tributary to the Pedernales River, tributary to the Colorado River

b. Zip Code: 78624

c. In the John Owens Original Survey No. 54, Abstract No. 537, Gillespie County, Texas.

**\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.**

**\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.**

d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude 30.249329 °N, Longitude -98.853819 °W.

**\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places**

di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Mapquest Developer Lat/ Long Finder

dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / N Yes

## WORKSHEET 2.0 Impoundment/Dam Information

This worksheet is required for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g. maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: (Applicant's Name) Reservoir 9P
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: 3.0.
- c. The impoundment is on-channel x or off-channel \_\_\_\_\_ (mark one)
  1. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4691? Y / N Yes
  2. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / N Yes
- d. Is the impoundment structure already constructed? Y / N Yes
  - i. For already constructed **on-channel** structures:
    1. Date of Construction: 1960's
    2. Was it constructed to be an exempt structure under TWC § 11.142? Y / N Yes
      - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / N Yes
      - b. If No, has the structure been issued a notice of violation by TCEQ? Y / N No
    3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / N No
      - a. If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - b. Authorization to close "ports" in the service spillway requested? Y / N No
  - ii. For **any** proposed new structures or modifications to structures:
    1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / N Yes  
Provide the date and the name of the Staff Person August 2017, Levi Best
    2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - a. No additional dam safety documents required with the Application. Y / N Yes
      - b. Plans (with engineer's seal) for the structure required. Y / N No
      - c. Engineer's signed and sealed hazard classification required. Y / N No
      - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / N No



3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / N Yes
- iii. Additional information required for **on-channel** storage:
1. Surface area (in acres) of on-channel reservoir at normal maximum operating level: 0.7
  2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option. Applicant has calculated the drainage area. Y/N Yes  
If yes, the drainage area is  $0.1+0.37+0.64= 1.11$  sq. miles.  
(If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4691).

## 2. Structure Location (Instructions, Page. 23)

- a. On Watercourse (if on-channel) (USGS name): Unnamed tributary of Barons Creek, tributary to the Pedernales River, tributary to the Colorado River
- b. Zip Code: 78624
- c. In the John Owens Original Survey No. 54, Abstract No. 537, Gillespie County, Texas.  
*\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.*  
*\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.*
- d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:  
 Latitude 30.248847 °N, Longitude -98.852890 °W.  
*\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places*
- di. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Mapquest Developer Lat/ Long Finder
- dii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / N Yes

218-017



6 pgs  
LD

20181539

**SPECIAL WARRANTY DEED WITH VENDOR'S LIEN**

**Date:** March 29, 2018

**Grantor:** BRT RESOURCES, LLC, a Texas limited liability company

**Grantor's Mailing Address:** 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209

**Grantee:** FREDERICKSBURG DEVELOPMENT, INC., a Texas corporation

**Grantee's Mailing Address:** 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209

**Consideration:** Cash and a note of even date executed by Grantee, payable to the order of Grantor in a certain principal amount. The note is secured by a vendor's lien retained for the benefit of Grantor in this deed and by a deed of trust of even date from Grantee to James C. Norman, Trustee for Grantor.

**Property (including any improvements):**

219.460 acres of land located in the City of Fredericksburg, Gillespie County, Texas, more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** All and singular any liens described herein, ad valorem taxes for the current and all subsequent years, zoning ordinances, utility district assessments and standby fees, if any, applicable to and enforceable against the Property, and all valid utility easements created by the dedication deed or plat of the subdivision in which the Property is located, covenants and restrictions common to the platted subdivision in which the Property is located, maintenance assessment liens, if any, applicable to and enforceable against the Property as shown by the records of the County Clerk of the County in which said real property is located, and any statutory water rights, or the rights or interests of the State of Texas or the public generally in any waters, tidelands, beaches and streams being situated in proximity to the Property.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.



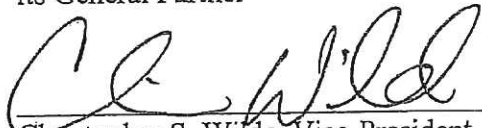
The vendor's lien against and superior title to the Property are retained and transferred, without recourse, to Lender until each note described is fully paid according to its terms, at which time this deed will become absolute.

When the context requires, singular nouns and pronouns include the plural.

**BRT RESOURCES, LLC,**  
a Texas limited liability company

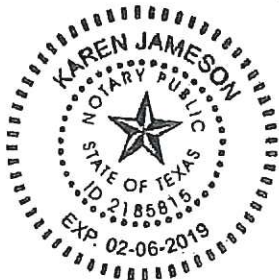
By: 3BRT Investments, Limited Partnership,  
a Texas limited partnership  
its sole Member

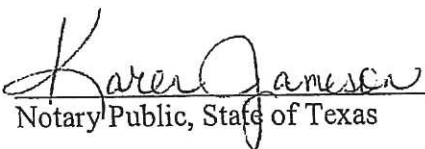
By: SBW Management, Inc.,  
a Texas corporation,  
its General Partner

By:   
Christopher S. Wilde, Vice-President

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me this 29<sup>th</sup> day of March, 2018, by Christopher S. Wilde, as Vice-President of SBW Management, Inc., a Texas corporation, the General Partner of 3BRT Investments, Limited Partnership, a Texas limited partnership, the sole Member of **BRT RESOURCES, LLC**, a Texas limited liability company, on their behalf.



  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
Fredericksburg Development, Inc.  
1250 N.E. Loop 410, Suite 333  
San Antonio, Texas 78209

## EXHIBIT "A"

### Property

# TX LANDMARK SURVEYING

39350 IH 10 West, Suite 1 | Boerne, TX 78006 | 830.428.0290  
TBPLS Firm No. 10164600

### FIELD NOTES FOR FRIEDEN SUBDIVISION 219.460 ACRES OF LAND

BEING 219.460 acres of land comprised of 89,500 acres out of the SAMUEL WILSON SURVEY No. 38, ABSTRACT No. 735, and 129,960 acres out of the JOHN OWENS SURVEY No. 54, ABSTRACT No. 537, located in the City of Fredericksburg, Gillespie County, Texas, said 219.460 acres being out of the following tracts and lots:

- 63.231 acres, all the BRT RESOURCES, LLC 63.231 acre tract recorded in Doc 20154947, Official Public Records of Gillespie County, Texas (OPRGCT);
- 25.32 acres, all LOT 13R, EQUESTRIAN PARK (REPLAT) recorded in Volume 5, Page 18, Plat Records of Gillespie County, Texas (PRGCT);
- 0.949 acres, abandoned EQUESTRIAN DRIVE ROW adjacent to LOT 13R, EQUESTRIAN PARK (REPLAT) recorded in Volume 5, Page 18, PRGCT
- 14.609 acres, all the BRT RESOURCES, LLC 14.609 acre tract recorded in Doc 20161322, OPRGCT
- 81.910 acres, remainder of the DANZ ORCHARDS (REPLAT) recorded in Volume 4, Page 29, PRGCT
- 20.648 acres, Lot 1 & 2 of the DANZ ORCHARDS recorded in Volume 2, Page 14, PRGCT
- 12.793 acres, all the BRT RESOURCES, LLC 12.8 acre tract recorded in Doc 20151405, OPRGCT

said 219.460 acres being more particularly described by metes and bounds as follows:

**BEGINNING** at a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for a northwest corner of this tract, the northwest corner of said BRT RESOURCES, LLC 63.231 acre tract (R1), the southwest corner of LOT 8, EQUESTRIAN PARK SUBDIVISION as shown on plat recorded in Volume 3, Page 55, (PRGCT) (R2), located on the east ROW line of STATE HIGHWAY No. 87, from which a found 1/2" rebar with plastic cap "BONN SURVEY 4447" bears North 1°16'29" West for 341.07 feet (North 0°22'25" West for 341.25' (R2) for reference;

**THENCE** North 89°05'33" East generally with a fence, at 267.00 feet passing a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for the southwest corner of Lot 9, said EQUESTRIAN PARK, continuing for an additional 266.95 feet passing a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for the southwest corner of Lot 10, said EQUESTRIAN PARK, continuing for an additional 266.95 feet for a total distance of 800.90' to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for an angle point and for the southwest corner of Lot 11, said EQUESTRIAN PARK;

**THENCE** North 89°05'06" East for 928.88 feet continuing generally with a fence to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for an angle point and for a southeastern corner of Lot 12, said EQUESTRIAN PARK;

**THENCE** through the interior of said abandoned EQUESTRIAN DRIVE ROW the following courses and distances:

1. North 20°37'30" East for 29.90 feet to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point in the centerline of the abandoned EQUESTRIAN DRIVE at the beginning of a curve to the right;
2. Northwesterly along a curve to the right for a distance of 163.63 feet (R=400', D=23°28'02", CB=North 57°38'29" West, CH=162.69') to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point of tangency;
3. North 45°53'17" West for 193.55 feet to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point in the centerline of the abandoned EQUESTRIAN DRIVE at the beginning of a curve to the left;
4. Northwesterly along a curve to the left for a distance of 148.14 feet (R=400', D=21°13'11", CB=North 56°31'48" West, CH=147.30') to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a corner;
5. North 22°49'40" East for 30.00 feet to a found 1/2" rebar with no identification for the southwest corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION, the southeast corner of LOT 7R of said EQUESTRIAN PARK SUBDIVISION;

**THENCE** along a western boundary of this tract, the common lot line between said LOT 7R and said LOT 13R the following courses and distances:

1. North 28°43'59" East for 234.85 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for an angle point;
2. North 00°57'32" West for 507.51 feet to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for a northwest corner of this tract, the northwest corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION (REPLAT), the northeast corner of LOT 7R of said EQUESTRIAN PARK SUBDIVISION (REPLAT), located on the south boundary of the KEVIN ECKHARDT 52.095 acre tract recorded in Volume 186, Page 374, Deed Records of Gillespie County, Texas (DRGCT);



THENCE North 89°08'47" East for 1038.00 feet to a found 1/2" rebar with no identification for the northeast corner of this tract, the northeast corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION (REPLAT), the southeast corner of the GREGORY & HOLLY TATSCH 2.00 acre tract recorded in Volume 462, Page 676, (OPRGCT), located on the western boundary of the GREGORY & HOLLY TATSCH 0.820 acre tract recorded in Volume 186, Page 275, (DRGCT):

THENCE South 01°42'34" East for 263.97 feet along the eastern boundary of this tract to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for an interior corner of this tract, the southwest corner of said GREGORY & HOLLY TATSCH 0.820 acre tract:

THENCE North 89°04'03" East for 39.94 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for a northeastern corner of this tract, the southeast corner of said GREGORY & HOLLY TATSCH 0.820 acre tract, located on the west boundary of the GREGORY & HOLLY TATSCH 29.550 acre tract (remainder) recorded in Volume 163, Page 590, DRGCT:

THENCE South 01°40'04" East for 109.84 along the eastern boundary of this tract to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner, the northwest corner of the BRT RESOURCES, INC 14.609 acre tract recorded in Document No. 20161322, OPRGCT;

THENCE North 86°58'38" East for 1123.32 feet along a north boundary of this tract, the south boundary of said remainder of the GREGORY & HOLLY TATSCH 29.550 acre tract to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner, the southeast corner of the remainder of the GREGORY & HOLLY TATSCH 29.550 acre tract recorded in Volume 163, Page 590, DRGCT;

THENCE along a western boundary of this tract, the eastern boundary of the GREGORY & HOLLY TATSCH properties the following courses and distances:

1. North 26°47'09" West for 366.33 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
2. North 10°14'53" West for 308.48 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
3. North 31°38'46" West for 199.94 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for the northeast corner of a 0.679 acre tract conveyed to TATSCH, the southeast corner of a 0.643 acre tract;

THENCE along a western boundary of this tract, the eastern and northern boundary of the 0.643 acre tract the following courses and distances:

1. North 31°38'47" West for 342.79 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;
2. South 80°59'27" West for 101.34 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for a corner;;

THENCE North 28°24'31" West for 210.42 feet along the western boundary line of this tract, the eastern boundary line of the GEORGE & JEAN SULTEMEIER 2.370 acre tract recorded in Document No. 20121997, OPRGCT, to a found 1/2" rebar with no identification for a northwest corner of this tract, located on the southeastern ROW of SOUTH EAGLE DRIVE;

THENCE along a northwestern boundary of this tract, the northwestern boundary of said BRT RESOURCES, LLC 12.793 acre tract, southeastern ROW of said SOUTH EAGLE DRIVE the following courses and distances:

1. North 38°26'44" East for 100.81 feet to a found 1/2" rebar with no identification for an angle point;
2. North 39°29'57" East for 299.89 feet to a found 1/2" rebar with no identification for an angle point;
3. North 37°27'14" East for 212.53 feet to a found 1/2" rebar with no identification for a northern corner of this tract, a western corner of the ROBERT C BROWN 2.010 acre tract recorded in Volume 167, Page 625, DRGCT;

THENCE along a northern boundary of this tract, the southern boundary of said ROBERT C BROWN 2.010 acre tract the following courses and distances:

1. South 50°49'53" East for 249.50 feet to a found 1/2" rebar with no identification for an interior corner;
2. North 43°44'10" East for 327.34 feet to a found 1/2" rebar with no identification for a northern corner, located on the southwestern boundary of the ALICE HILTON 2.800 acre tract recorded in Document No. 20122812, OPRGCT;

THENCE along a northern boundary of this tract, the southern boundary of said ALICE HILTON 2.800 acre tract the following courses and distances:

1. South 50°52'18" East for 233.20 feet to a found 1/2" rebar with no identification for an interior corner;
2. North 01°48'37" West for 328.50 feet to a found 1/2" rebar with plastic cap "BONN 4447" for a northern corner, the southwestern corner of the LESLIE K LANDRETH 1.290 acre tract recorded in Document No. 20135413, OPRGCT;

THENCE along a northern boundary of this tract, the northern boundary of said LOT 1 & LOT 2, DANZ ORCHARDS, and the northern boundary of said LOT 3AR, DANZ ORCHARDS (REPLAT) the following courses and distances:

1. North 80°41'43" East for 287.92 feet to a found 1/2" rebar with no identification for an angle point;
2. North 72°06'07" East for 407.35 feet to a found 1/2" rebar with no identification for an angle point;
3. North 72°19'45" East for 10.23 feet to a found 1/2" rebar with no identification for an interior corner;
4. North 12°45'32" West for 166.70 feet to a found 1/2" rebar with no identification for a northern corner;
5. North 75°40'31" East for 40.06 feet to a found 1/2" rebar with no identification for a northern corner;
6. South 12°42'15" East for 164.29 feet to a found 1/2" rebar with no identification for an interior corner;
7. North 72°44'55" East for 10.29 feet to a found 1/2" rebar with no identification for an angle point;
8. North 72°40'12" East for 275.47 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
9. North 73°42'12" East for 164.68 feet to a found 1/2" rebar with no identification for a northeast corner;
10. South 10°28'48" East for 223.71 feet to a found 1/2" rebar with no identification for an angle point;
11. South 11°03'16" West for 54.28 feet to a found 1/2" rebar with no identification for a point of curvature;
12. Southeasterly along a curve to the left having an arc length of 78.39 feet (R=50.00', D=89°49'26", CB=South 55°32'56" East, CH=70.60') to a found 1/2" rebar with no identification for an angle point;
13. South 76°35'54" East for 215.44 feet to a found 1/2" rebar with no identification for a northeast corner, located on the west boundary of LOT 6, MORIN SUBDIVISION;

THENCE South 01°30'45" East for 359.22 feet generally with a fence along the east boundary of this tract, the west boundary of said MORIN SUBDIVISION to a found 1/2" rebar with no identification for an angle point, the southwest corner of LOT 5, MORIN SUBDIVISION;

THENCE South 00°32'18" East for 297.32 feet generally with a fence continuing along the east boundary of this tract, the west boundary of the HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 150, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W;

THENCE South 01°21'04" East for 175.60 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 153, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W;

THENCE South 01°34'25" East for 1047.84 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W and the west boundary of the HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1 to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 71, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1;

THENCE South 01°48'52" East for 317.05 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1 to a found 1/2" rebar with no identification for an angle point, the southwest corner of LOT 67, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1, the northwest corner of MARIPOSA DRIVE (60' public ROW);

THENCE South 01°49'19" East for 60.01 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said MARIPOSA DRIVE (60' public ROW) to a found 1/2" rebar with no identification for an angle point, the southwest corner of said MARIPOSA DRIVE (60' public ROW), the northwest corner of said LOT 2, KINMAN SUBDIVISION;

THENCE South 01°47'34" East for 210.21 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said LOT 2, KINMAN SUBDIVISION to a found 1/2" rebar with no identification for the southeast corner of this tract, the southeast corner of said LOT 3CR, the northeast corner of the MICHAEL HODGES 158.76 acre tract recorded in Document No. 20112558, OPRGCT, the west boundary of LOT 2, KINMAN SUBDIVISION;

THENCE South 89°18'54" West for 1513.77 feet along the south boundary of this tract, the north boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for an angle point and the southeast corner of said BRT RESOURCES, LLC 14.609 acre tract;

THENCE South 89°24'02" West for 1374.40 feet continuing along the south boundary of this tract, the north boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for an interior corner, the southwest corner of said BRT RESOURCES, LLC 14.609 acre tract;

THENCE along the east boundary of this tract, the west boundary of said MICHAEL HODGES 158.76 acre tract for the following courses and distances:

1. South 01°34'58" East for 188.06 feet to a found 1/2" rebar with plastic cap "BONN 4447" for an angle point, the northeast corner of EQUESTRIAN DRIVE (60' public ROW);
2. South 01°34'02" East for 30.06 feet to a found 1/2" rebar with no identification for an angle point, the southeast corner of said EQUESTRIAN DRIVE (60' public ROW);
3. South 01°39'48" East for 1,262.09 feet along the eastern boundary line of this tract generally with a fence, the western boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for the southeast corner of this tract, the northeast corner of the LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract as recorded in Document 20125145, OPRGCT;



THENCE South 01°39'48" East for 1,262.09 feet (South 00°33'06" East for 1,261.65 feet, R1) along the eastern boundary line of this tract generally with a fence, the western boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for the southeast corner of this tract, the northeast corner of the LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract as recorded in Document 20125145, OPRGCT (R3);

THENCE South 89°06'09" West along a southern boundary line of this tract generally with a fence, at 771.16 feet (South 89°39'27" West for 771.15 feet, R3) passing a found 1/2" rebar with no identification for the northwest of the said LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract, the northeast corner of the RICHARD & LINDA GRAY 11.353 acre tract recorded in Document 20104425, OPRGCT (R4), continuing for an additional distance of 513.68 feet (513.53 feet, R4) to a found 1/2" rebar with no identification for a southwest corner, located on an eastern boundary line of the PEDERNALES BREWING CO. 6.84 acres / Lot 24 as recorded in Document 20112340, OPRGCT;

THENCE North 00°02'50" East for 271.51 feet (North 00°43' East for 271.2 feet, R1) along a western boundary of this tract generally with a fence to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;

THENCE South 88°25'51" West for 122.63 feet (North 89°16' West for 122.5 feet, R1) along a southern boundary of this tract generally with a fence to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for a southwestern corner;

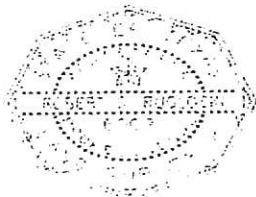
THENCE North 04°24'09" West for 108.22 feet (North 02°06' West for 108.1 feet, R1) along a western boundary of this tract to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;

THENCE North 89°47'03" West for 600.98 feet along a southern boundary of this tract, along the northern boundary line of said PEDERNALES BREWING CO. 6.84 acres / Lot 24 to a found 1/2" rebar with no identification for a point on line and the northeast corner of the PEDERNALES BREWING CO. 5.37 acres / Lot 1 as recorded in Document 20112340, OPRGCT;

THENCE continuing North 89°47'03" West for 567.02 feet, a total distance of 1,168.00 feet (1168.00 feet, R1) along a southern boundary of this tract, along the northern boundary line of said PEDERNALES BREWING CO. 5.37 acres / Lot 1 to a found 2" steel sign post for the southwest corner of this tract, the northwest corner of said PEDERNALES BREWING CO. 5.37 acres / Lot 1, located on the eastern ROW line of said STATE HIGHWAY No. 87;

THENCE North 01°16'29" West for 860.80 feet (North 00°25'00" West for 860.80 feet, R1) along the western boundary of this tract, the eastern ROW line of said STATE HIGHWAY No. 87 to the POINT OF BEGINNING.

CONTAINING: 219.460 acres of land.



The Basis of Bearings is Texas State Plane Coordinate System, NAD 1983, Central Zone (4203). This description was based on a survey made on the ground under my supervision completed on September 30, 2015.

  
Robert S. Rugloski, RPLS #6002  
Job #11607051 (RSR) | October 23, 2017

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



Mary Lynn Rusche, County Clerk

Gillespie County Texas

April 02, 2018 03:50:40 PM

FEE: \$36.00

CCHEESEMAN

20181539

LD



# WORKSHEET 3.0

## DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

*The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).*

### 1. Diversion Information (Instructions, Page. 24)

a. This Worksheet is to add new (select 1 of 3 below):

1.   N/A   Diversion Point No.
2.            Upstream Limit of Diversion Reach No.
3.            Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point**            cfs (cubic feet per second) or            gpm (gallons per minute)

c. Does this point share a diversion rate with other points? **Y / N**  
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches            cfs or            gpm*

d. For amendments, is Applicant seeking to increase combined diversion rate? **Y / N**

*\*\* An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
	Directly from stream	
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. **Y / N**

If yes, the drainage area is            sq. miles.

*(If assistance is needed, call the Surface Water Availability Team at (512) 239-4691, prior to submitting application)*



## 2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): \_\_\_\_\_
- b. Zip Code: \_\_\_\_\_
- c. Location of point: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.

*A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure. For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.*

- d. Point is at:  
Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.  
*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places*
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): \_\_\_\_\_
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

## WORKSHEET 4.0 DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be N/A.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses \_\_\_\_\_% and explain the method of calculation: \_\_\_\_\_

Is the source of the discharged water return flows? Y / N      If yes, provide the following information:

1. The TPDES Permit Number(s) \_\_\_\_\_ (attach a copy of the **current** TPDES permit(s))
2. Applicant is the owner/holder of each TPDES permit listed above? Y / N

*PLEASE NOTE: If Applicant is not the discharger of the return flows, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, then the application should be submitted under Section 3, Bed and Banks.*

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
  4. The percentage of return flows from groundwater \_\_\_\_\_, surface water \_\_\_\_\_?
  5. If any percentage is surface water, provide the base water right number(s) \_\_\_\_\_.
- c. Is the source of the water being discharged groundwater? Y / N      If yes, provide the following information:

1. Source aquifer(s) from which water will be pumped: \_\_\_\_\_
2. Any 24 hour pump test for the well if one has been conducted. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbbrpt.asp>. Additionally, provide well numbers or identifiers \_\_\_\_\_.
3. Indicate how the groundwater will be conveyed to the stream or reservoir.
4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.

ci. Is the source of the water being discharged a surface water supply contract? Y / N  
If yes, provide the signed contract(s).

cii. Identify any other source of the water \_\_\_\_\_





WATER CONTRACT APPLICATION
And
GENERAL INFORMATION FORM

A customer who is a natural person may request that his or her address, phone number and social security number be kept confidential, unless required or mandated by law.

(X) Yes (request for confidentiality) ( ) No (do not request confidentiality)

I. APPLICANT: Fredericksburg Development Incorporated
Address: 1250 N. E. Loop 410 Suite 333
City: San Antonio State: Texas Zip: 78209
Phone: (210) 930-5141 Fax: (210) 930-5142
E-mail Address: [REDACTED]

II. GENERAL INFORMATION

1. This application is for one of the following uses of water (check only one):
( ) Agriculture ( ) Industrial ( ) Irrigation (including golf course or landscape irrigation)
( ) Municipal (X) Recreational (including amenity ponds)

2. This request is for 9 acre-feet per year.
Request to be in acre-feet (af) (1af= 325,851 gallons)

3. The requested contract is for a term of 10 years.
Contracts limited to the following term:
i. Firm Contract (Municipal or Industrial) 5 years 40 years
ii. Firm Industrial Contract (<500 acre-feet) 1 year 40 years
iii. Firm Contract (Other than Municipal or Industrial) 5 years 10 years

4. Water will be used within a service area which consists of a total of 219.46 acres of land in Gillispie County.

5. Water will be pumped from the following (check only one):
( ) Lake Buchanan ( ) Inks Lake ( ) Lake LBJ
( ) Lake Marble Falls ( ) Lake Travis ( ) Lake Austin
( ) Lady Bird Lake ( ) Colorado River (X) Other - No water will be pumped.

NOTE: If water will be diverted downstream of Lake Travis, conveyance, delivery, or system losses will be assessed.

6. The maximum diversion rate will be N/A

7. Will you have an alternative "low water level" intake location? ( ) Yes (X) No
If yes, please describe where that location will be:

8. Will water be pumped and delivered to you by an entity other than you? ( ) Yes (X) No
If yes, please indicate that entity to us:

### III. ADDITIONAL APPLICATION INFORMATION

On a separate page, please provide:

1. "Exhibit A" - An estimate of the amount of water which will be needed per year, the "Maximum Annual Quantity" (MAQ amount should be rounded to the next whole number), throughout the term of the proposed contract. The estimate of the Maximum Annual Quantity should include:
  - a. A detailed description of how you determined the amount necessary for the proposed contract, including consideration of the beneficial use of the water without waste and the full implementation of your proposed water conservation plan;
  - b. If water will be diverted downstream of the Highland Lakes, conveyance, delivery or system losses will be incurred to deliver the amount of water requested to the Point of Diversion under the contract and will be added to the amount requested to be diverted (see Water Contract Rule 5.1(k));
  - c. For a proposed contract for water upstream of any of the Highland Lakes, or water from a tributary of the Colorado River downstream of the Highland Lakes, a technical analysis shall be performed to determine the potential maximum impact of the proposed contract on LCRA's water rights. (See Water Contract Rule 5.1(k).) Applicant also shall include such impact in its application to the Texas Commission on Environmental Quality for any Permit to Use State Water necessary to use the water sought in the proposed contract request; and,
  - d. If you have an alternate source of water supply from which you also will be diverting from the same facilities used to divert water under the requested contract, please provide a proposed accounting plan setting forth how you intend to account for and report water used from the various sources of supply.
2. "Exhibit B" - Map showing the point of diversion from the Colorado River and any points of discharge of return flows, as applicable, with said points referenced to an original county survey corner by bearing and distance.
3. "Exhibit C" - Recent survey or legal description of subject property service area, including boundary map.
4. "Exhibit D" - Map showing the location of subject service area. A 7 1/2 minute USGS Quadrangle map is suggested.
5. "Exhibit E" – Water Conservation Plan.
6. "Exhibit F" – Drought Contingency Plan.
7. "Exhibit G" – Demand Schedule : A demand or use schedule that estimates your annual water usage, and any increases to it over time, of the water to be supplied under the proposed contract
8. "Exhibit H" – Contact List: List the names, business addresses, telephone numbers and email addresses of the following (*as applicable*): individual signing this application; primary contact for questions regarding the application (if not the signatory to the application); engineer for applicant; attorney for applicant; operations staff for applicant.
9. "Exhibit I" – Authority regarding Service Area: Provide documentation showing the applicant's legal rights with regard to the property included in the service area ((e.g., deed, lease, certificate of convenience and necessity, or water service agreement with property owner).



10. "Exhibit J" (as applicable) – Corporate Structure and Signature Authority: If the contract is in the name of an entity, please provide documentation of the corporate structure, corporate officers, and signature authority of the person who will be executing the contract.
11. "Exhibit K" (as applicable) – Plan for treatment of wastewater or waste disposal and the estimated amount (as applicable)

NOTE: Exhibits must be included with the application (please provide 4 copies of each exhibit); See "Lower Colorado River Authority Water Contract Rules" for further details concerning Exhibits B through G.

**IV. APPLICATION FEE**

An application fee in accordance with the following schedule must be submitted with the application.

<u>Application Type</u>	<u>Application Fee</u>
Replacement or Amendment (<500 acre-feet/year) .....	\$2,000
Replacement or Amendment (≥500 acre-feet/year) .....	\$2,000 plus \$1.00 per acre-foot of additional water above 500 acre-feet
New Contract (<500 acre-feet/year).....	\$2,000
New Contract (≥500 and <5,000 acre-feet/year) .....	\$2,000 plus \$1.00 per additional acre-foot above 500 acre-feet
New Contract ≥5,000 acre-feet/year .....	\$10,000 plus \$1.00 per additional acre-foot above 5,000 acre-feet

**V. STATEMENT OF UNDERSTANDING AND AUTHORIZATION**

I have read and understand all of the provisions contained in the *Lower Colorado River Authority Water Contract Standard Terms and Conditions*, as well as the *Lower Colorado River Authority Water Contract Rules*, and hereby request the Lower Colorado River Authority to consider this application to enter into the most current standard form water contract. I further acknowledge and agree that, by filing this application, I may be required by LCRA consistent with LCRA's Water Contract Rules to provide additional funds for the costs of technical review that are not otherwise covered by the application fees submitted herewith and that a failure to do so may result LCRA's rejection of my application. All of the above information is, to the best of my knowledge, known to be correct and accurate as of the date recorded below and such information may be used to complete the necessary documents for the requested water contract. If this application is filed on behalf of an organization, I have the authority to submit this application.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

THE STATE OF TEXAS, COUNTY OF: \_\_\_\_\_ §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
 (Name) \_\_\_\_\_ (Title) \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
 Notary Public Signature

**Lower Colorado River Authority  
Upstream Water Contract  
Supplemental Information**

Applicant proposes to maintain three existing reservoirs located on the Fredericksburg Development, Inc. site in Fredericksburg, Texas. The three reservoirs were initially constructed for domestic and livestock purposes. The reservoirs usage will be converted to recreational purposes (amenity reservoirs) within a planned subdivision. The reservoirs are located in Gillespie County on unnamed tributaries of Baron's Creek, tributary to the Pedernales River, tributary to the Colorado River

Applicant is proposing to enter into this upstream water sales contract with the Lower Colorado River Authority (LCRA) to compensate for evaporation losses from the reservoirs. Applicant understands that a water rights permit from the Texas Commission on Environmental Quality (TCEQ) to Use State Water to maintain these reservoirs is required. Applicant has met with the TCEQ and is preparing the required water rights application.

Exhibit A -The Maximum Annual Quantity of water required to compensate for the evaporation losses is 9 acre-feet.

The maximum quantity of water was determined from the evaporation information TCEQ provided from the water availability model TCEQ uses; which we understand was updated by the LCRA. The evaporation was multiplied by the surface area of the normal water elevation for each of the reservoirs. The total evaporation includes all three reservoirs.

No water will be diverted downstream of the Highland Lakes.

Since the maximum amount of annual evaporation is relatively small, previous discussions with LCRA staff indicated a technical analysis to determine the potential maximum impact of the proposed contract on LCRA's water rights was not necessary.

Applicant will not be using an alternate source of water supply to maintain these reservoirs.

Exhibit B - Maps showing the location of the three ponds are attached.

Exhibits C and D – A deed and map showing the location of the project development area are attached.

Exhibits E and F - Since water will not be diverted for subsequent use, no Water Conservation Plan or Drought Contingency Plan is required.

Exhibit G - Water will only be stored as inflows occur in accordance with the water right issued by the TCEQ. Applicant understands that the TCEQ environmental flow restrictions will be part of said water right.

Exhibit H - Contact List:

Individual signing the application:

Christopher Wilde, Vice President 1250 N. E. Loop 410,  
Suite 333; San Antonio, TX 78201 Phone (0)



210.930.5141 or (c) 832.771.1181; Email [REDACTED]  
[REDACTED]

Primary Contact:

Skip Preble, Heirloom Communities, LLC; 133 Otto  
Eckhardt Road; Fredericksburg, TX 78624 Phone (0)  
888.211.2270 or (C) 832.771.1181; Email  
[REDACTED]

Engineer:

Randy Jenniges, P. E.; 133 Otto Eckhardt Road,  
Fredericksburg, TX 78624 Phone (C) 320.333.5951 Email  
[REDACTED]

Attorney:

Jimmy Norman, Norman & Oliver, P.C., 7373 Broadway,  
Suite 504, San Antonio, Texas 78209 Phone (0)  
210.822.8972 Ext. 225, Fax 210.804.7676; Email  
[REDACTED]

Operations Staff:

Exhibit I - Attached is a deed documenting Fredericksburg Development Incorporated's ownership of the property.

Exhibit J - Attached are documents evidencing the signature authority of Christopher Wilde Fredericksburg Development Incorporated Vice-President.

Exhibit K - There will be no treatment of wastewater or waste disposal.

NOTE: Exhibits must be included with the application (please provide 4 copies of each exhibit); See "Lower Colorado River Authority Water Contract Rules" for further details concerning Exhibits B through G.

## WORKSHEET 4.1 DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g. maps).  
**Instructions, Page 27.**

### For water discharged at this location provide:

- a. The amount of water that will be discharged at this point is  $\frac{N/A}{}$  acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of \_\_\_\_\_ cfs or \_\_\_\_\_ gpm.
- c. Name of Watercourse as shown on Official USGS maps: \_\_\_\_\_
- d. Zip Code: \_\_\_\_\_
- f. Location of point: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.
- g. Point is at:  
Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.  
***\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- h. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): \_\_\_\_\_

**Map submitted must clearly identify each discharge point. See instructions Page. 15.**



## WORKSHEET 5.0

### ENVIRONMENTAL INFORMATION

This worksheet is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins. The worksheet is also required in all basins for: requests to change a diversion point, applications using an alternate source of water, and bed and banks applications. **Instructions, Page 28.**

#### **1. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: N/A

Other, specify: \_\_\_\_\_

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

Personal observation

Other, specify: \_\_\_\_\_

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or ungrazed area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot.
2. Measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure).
3. If the application includes a proposed reservoir, also include:
  - i. A brief description of the area that will be inundated by the reservoir.
  - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
  - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

## 2. Alternate Sources of Water and/or Bed and Banks Applications

For all bed and banks applications:

- a. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on the new diversion structure).



- b. An assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.

If the alternate source is treated return flows, provide the TPDES permit number \_\_\_\_\_

If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:

- a. Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L					
Chloride, mg/L					
Total Dissolved Solids, mg/L					
pH, standard units					
Temperature*, degrees Celsius					

\* Temperature must be measured onsite at the time the groundwater sample is collected.

- b. If groundwater will be used, provide the depth of the well \_\_\_\_\_ and the name of the aquifer from which water is withdrawn \_\_\_\_\_.

# WORKSHEET 6.0

## Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.  
**Instructions, Page 31.**

*The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4691, or e-mail [wras@tceq.texas.gov](mailto:wras@tceq.texas.gov). The model plans can also be downloaded from the TCEQ webpage. Please use the most up-to-date plan documents available on the webpage.*

### 1. Water Conservation Plans

- a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture – including irrigation, wholesale):
1. Request for a new appropriation or use of State Water.
  2. Request to amend water right to increase appropriation of State Water.
  3. Request to amend water right to extend a term.
  4. Request to amend water right to change a place of use.  
*\*does not apply to a request to expand irrigation acreage to adjacent tracts.*
  5. Request to amend water right to change the purpose of use.  
*\*applicant need only address new uses.*
  6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water  
*\*including return flows, contract water, or other State Water.*
- b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:
1.   N/A   Municipal Use. See 30 TAC § 288.2. \*\*
  2.        Industrial or Mining Use. See 30 TAC § 288.3.
  3.        Agricultural Use, including irrigation. See 30 TAC § 288.4.
  4.        Wholesale Water Suppliers. See 30 TAC § 288.5. \*\*

\*\*If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N

- c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed



appropriation; and evaluates any other feasible alternative to new water development.  
See 30 TAC § 288.7.  
Applicant has included this information in each applicable plan? Y / N

## 2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
1. \_\_\_\_ Municipal Uses by public water suppliers. See 30 TAC § 288.20.
  2. \_\_\_\_ Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
  3. \_\_\_\_ Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc. See 30 TAC § 288.30*) Y / N

# WORKSHEET 7.0

## ACCOUNTING PLAN INFORMATION WORKSHEET

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4691 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

### 1. Is Accounting Plan Required

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

### 2. Accounting Plan Requirements

- a. A **text file** that includes:
  1. an introduction explaining the water rights and what they authorize;
  2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
  3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
  4. Should provide a summary of all sources of water.
- b. A **spreadsheet** that includes:
  1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
  2. Method for accounting for inflows if needed;
  3. Reporting of all water use from all authorizations, both existing and proposed;
  4. An accounting for all sources of water;
  5. An accounting of water by priority date;
  6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
  7. Accounting for conveyance losses;
  8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
  9. An accounting for spills of other water added to the reservoir; and
  10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.



## WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

### 1. NEW APPROPRIATION

	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under <b>Amount (\$)</b> .	\$100.00
	<u>In Acre-Feet</u>	
	a. Less than 100	\$100.00
	b. 100 - 5,000	\$250.00
	c. 5,001 - 10,000	\$500.00
	d. 10,001 - 250,000	\$1,000.00
	e. More than 250,000	\$2,000.00
Recording Fee		\$25.00
Agriculture Use Fee	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **	\$0.00
Use Fee	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x _____ Maximum annual diversion of State Water in acre-feet. **	\$0.00
Recreational Storage Fee	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x <u>44.0</u> acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	\$44.00
Storage Fee	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.	\$0.00
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4691.	\$1,154.32
<b>TOTAL</b>		<b>\$ 1,323.32</b>

### 2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
Filing Fee	Amendment: \$100	\$0.00
	OR Sever and Combine: \$100 x ___of water rights to combine	
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$ 0.00</b>

### 3. BED AND BANKS

	Description	Amount (\$)
Filing Fee		\$100.00
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$ 0.00</b>

**FIRM WATER CONTRACT**

**By and Between**

**LOWER COLORADO RIVER AUTHORITY**

**And**

**FREDERICKSBURG DEVELOPMENT, INC.**



## FIRM WATER CONTRACT

This Contract is entered by and between the LOWER COLORADO RIVER AUTHORITY (hereinafter, together with its successors and assigns, "LCRA") and FREDERICKSBURG DEVELOPMENT, INC. (hereinafter, together with its successors and assigns as provided herein, "PURCHASER"), who, in mutual consideration of the provisions herein contained, agree as follows:

### CONTRACT

1. PERMIT REQUIRED .....	1
2. STANDARD TERMS AND CONDITIONS .....	1
3. GENERAL TERMS, EXCEPTIONS & SPECIAL CONDITIONS .....	2
3.1 INCORPORATION OF EXHIBITS. ....	2
3.2 MAXIMUM ANNUAL QUANTITY.....	2
3.3 PAYMENT.....	2
3.4 POINTS OF AVAILABILITY. ....	2
3.5 MAXIMUM DIVERSION RATE. ....	2
3.6 TYPE OF USE. ....	3
3.7 SERVICE AREA.....	3
3.8 TERM OF CONTRACT. ....	3
3.9 PREVIOUS CONTRACT. ....	3
3.10NOTICE. ....	3

#### 1. PERMIT REQUIRED

PURCHASER may not impound, divert, or use water under this contract unless PURCHASER, in accordance with the substantive rules of the Texas Commission on Environmental Quality ("TCEQ") for upstream sales of water, obtains and maintains in effect a Water Rights Permit from the TCEQ that authorizes impoundment at the Point(s) of Availability consistent with the limitations set forth in Section 3.2 below.

#### 2. STANDARD TERMS AND CONDITIONS

Except as expressly provided in Section 3 of this Contract, the Parties agree to the standard terms and conditions attached hereto as Exhibit A.

### **3. GENERAL TERMS, EXCEPTIONS & SPECIAL CONDITIONS**

#### **3.1 Incorporation of Exhibits.**

All Exhibits attached to this Contract are incorporated herein by this reference in their entirety and made a part hereof for all purposes. In the event of a conflict between Exhibit A (Standard Terms and Conditions) and these General Terms, the General Terms will govern.

#### **3.2 Maximum Annual Quantity**

Upon issuance by TCEQ to PURCHASER of the Permit(s) as required in Section I.A. of this contract, PURCHASER shall have the right to impound, at normal operating levels, up to 44 acre-feet of raw water and to use such reservoir(s) for recreational purposes with no right of diversion, such impoundment(s) to be located on an unnamed tributary of Baron's Creek, tributary to the Pedernales River, tributary to the Colorado River in Gillespie County, Texas, described and depicted in Exhibits "B" and "C" attached hereto (the "Point(s) of Availability"). PURCHASER acknowledges that the impoundment, including evaporative losses, of water at the Point(s) of Availability will have an estimated impact to LCRA's senior water rights of approximately 9.68 acre-feet per year (the "Maximum Annual Quantity," or "MAQ"). PURCHASER's use of water from year to year may vary from the MAQ. PURCHASER further acknowledges that this estimate is based on certain assumptions regarding diversion and/or impoundment limitations and other criteria that may be modified by the TCEQ as part of its review and issuance of PURCHASER'S Permit to Appropriate State Water. In the event that such permit differs in the amount authorized for impoundment, diversion, or use by PURCHASER or is based on different assumptions than those used to determine the MAQ stated herein, LCRA will amend this contract to reflect these limitations.

#### **3.3 Payment**

Notwithstanding Section II.B.3 in Exhibit A, prior to the issuance by TCEQ of a permit authorizing the impoundment contemplated in Section 3.2, PURCHASER shall pay LCRA on an annual basis an amount equal to the Reservation Rate multiplied by the MAQ. Beginning at the date of issuance of the permit, PURCHASER shall make payments consistent with Section II.B.3 in Exhibit A, with such payments prorated for the year in which the permit is issued and adjusted for payments made under the Reservation Rate.

#### **3.4 Points of Availability.**

The Point of Availability is an unnamed tributary of Baron's Creek, tributary to the Pedernales River, tributary to the Colorado River in Gillespie County, Texas as described and depicted in Exhibit B.

#### **3.5 Maximum Diversion Rate.**

Diversions are not authorized.



**3.6 Type of Use.**

This Contract is authorized for recreational use consistent with Section 1.F. of Exhibit A.

**3.7 Service Area.**

Water supplied under this contract shall only be used within that certain area of 219.46 acres in Gillespie County as described in Exhibit C and depicted in Exhibit D, together hereinafter called the "Service Area."

**3.8 Term of Contract.**

The term of this Contract is 10 years unless terminated earlier by either party consistent with Exhibit A.

**3.9 Previous Contract.**

There is no contractual relationship between the parties prior to the Effective Date.

**3.10 Notice.**

All notices and invoices to PURCHASER shall be addressed to:

Fredericksburg Development, Inc.  
1250 N.E. Loop 410 Suite 333  
San Antonio, Texas 78209

All payments to LCRA shall be made to the address on the invoices received by PURCHASER.  
All notices to LCRA shall be addressed to:

Lower Colorado River Authority  
Attn: Raw Water Sales  
P.O. Box 220  
Austin, Texas 78767  
(512) 473-3551 for facsimile transmission

and

Lower Colorado River Authority  
Attn: River Operations  
P.O. Box 220  
Austin, Texas 78767  
(512) 473-3551 for facsimile transmission

**SIGNED BY:**

Lower Colorado River Authority

By: \_\_\_\_\_

Monica Masters  
Vice President, Water Resources

Date: \_\_\_\_\_

Fredericksburg Development, Inc.

By:  \_\_\_\_\_

Date: 11/11/19 \_\_\_\_\_

**EXHIBITS**

- A. Standard Contract Terms and Conditions
- B. Description of Point(s) of Availability
- C. Description of Service Area
- D. Depiction of Service Area
- E. Water Conservation Plan
- F. Drought Contingency Plan
- G. Demand Schedule
- H. Arbitration Procedures



**Exhibit A**

**Standard Contract Terms and Conditions**

## Exhibit A

### STANDARD CONTRACT TERMS AND CONDITIONS

I. WATER SUPPLY.....	2
A. PERMIT(S) MAY BE REQUIRED .....	2
B. MAXIMUM ANNUAL QUANTITY & LOSS FACTOR .....	2
C. EXCEEDANCE OF MAXIMUM ANNUAL QUANTITY.....	3
D. MAXIMUM DIVERSION RATE .....	3
E. SOURCE OF WATER SUPPLY.....	3
F. TYPE OF USE.....	4
G. SERVICE AREA.....	4
H. WATER CONSERVATION AND DROUGHT CONTINGENCY MEASURES.....	5
I. AVAILABILITY OF WATER.....	6
J. DELIVERY OF WATER.....	6
K. DEMAND SCHEDULE.....	6
L. REDUCTION IN MAQ FOR NON-USE.....	6
M. STATE REGULATION OF LCRA WATER SUPPLIES.....	6
N. OPERATIONS OF DAMS AND RESERVOIRS.....	7
O. QUALITY OF WATER.....	7
P. INTERBASIN TRANSFER.....	7
Q. REQUIRED NOTICES.....	7
II. CONTRACT ADMINISTRATION.....	8
A. TERM OF CONTRACT.....	8
B. PAYMENT.....	9
C. MEASURING WATER.....	10
D. TERMINATION OF CONTRACT OR REDUCTION IN MAXIMUM ANNUAL QUANTITY.....	11
E. NON-PAYMENT.....	13
F. EQUITABLE REMEDIES.....	13
G. NOTICE.....	13
H. ASSIGNMENT OF CONTRACT.....	14
I. COMPLIANCE WITH FILING REQUIREMENTS.....	14
III. ENVIRONMENTAL, PERMITTING AND OTHER ISSUES RELATED TO WATER SUPPLY.....	14
A. NONPOINT SOURCE WATER POLLUTION ABATEMENT.....	14
B. SEWAGE REGULATIONS.....	14
C. DOCUMENTATION OF COMPLIANCE; RIGHT OF ENTRY.....	14
D. ANNUAL REPORTS OF DUE DILIGENCE; AS-BUILT PLANS.....	15
IV. GENERAL PROVISIONS.....	15



A. EFFECTIVE DATE.....	15
B. PREVIOUS CONTRACT. ....	15
C. INDEMNIFICATION. ....	15
D. FORCE MAJEURE.....	16
E. NO THIRD-PARTY BENEFICIARY. ....	16
F. NO RIGHTS OR TITLE ACQUIRED. ....	16
G. REPRESENTATIONS AND WARRANTIES.....	16
H. DISPUTE RESOLUTION. ....	16
I. ACTUAL DAMAGES.....	17
J. AMENDMENT. ....	17
K. BINDING EFFECT. ....	17
L. COMPLETE CONTRACT. ....	18
M. COUNTERPARTS.....	18
N. FURTHER ASSURANCES.....	18
O. GOVERNING LAW.....	18
P. HEADINGS; TABLE OF CONTENTS. ....	18
Q. INCORPORATION OF WATER CONTRACT RULES.....	18
R. INTERPRETATION AND RELIANCE. ....	18
S. RELATIONSHIP OF PARTIES. ....	18
T. SEVERABILITY. ....	19
U. NO ADDITIONAL WAIVER IMPLIED. ....	19
V. SHORT TERM SALES OF FIRM WATER TO THIRD PARTIES.....	19

**I. WATER SUPPLY**

**A. PERMIT(S) MAY BE REQUIRED**

PURCHASER may not impound, divert, or use water under this Contract unless PURCHASER, in accordance with the substantive rules of the Texas Commission on Environmental Quality (“TCEQ”), U.S. Corps of Engineers, or any other local, state, or federal regulatory authority, obtains and maintains any water rights permit, wastewater discharge permit, dredge and fill permits, or any other similar permit, that is necessary to authorize PURCHASER’S impoundment, diversion and/or consumptive use, and subsequent discharge, of water consistent with this Contract.

**B. MAXIMUM ANNUAL QUANTITY & LOSS FACTOR**

From and after the Effective Date hereof, PURCHASER shall have the right to a Maximum Annual Quantity (MAQ) of raw or untreated water per annum made available by LCRA as set forth in the terms of the Contract. For purposes of this Contract, the term “made available” refers to the greatest of: (i) the amount of water released from LCRA firm supplies to allow for diversions by or on behalf of PURCHASER; or (ii) the amount of water diverted by or on behalf of PURCHASER at the Point(s) of Availability plus, if applicable, the Loss Factor (defined below) times the amount of water diverted.

Notwithstanding the foregoing, in the event that PURCHASER's Point(s) of Availability are located downstream of Lake Travis, PURCHASER and LCRA agree that calculations of Maximum Annual Quantity and the amount of water made available under this Contract will be based on the amount of water which LCRA makes available for diversion by or on behalf of PURCHASER at the Point(s) of Availability plus the Loss Factor as set forth in this Contract.

In the event that PURCHASER'S Point(s) of Availability are located downstream of Lake Travis, the Contract will specify a Loss Factor. The Loss Factor represents LCRA's best available estimate of the conveyance, delivery, or system loss incurred to provide water under this Contract. LCRA hereby reserves the right to modify the Loss Factor and make any associated changes to the MAQ, at any time, based on any revised estimates of conveyance, delivery, or system loss associated with the delivery of water to PURCHASER, including but not limited to changes in the source of supply LCRA uses to make water available to PURCHASER or updated and substantiated information related to river or canal losses.

PURCHASER may, at its option, conduct its own investigation of conveyance, delivery, or system losses, associated with the delivery of water by LCRA under this Contract. If PURCHASER conducts such study in accordance with LCRA's then-current Water Contract Rules, it shall provide to LCRA in a written report the results of any such investigation within sixty (60) calendar days of completion and LCRA agrees to consider whether any adjustment to the Loss Factor is appropriate under this Contract. If LCRA determines that an adjustment to the Loss Factor is appropriate, it shall provide PURCHASER written notice, by certified mail, of any change to the Loss Factor and resulting change to the Contract MAQ, within fifteen (15) business days of adopting such change. A change to the Loss Factor that results in an increase in the MAQ of 500 acre-feet per year or more shall not take effect until approved by the LCRA Board as an amendment to this Contract. Notwithstanding the foregoing or any provision in LCRA's raw water contract rules, LCRA will not require PURCHASER to obtain a new contract on the most current standard form water contract where the change to the MAQ is based solely on a change to the Loss Factor.

PURCHASER shall designate a point or points of availability for such water as described and depicted in Exhibit "B" attached hereto (the "Point(s) of Availability"), said Exhibit depicting the location by reference to a corner of an original land survey and/or other survey point, giving course and distance and providing the latitude and longitude. Such Points of Availability may be located on the Colorado River or a LCRA-operated canal. In the event that the Point(s) of Availability are located on a LCRA operated-canal, PURCHASER shall also identify a point or points of diversion for such water on the Colorado River ("Point(s) of Diversion"). Such Point(s) of Diversion, if any, shall be described and depicted in Exhibit "B" in the same manner described for Point(s) of Availability.

**C. EXCEEDANCE OF MAXIMUM ANNUAL QUANTITY.**

If the amount of water made available to PURCHASER for any reason exceeds the Maximum Annual Quantity stated in PURCHASER's Contract during two (2) consecutive years, or two (2) out of any four (4) consecutive years, PURCHASER shall submit an application (including the application fee) for a new standard form water contract for an adjusted MAQ, the reasonableness of which shall be determined consistent with LCRA's then effective Water Contract Rules, to the extent LCRA has water supplies available.

**D. MAXIMUM DIVERSION RATE**

PURCHASER may not divert water made available by LCRA under this Contract at a rate greater than as set forth in this Contract ("Maximum Diversion Rate").

**E. SOURCE OF WATER SUPPLY.**

1. The water made available for impoundment, diversion and/or use under this Contract will be water provided from any source available to LCRA at the time PURCHASER uses water under this Contract.



2. LCRA may make water available under this Contract in accordance with LCRA's Water Management Plan, as may be amended in accordance with state law from time to time, from storage in Lakes Buchanan and/or Travis in accordance with water rights held by LCRA as set forth in Certificates of Adjudication No. 14-5478, as amended, and 14-5482, as amended.
3. LCRA may make water available under this Contract from water rights owned by LCRA based on that certain water right previously owned by the Garwood Irrigation Company and identified as Certificate of Adjudication No. 14-5434 issued by the Texas Water Commission on June 28, 1989, as amended (herein, "Garwood's Right"). That portion of Garwood's Right that is owned by LCRA (and for which reference is made to Certificate of Adjudication No. 14-5434C issued by the Texas Natural Resource Conservation Commission) is referred to herein as "Garwood's Remaining Right."
  - a) PURCHASER acknowledges and agrees that LCRA may make water available for impoundment, diversion and/or use under this Contract from Garwood's Remaining Right only following approval by the Texas Commission on Environmental Quality or its successors (hereafter, "TCEQ"), of amendments to allow use of Garwood's Remaining Right for the type of use authorized by this Contract at the Point of Diversion and/or Point of Availability.
  - b) In this event, this Contract is subject to the commitments and conditions set forth in Section 7.08 of that certain Purchase Agreement, dated July 20, 1998, between Garwood Irrigation Company, as seller, and the Lower Colorado River Authority, as buyer (the "LCRA-Garwood Purchase Agreement"), and is further subject to all terms, provisions and special conditions contained within Garwood's Remaining Right, as amended. Copies of the LCRA-Garwood Purchase Agreement and Garwood's Remaining Right, as amended, are available at the following internet web-site address:

<http://www.lcra.org/water/contracts.html>

PURCHASER also may obtain copies of the LCRA Purchase Agreement and Garwood's Remaining Right, as amended, by request to LCRA's address for notices herein. By executing this Contract, PURCHASER hereby acknowledges receipt of copies of the LCRA Purchase Agreement and Garwood's Remaining Right, as amended.

#### **F. TYPE OF USE.**

PURCHASER represents to LCRA and LCRA relies on such representation that all water made available under this Contract will be impounded, diverted, and/or used by PURCHASER for the type of use as described in this Contract, as such use is defined by the substantive rules for water rights of the TCEQ. In accordance with state law, any part of the water that PURCHASER impounds or diverts but does not use or consume for such use in accordance with this Contract shall be returned to the Colorado River or a tributary of the Colorado River.

#### **G. SERVICE AREA.**

Water made available under this Contract shall only be used within that certain area, as described in Exhibit "C" attached hereto and depicted in Exhibit "D," attached hereto, together hereinafter called the "Service Area."



## H. WATER CONSERVATION AND DROUGHT CONTINGENCY MEASURES.

1. PURCHASER agrees to implement the water conservation program contained in the water conservation plan (the "Water Conservation Plan") described in Exhibit "E" attached hereto. PURCHASER further agrees that the water impounded and/or diverted by PURCHASER pursuant to this Contract will be used in accordance with such Water Conservation Plan. LCRA, in accordance with applicable law, may from time to time adopt reasonable rules and regulations relating to water conservation measures. PURCHASER shall update its Water Conservation Plan every five years, or on such schedule as may be required by LCRA or other state law. PURCHASER further agrees to amend its Water Conservation Plan, as necessary, to reflect amendments in state law, regulations or LCRA's water conservation rules and regulations. PURCHASER further agrees to do so within 180 days of the effective date of such amendments, provided that, if the amendments are adopted by LCRA (rather than, for example, TCEQ), the deadline for PURCHASER to make corresponding amendments to its Water Conservation Plan shall run from the date LCRA provides written notice of the amendments to PURCHASER. PURCHASER further agrees to submit its amended Water Conservation Plan to LCRA within 30 days after its adoption. Revisions to PURCHASER's Water Conservation Plan are not required under this section if PURCHASER has not initiated diversions; however, PURCHASER shall update its Water Conservation Plan to be consistent with LCRA's rules and regulations related to water conservation at least sixty (60) days prior to initiating diversions under this Contract. In the event that PURCHASER agrees to furnish water or water services to a third party, who in turn will furnish the water or water services to an ultimate consumer, PURCHASER agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a water conservation program consistent with PURCHASER's Water Conservation Plan; and, b) amend its water conservation program to reflect amendments in state law, regulations or LCRA's water conservation rules and regulations within the same timelines that apply to PURCHASER.
  
2. PURCHASER agrees to implement the drought contingency program contained in the drought contingency plan (the "Drought Contingency Plan") described in Exhibit "F" attached hereto. PURCHASER further agrees that the water impounded and/or diverted by PURCHASER pursuant to this Contract will be used in accordance with such Drought Contingency Plan. PURCHASER shall review and update the Drought Contingency Plan not less than once every five (5) years or following written request by LCRA consistent with any other schedule required by LCRA's Water Contract Rules. PURCHASER further agrees to submit any amended Drought Contingency Plan to LCRA within 30 days after its adoption. LCRA, in accordance with applicable law, may from time to time adopt reasonable rules and regulations relating to drought contingency measures, including LCRA's Water Management Plan. PURCHASER agrees to amend its Drought Contingency Plan, as necessary, to reflect amendments in state law or regulations or LCRA's rules, regulations or Water Management Plan. PURCHASER further agrees to do so within 180 days of the effective date of such amendments, provided that, if the amendments are adopted by LCRA (rather than, for example, TCEQ), the deadline for PURCHASER to make corresponding amendments to its Drought Contingency Plan shall run from the date LCRA provides written notice of the amendments to PURCHASER. Revisions to PURCHASER's Drought Contingency Plan are not required under this section if PURCHASER has not initiated diversions; however, PURCHASER shall update its Drought Contingency Plan to be consistent with LCRA's rules and regulations related to water conservation at least sixty (60) days prior to initiating diversions under this Contract. In the event that PURCHASER agrees to furnish water or water services to a third party, who in turn will furnish the water or water services to an ultimate consumer, PURCHASER agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a drought contingency program consistent with PURCHASER's Drought Contingency Plan; and b) amend its drought contingency program to reflect amendments in state law, regulations, or LCRA's rules, regulations, or Water



Management Plan within the same timelines that apply to PURCHASER.

**I. AVAILABILITY OF WATER.**

LCRA is committing to make available to PURCHASER under this Contract a portion of LCRA's firm water supply, as defined in LCRA's Water Contract Rules; provided, however, LCRA may interrupt or curtail the water supplied under this Contract as required by state law or in accordance with LCRA's Water Management Plan or Drought Contingency Plan, as such Plans and any amendments thereto have been approved and may be approved in the future by the TCEQ.

Water supplied under this contract is water that otherwise would have flowed into the Colorado River and/or Lakes Buchanan and Travis and is a commitment against LCRA's firm water supply, as defined in LCRA's Water Contract Rules, subject to diversion and use rights of all senior right holders downstream of the Point(s) of Availability.

**J. DELIVERY OF WATER.**

LCRA is responsible for making water available under this Contract only up to the MAQ. LCRA makes no guarantee that the water made available under this Contract will be available at any particular time or place or that any LCRA owned/operated reservoir or the Colorado River will be maintained at any specific elevation or flow at any particular time. Furthermore, PURCHASER acknowledges and agrees that LCRA's obligations under this Contract shall not require LCRA to make additional releases of water from LCRA firm water supplies beyond the MAQ or to make releases to raise the water elevations or flows at the Point(s) of Availability at a particular time sufficient for PURCHASER's intake and/or diversion facilities to operate.

**K. DEMAND SCHEDULE.**

PURCHASER has provided a Demand Schedule (Exhibit G) that reflects PURCHASER's best estimate of the scheduled initiation of diversions, initial usage, annual water usage, and any increases of usage over time, of the water to be made available by LCRA under this Contract, consistent with LCRA's Water Contract Rules. PURCHASER shall review, update if needed, and provide to LCRA an updated Demand Schedule not less than once every five (5) years coincident with any updated Water Conservation Plans required by this Contract or LCRA's Water Contract Rules, or following written request by LCRA consistent with any other schedule that may be required by LCRA's Water Contract Rules.

**L. REDUCTION IN MAQ FOR NON-USE.**

Upon sixty (60) days' written notice to PURCHASER, LCRA may consider reducing the MAQ under this Contract at any time after ten year(s) after the Effective Date of this Contract if PURCHASER's maximum annual use has not been at least ten percent of the MAQ on an annual basis within the first ten years. Within thirty (30) days of LCRA's written notice that it is considering reduction of the MAQ, PURCHASER shall provide LCRA with a written assurance and updated Demand Schedule that demonstrates PURCHASER's intent to increase its diversions under this Contract within the next two (2) years to an amount that will be at least ten percent (10%) of the original MAQ secured by this Contract. If PURCHASER fails to or is unable to provide such written assurance, or if at least ten percent (10%) of the MAQ is not put to use on an annual basis within the two year period, LCRA may thereafter, at its sole option, terminate the contract or reduce the MAQ to any amount LCRA deems appropriate and reasonable under LCRA's raw water contract rules in effect at the time. An adjustment to the MAQ of this Contract under this section does not require PURCHASER to obtain a new contract on the most current standard form contract.

**M. STATE REGULATION OF LCRA WATER SUPPLIES.**

PURCHASER acknowledges and agrees that the water LCRA makes available under this Contract may be regulated in whole or in part by the State of Texas or local regulatory authorities. PURCHASER further acknowledges and agrees that LCRA's water rights are subject to regulation by the State of Texas, including



but not limited to periodic review and amendment of LCRA's Water Management Plan by the TCEQ. LCRA and PURCHASER acknowledge and agree that LCRA shall be obligated to exercise due diligence to manage its water supplies within such regulatory regimes to make water available to PURCHASER in accordance with the terms of this Contract. PURCHASER acknowledges and agrees, however, that LCRA's obligations under this Contract may be affected by orders of the State of Texas, its agencies or local regulatory authorities. Orders of the State of Texas, its agencies or local regulatory authorities may constitute a "force majeure" event in accordance with this Contract.

**N. OPERATIONS OF DAMS AND RESERVOIRS.**

The right of LCRA to maintain and operate its several dams and their appurtenances on the Colorado River and its associated tributaries and at any and all times in the future to impound and release waters thereby in any lawful manner and to any lawful extent LCRA may see fit is recognized by PURCHASER; and, except as otherwise provided herein, there shall be no obligation upon LCRA to release or not to release any impounded waters at any time or to maintain any waters at any specified elevation or flow. PURCHASER acknowledges that the elevations of said reservoirs and the Colorado River will vary as a result of hydrologic events, or lack thereof, (e.g. floods or droughts) in the watershed and LCRA's operations of its dams on the Colorado River.

PURCHASER acknowledges that Longhorn Dam, which is owned and operated by the City of Austin, may lie upstream of the Point(s) of Availability and/or Point(s) of Diversion, if any, and downstream of Lake Travis. PURCHASER agrees to hold LCRA harmless for any claims that PURCHASER has against LCRA for any action or inaction by the City of Austin relating to its ownership and operation of Longhorn Dam.

**O. QUALITY OF WATER.**

LCRA makes no representation as to the quality of the water made available under this Contract, and PURCHASER hereby releases LCRA and agrees to hold it harmless from any and all claims that PURCHASER or PURCHASER's customers or users have or may have against LCRA for any diminution in or impairment of the quality of water made available under this Contract.

**P. INTERBASIN TRANSFER.**

Any surface water made available under this Contract may not be transferred or used outside of the Colorado River basin unless such transfer or use is within LCRA's water service area or is otherwise in strict compliance with LCRA Board Policies, LCRA water rights and a final permit for interbasin transfer ("IBT") issued by the TCEQ. In the event that PURCHASER intends to transfer or use surface water made available under this Contract outside of the Colorado River basin in accordance with this section, PURCHASER, by executing this Contract, authorizes LCRA to apply to the TCEQ for the necessary authorization pursuant to Texas Water Code § 11.085 and 11.122 within forty-five (45) days of the Effective Date of this Contract. LCRA shall diligently pursue such authorization after it is filed. PURCHASER shall pay for any filing and notice fees related to such application after LCRA bills PURCHASER for such fees in accordance with this Contract.

**Q. REQUIRED NOTICES.**

1. PURCHASER shall notify LCRA in writing of its intention to initiate diversions of water under this Contract not more than eight (8) weeks, nor less than four (4) weeks, prior to PURCHASER's initiation of diversions. Such notice shall include PURCHASER's anticipated diversion rate, not to exceed the Maximum Diversion Rate. If impoundments or diversions of water are being continued from a previous contract or other right to divert, and no change in diversion rate is anticipated, no notice is necessary.
2. PURCHASER shall notify LCRA in writing not more than two (2) weeks prior to making any change in its planned diversion rate, not to exceed the Maximum Diversion Rate specified

in this Contract.

3. If PURCHASER's Point(s) of Availability and/or Point(s) of Diversion, if any, are located downstream of Lake Travis or on a tributary which flows into the Colorado River downstream of Lake Travis, PURCHASER shall notify LCRA's River Operations Center (ROC) of its intent to impound and/or divert water under this Contract and shall either: (1) develop with the ROC a written process or mechanism for notifying the ROC of its intent to divert water under this Contract; or (2) notify the ROC prior to making any impoundment and/or diversion under this Contract in accordance with any requirements set forth in the Special Conditions in the Contract.
4. In the event the PURCHASER is required by state law to obtain a water right permit or water right permit amendment – including but not limited to contractual, term, or temporary water right permits – from TCEQ related to water that is reserved or purchased pursuant to an LCRA water contract, PURCHASER shall provide LCRA: (i) a copy of the application for the water right permit or water right permit amendment within five (5) business days of its filing with TCEQ; (ii) a copy of any proposed notice related to the application; and (iii) a copy of the water right permit or water right permit amendment promptly following the issuance of the water right permit or water right permit amendment. PURCHASER shall incorporate LCRA's reasonable comments into the application notice provided that: (i) LCRA provides its comments to PURCHASER within ten (10) business days of LCRA's receipt of the draft notice, unless a shorter response period is required by the TCEQ; and (ii) TCEQ accepts LCRA's comments in the final version of the notice. PURCHASER also shall provide LCRA two copies of any notice or action by TCEQ of a violation or termination of the water right permit or water right permit amendment within ten (10) days of PURCHASER receiving notice from TCEQ.
5. PURCHASER shall notify LCRA in writing not more than eight (8) weeks, nor less than four (4) weeks, prior to implementing a program for reuse of water that is reserved or purchased pursuant to this Contract and that falls within the type of use and Service Area provided in this Contract. PURCHASER will make available to LCRA non-privileged documents regarding PURCHASER's reuse program within a reasonable amount of time, not to exceed fifteen (15) business days, following a written request by LCRA staff. For all purposes of this Contract, the term "reuse" means the authorized use of water, which water was diverted and used pursuant to this Contract, but which water remains unconsumed and has yet to be either disposed of or discharged or otherwise allowed to flow into a watercourse, lake or other body of state-owned water.
6. PURCHASER shall notify LCRA in writing of its intentions to divert or deliver water for a Secondary Purchaser at least thirty (30) days prior to any diversions or deliveries from PURCHASER to the Secondary Purchaser.
7. Prior to the Effective Date of this Contract, PURCHASER shall provide to LCRA a demand or use schedule that estimates PURCHASER's annual usage, and any increases to it over time, of the water to be made available by LCRA under this Contract (the "Demand Schedule"). PURCHASER shall review, update if needed, and provide to LCRA the Demand Schedule not less than once every five (5) years or following written request by LCRA consistent with any other schedule required by LCRA's Water Contract Rules.

## **II. CONTRACT ADMINISTRATION**

### **A. TERM OF CONTRACT.**

This Contract shall be for the term of years as set forth in this Contract, which shall commence on the Effective Date and end on the anniversary of the Effective Date in the last year of the contract term as set forth in this Contract, unless terminated earlier by either party as provided below.



**B. PAYMENT.**

1. The "Water Rate" is the rate determined by the Board of Directors of LCRA to then be in effect for all sales of firm water for the same use as provided in this Contract. The "Reservation Rate" is the rate determined by the Board of Directors of LCRA to then be in effect for the reservation of firm water for the same use as provided in this Contract. The "Inverted Block Rate" is the rate determined by the Board of Directors of LCRA to then be in effect for diversion or use of water in amounts in excess of the Maximum Annual Quantity.
2. The Water Rate presently in effect is \$145 per acre-foot (\$0.44 per 1,000 gallons) of water. The Reservation Rate presently in effect is \$72.50 per acre-foot. The Inverted Block Rate presently in effect is \$290 per acre-foot of water. LCRA reserves all rights that it may have under law to modify the Water Rate, the Reservation Rate, or the Inverted Block Rate. PURCHASER understands and acknowledges that the Water Rate, Reservation Rate, and the Inverted Block Rate set forth in this Contract have been approved by LCRA's Board of Directors, and that the Board may change all rates, fees and charges under the Contract from time to time.
3. PURCHASER agrees and covenants to pay LCRA – on an annual basis – an amount of money (the "Use Charge") equal to the Water Rate multiplied by the MAQ for the water to be made available in the upcoming year. PURCHASER acknowledges that invoices and payments due under this Section will assume full use of the MAQ under this Contract on an annual basis.
4. PURCHASER further agrees and covenants to pay LCRA – on a calendar year basis – an amount of money (the "Excess Use Charge") equal to the Inverted Block Rate multiplied by any amount of water LCRA determines has been impounded, diverted or otherwise used by PURCHASER that would result in an average firm yield impact to LCRA's senior water rights in excess of the Maximum Annual Quantity during the previous calendar year, less any amount PURCHASER has previously paid for the same water through the Use Charge and/or Reservation Charge. In the event the amount of water made available to PURCHASER is limited because of a curtailment imposed by LCRA or state law in accordance with this Contract to an amount less than the MAQ, then PURCHASER shall pay a surcharge, in excess of any Use or Reservation Charges, to be set by LCRA's Board of Directors, multiplied by any amount of water made available to PURCHASER in excess of the amount PURCHASER is authorized to have available during the curtailment (the "Curtailment Surcharge").
5. All charges under this Contract shall be pro-rated as necessary to reflect the Effective Date or date of termination of this Contract. For purposes of metering and billing, the "calendar year" may be based upon the 12-month period from the December meter reading date to the next December reading date.
6. Following the Effective Date of this Contract, LCRA will mail an invoice or invoices to PURCHASER for the pro rated amount due for the current year and any amount due under the previous contract.
7. In January of each year, LCRA will mail an invoice to PURCHASER showing the amount of money owed by PURCHASER to LCRA for the Use Charge and any late payment charges as specified herein. The invoice shall also show any amount of water that LCRA has determined PURCHASER has impounded, diverted or otherwise used that would result in an average firm yield impact to LCRA's senior water rights in excess of the Maximum Annual Quantity during the previous calendar year, as well as the corresponding Excess Use Charge.

8. PURCHASER shall pay LCRA for water provided under this Contract in the amount of each invoice submitted to PURCHASER by LCRA on or before thirty (30) days from the date of the invoice. PURCHASER shall mail checks for payments to the address indicated on the invoice. PURCHASER may pay by hand-delivery of checks or cash to LCRA's headquarters in Austin, Travis County, Texas, or by bank-wire if PURCHASER obtains LCRA's approval and makes arrangements for doing so prior to the due date. Payment must be received at the address provided on the invoice, or, if approved, at LCRA's headquarters or bank, not later than thirty (30) days from the invoice date in order not to be considered past due or late. In the event PURCHASER fails to make payment of that invoice within thirty (30) days of the invoice date, PURCHASER shall then pay a late payment charge of five percent (5%) of the unpaid amount of the invoice. For each calendar month or fraction thereof that the invoice remains unpaid, PURCHASER shall pay interest at the rate of one and one-half percent (1.5%) per month on the unpaid portion of the invoice. In the event PURCHASER attempts to pay LCRA by check, draft, credit card or any other similar instrument and the instrument is returned or refused by the bank or other similar institution as insufficient or non-negotiable for any reason, PURCHASER shall be assessed and must pay to LCRA, per each returned instrument, the LCRA's current returned instrument fee. If the invoice has not been paid within thirty (30) days of the invoice date, PURCHASER further agrees to pay all costs of collection and reasonable attorney's fees, regardless of whether suit is filed, as authorized by Chapter 271, Texas Local Government Code.

**C. MEASURING WATER.**

1. To measure the amount of water diverted by PURCHASER hereunder, PURCHASER agrees at PURCHASER's expense to install such measuring and recording devices or methods as are approved by LCRA (the "Meter"), such Meter to permit, within five percent (5%) accuracy, determination of quantities of raw water diverted from the reservoir or stream hereunder in units of 1,000 gallons. LCRA shall have the right to approve both the design of the meter as well as the location of its installation. PURCHASER must repair, replace or make necessary improvements to a meter that is not in compliance with this Contract or LCRA's Water Contract Rules promptly after PURCHASER becomes aware of the deficiency that causes the meter to not comply with this Contract or LCRA's Water Contract Rules.
  - a) PURCHASER agrees to read Meter and submit meter readings to LCRA via electronic mail, online portal or other format as specified by LCRA, on a monthly basis, on or about the 15th day of each month or on such date as specified by LCRA.
  - b) PURCHASER agrees to provide LCRA's representatives access across PURCHASER's property for inspection, testing and reading of the Meter. PURCHASER shall locate the meter in a manner that provides LCRA with reasonably safe access to the Meter for the purpose of making meter readings, testing, and/or periodic inspections.
  - c) PURCHASER agrees that the Meter shall be tested for accuracy by qualified personnel as approved by LCRA and at the expense of PURCHASER once each calendar year at intervals of approximately twelve (12) months if the MAQ is greater than 20 acre-feet per year and at intervals of approximately (24) months if the MAQ is less than or equal to 20 acre-feet per year.
  - d) PURCHASER shall furnish to LCRA a report of such test results. Readings within five percent (5%) of accuracy shall be considered correct.



- e) In the event PURCHASER fails to test the Meter for a period of fifteen (15) consecutive months for contracts with a MAQ greater than 20 acre-feet per year or fails to test the Meter for a period of 25 consecutive months for contracts with a MAQ of 20 acre-feet per year or less, PURCHASER agrees to pay LCRA for the actual cost of testing the Meter plus a fifty dollar (\$50) administrative fee. LCRA will provide PURCHASER a written invoice of the cost of testing the Meter, and said invoice will be subject to the payment terms provided in section II.B of this Contract.
  - f) If, at any time, LCRA provides PURCHASER a written notice that questions the accuracy of the Meter, PURCHASER promptly shall test the Meter and, in this event, the expense of such test will be paid by LCRA if the Meter is found to be correct and by PURCHASER if it is found to be incorrect.
  - g) Any party that tests the Meter shall provide written notice of the test to the other party at least five (5) business days in advance of the test and shall allow the other party to observe the test.
  - h) PURCHASER shall be required to take necessary steps to correct any inaccuracy in the Meter discovered during any test. LCRA may install, at its expense, check meters in or to any of PURCHASER's Meters at any time and may leave such check meters installed for such periods as is reasonably necessary to determine the accuracy of PURCHASER's Meters.
  - i) If, as a result of any test, the Meter is found to be registering inaccurately (i.e., in excess of five percent (5%) of accuracy), the readings of the Meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon or, if no such period is known and agreed upon, the shorter of the following periods shall be used as the basis for correction:
    - (1) a period extended back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or
    - (2) a period extending back half of the time elapsed since the last previous test; and the records of reading shall be adjusted accordingly.
2. In the event PURCHASER is charged based on water released from LCRA firm water supplies under this Contract rather than the actual amount withdrawn from the reservoir or stream by PURCHASER, LCRA shall include the amount of such releases in the monthly invoice provided to PURCHASER. LCRA shall make available information regarding its calculation of the amount of water released attributable to PURCHASER's actual diversions under this Contract within a reasonable period following PURCHASER's written request.

**D. TERMINATION OF CONTRACT OR REDUCTION IN MAXIMUM ANNUAL QUANTITY.**

This Contract may be terminated as follows:

- 1. If PURCHASER is current on all payments due to LCRA under this Contract and the MAQ is less than 500 acre-feet, PURCHASER may terminate this Contract or reduce the MAQ as set forth in this section at any time following the expiration of five (5) years, measured from the Effective Date, by providing at least one year's prior written notice to LCRA. If the MAQ is 500 acre-feet or more, Purchaser's ability to terminate or reduce the MAQ is limited as follows: beginning with the five-year anniversary of the Effective Date of the contract,

Purchaser may: (a) reduce its MAQ by up to 25 percent of the original contract quantity once every five years; or (b) if LCRA's other firm, non-temporary commitments have increased in an amount greater than projected under LCRA's Water Supply Resource Plan, Purchaser may terminate the contract or reduce the MAQ by a quantity greater than 25 percent.

2. LCRA at its sole option, in accordance with the terms and conditions set forth in Section II.E, "Non-Payment," may terminate this Contract without recourse should PURCHASER fail to comply with the terms and conditions of this Contract for the payment of moneys owed to LCRA pursuant to Section II.B. "Payment."
3. If PURCHASER fails to comply with its Water Conservation Plan, its Drought Contingency Plan, or any applicable LCRA nonpoint source water pollution abatement ordinance, or if PURCHASER fails to amend its Water Conservation Plan or its Drought Contingency Plan to reflect changes in LCRA's Water Conservation Plan Rules, LCRA's Drought Contingency Plan Rules, or state law or rules, LCRA may terminate, at its sole option, this Contract without recourse unless such default is cured within thirty (30) days of the date LCRA provides written notice to PURCHASER (or, if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days of PURCHASER's receipt of written notice of such default.
4. If PURCHASER fails to comply with the requirements of Sections III.A, "Nonpoint Source Pollution Abatement," III.B, "Sewage Regulations," or III.C, "Documentation of Compliance; Right of Entry," LCRA may, at its sole option, terminate this Contract without recourse unless such default is cured within thirty (30) days of the date LCRA provides written notice to PURCHASER (or if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days of PURCHASER's receipt of written notice of such default. For purposes of this section, LCRA shall not deem PURCHASER to be in default for so long as PURCHASER is in compliance with any remedial or enforcement agreement authorized by an agency of appropriate jurisdiction.
5. If PURCHASER fails to comply with other requirements of this Contract not specifically stated above, LCRA may, at its sole option, terminate this Contract without recourse unless such default is cured within thirty (30) days (or, if the nature of such default is not susceptible of being cured within such thirty (30) day period, such longer period of time during which PURCHASER diligently prosecutes the cure of such default, not to exceed one hundred eighty (180) days of PURCHASER's receipt of written notice of such default.
6. Subject to the requirements of applicable bankruptcy laws, including the rights of a trustee to assume contracts under applicable bankruptcy laws, this Contract may be terminated immediately by LCRA upon the declaration of bankruptcy by PURCHASER.
7. In the event TCEQ or any other local, state, or federal regulatory agency denies to PURCHASER, or terminates for any reason, a permit required by this Contract, PURCHASER shall notify LCRA within three (3) business days and immediately cease diversions under this Contract. LCRA, at its sole option, may terminate this Contract on or after the denial or termination of any permit required by this Contract is final and non-appealable.

PURCHASER shall remain liable for all fees and charges, including any non-refundable Pre-paid Reservation Charges, accruing under the Contract through the date the Contract is terminated, including but not limited to a pro-rated Reservation Charge, which shall be calculated based upon the excess of the Maximum Annual Quantity, pro-rated to the date of termination, over the amount of water made available



to PURCHASER through the date of termination. In the event LCRA terminates this Contract as provided herein, PURCHASER shall suspend immediately upon such termination all withdrawal of water from the Colorado River, or any tributaries thereof, under this Contract. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized withdrawals by PURCHASER or enforce the requirements of PURCHASER's Water Permit, if any. In the event that the contract is terminated based upon the denial or termination of a permit required by this Contract, PURCHASER shall be required to pay an early termination fee equal to the Reservation Rate times the MAQ.

**E. NON-PAYMENT.**

1. If LCRA determines that PURCHASER has not paid the full amount owed for any payment due under Section II.B, "Payment", hereof within the time provided therefore, LCRA shall give written notice to PURCHASER stating the amount LCRA has determined is due and unpaid. If LCRA gives notice as provided herein and PURCHASER fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, LCRA may, at its sole option: (1) upon giving ten (10) days written notice to PURCHASER terminate this Contract without recourse; and/or, (2) request injunctive relief from a court of competent jurisdiction to prevent PURCHASER from impounding and/or diverting additional water pursuant to this Contract.
2. If PURCHASER should dispute PURCHASER's obligation to pay all or any part of the amount stated in any invoice or notice, PURCHASER may, in addition to all other rights that PURCHASER may have under law, pay such amount under protest in which case such amount shall be deposited by LCRA in an interest bearing account mutually acceptable to both LCRA and PURCHASER pending final resolution of such dispute in accordance with Section IV.H, "Dispute Resolution." LCRA may not terminate this Contract, or request injunctive relief to prevent additional impoundments and/or diversions, for failure to pay the amount stated in any invoice or notice if PURCHASER pays such amount under protest and until there is a final resolution of such dispute in accordance with Section IV.H, "Dispute Resolution," favorable to LCRA.

**F. EQUITABLE REMEDIES.**

PURCHASER agrees that diversions or impoundments of water by PURCHASER without the authorization provided by this Contract will result in damages to LCRA that cannot be adequately compensated by money alone. As a result, PURCHASER agrees that LCRA shall have available to it equitable remedies, including injunctive relief against additional diversions or impoundments by PURCHASER unless PURCHASER demonstrates that it is otherwise authorized to divert or impound water. In addition, PURCHASER agrees that the provisions of Section IV.H, "DISPUTE RESOLUTION," will not apply to any legal action brought by LCRA seeking equitable remedies under this Contract except as expressly provided by Section II.E.2 regarding "NON-PAYMENT."

**G. NOTICE.**

Any notice under this Contract may be delivered by facsimile transmission or by certified mail, return receipt requested. If delivered by facsimile transmission, notice shall be deemed effective as of the facsimile send date, provided that any notice sent by facsimile must also be sent the same date by first-class mail. If delivered by certified mail, return receipt requested, notice shall be deemed effective five (5) days after the date on which the notice is post-marked.

All notices and invoices to PURCHASER shall be addressed as set forth in the General Terms of this Contract.

All notices and payments to LCRA shall be addressed as set forth in the General Terms of this Contract.

Either party may change its address by giving written notice of such change to the other party. PURCHASER is required to provide notice of change in address or contact person within ten (10) days of such change. PURCHASER shall maintain a physical address on file with LCRA.

#### **H. ASSIGNMENT OF CONTRACT.**

PURCHASER shall have the right to assign this Contract provided that: i) there is no change to the MAQ, source, type of use or Service Area provided in this Contract; ii) prior to such assignment, this Contract is amended to be consistent with all terms of LCRA's then-current standard form contract for purchase of firm water from Lake Travis and LCRA's then-current Water Contract Rules as determined by LCRA; iii) the Water Conservation Plan and Drought Contingency Plan are updated as may be necessary in accordance with this Contract as determined by LCRA; iv) PURCHASER provides LCRA at least sixty (60) days prior written notice of such assignment; and, v) PURCHASER is not in default under this Contract at the time of such assignment.

#### **I. COMPLIANCE WITH FILING REQUIREMENTS.**

LCRA agrees to file a copy of this Contract with the Executive Director of the TCEQ, P.O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by PURCHASER hereunder that the effectiveness of this Contract is dependent upon compliance with the substantive rules and procedural rules for water rights of the TCEQ.

### **III. ENVIRONMENTAL, PERMITTING AND OTHER ISSUES RELATED TO WATER SUPPLY**

#### **A. NONPOINT SOURCE WATER POLLUTION ABATEMENT.**

If PURCHASER will use water under this Contract to serve areas located within the jurisdictional area of LCRA Lake Travis Nonpoint Source Pollution Control Ordinance, the Upper Highland Lakes Nonpoint Source Pollution Control Ordinance, or any other LCRA water quality ordinance that has been adopted by the LCRA Board, PURCHASER agrees to comply with and shall comply with the provisions of that respective ordinance, which ordinance may require a permit and compliance with other applicable local, state, and federal rules and regulations pertaining to water quality protection. If PURCHASER will use water under this Contract to serve areas wholly outside the jurisdiction of an LCRA water quality ordinance, PURCHASER agrees to comply with and shall comply with any applicable local, state, and federal rules and regulations pertaining to water quality protection. PURCHASER further agrees to distribute to its customers in its service area water quality protection educational materials that LCRA provides to PURCHASER.

#### **B. SEWAGE REGULATIONS.**

PURCHASER agrees to obtain, or cause to be obtained, all approvals required by all applicable local, state or federal agencies for any sanitary sewage system or systems that collect sewage derived from water diverted herein or any sanitary sewage system whose effluent is discharged within the boundaries of LCRA's statutory district. Failure of PURCHASER to meet any standards imposed by such agencies for sanitary sewage systems, including on-site systems, shall subject PURCHASER under this Contract to all remedies allowed by law including, without limitation, termination or suspension of this Contract by LCRA. PURCHASER further agrees that if a sewage treatment plant is located within the Service Area, LCRA shall have reasonable access to such plant for the purpose of taking samples of sewage effluent from such plant for testing by LCRA to determine whether PURCHASER is in compliance with regulatory standards imposed by such agencies.

#### **C. DOCUMENTATION OF COMPLIANCE; RIGHT OF ENTRY.**

1. In addition to notices required by Section I.Q of this Contract, PURCHASER shall provide LCRA copies of any approvals that PURCHASER has received from federal, state, or local



agencies that relate to water reserved or purchased pursuant to PURCHASER's Contract or to facilities intended to impound, divert, transport, or use water provided under PURCHASER's Contract within a reasonable amount of time, not to exceed fifteen (15) business days, following a written request by LCRA staff.

2. PURCHASER agrees that LCRA employees and agents shall be entitled to enter any property where facilities impound or deliver water to the service area of PURCHASER at any reasonable time following a reasonable attempt at prior notification for the purpose of inspecting and investigating conditions relating to the quality of water; the compliance by PURCHASER with any rule, regulation, permit or other order of the state, its agencies, local regulatory authorities or LCRA; compliance by PURCHASER with the requirements of this Contract; or, inspection of any of PURCHASER's facilities related to the use, diversion or impoundment of water under this Contract. LCRA employees or agents acting under this Contract who enter PURCHASER's property shall observe rules and regulations concerning safety, internal security, and fire protection, and shall notify any occupant or management of their presence and shall exhibit proper credentials.

**D. ANNUAL REPORTS OF DUE DILIGENCE; AS-BUILT PLANS.**

1. PURCHASER shall report to LCRA, on a yearly basis, progress made toward obtaining any and all necessary authorizations (e.g. TCEQ permits, Army Corps of Engineers permits, etc.) as well as progress towards commencing and completing construction of facilities which will be used to divert, impound, and/or convey water under PURCHASER's Contract.
2. PURCHASER shall provide to LCRA "as-built" drawings and plans (including GPS coordinates of any intakes or impoundments) for facilities which will be used to divert, impound, and/or convey water under PURCHASER's Contract were actually built within thirty (30) days of completion of construction.

**IV. GENERAL PROVISIONS**

**A. EFFECTIVE DATE.**

"Effective Date" means the last date of execution of this Contract by the Parties; provided all of the Parties must execute this Contract for it to be effective.

**B. PREVIOUS CONTRACT.**

In the event of a previous contract between the Parties related to the Service Area of this Contract prior to the Effective Date, this Contract replaces such prior contract unless specified otherwise hereunder.

**C. INDEMNIFICATION.**

PURCHASER will indemnify and hold LCRA harmless from any and all claims and demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from any and all actions and activities (or failure to act) of PURCHASER under this Contract except to the extent caused by LCRA's gross negligence or willful misconduct. PURCHASER's pumping and related facilities shall be installed, operated and maintained by PURCHASER at PURCHASER's sole risk. Nothing in this Contract shall be construed as authorizing PURCHASER, or recognizing that PURCHASER has any right, to install any equipment or improvements on property owned by LCRA or third parties.

LCRA will hold PURCHASER harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of LCRA under this Contract.

**D. FORCE MAJEURE.**

The term "Force Majeure" as used herein, shall mean those situations or conditions that are beyond the control of LCRA or PURCHASER and that, after the exercise of due diligence to remedy such situation or condition, render LCRA or PURCHASER unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government or agencies of the United States or of the State of Texas, excluding LCRA, or any civil or military authority, insurrections, riots epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial or entire failure of water supply insofar as each of the foregoing are beyond the reasonable control of the party in question. LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to PURCHASER due to any force majeure. LCRA shall use reasonable and timely diligence to repair or recondition LCRA's machinery, canals, or dams in the event such machinery, canals or dams are damaged or made unserviceable from any force majeure.

**E. NO THIRD-PARTY BENEFICIARY.**

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

**F. NO RIGHTS OR TITLE ACQUIRED.**

PURCHASER agrees and acknowledges that it acquires by this Contract no rights or title to the water that is the subject of this Contract other than those rights explicitly set forth herein.

**G. REPRESENTATIONS AND WARRANTIES.**

Each of LCRA and PURCHASER represents and warrants to the other that this Contract has been duly executed by an authorized officer and constitutes a valid and binding Contract, enforceable against it in accordance with its terms (except as such enforceability may be limited by bankruptcy laws or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles).

**H. DISPUTE RESOLUTION.**

1. Settlement by Mutual Agreement.

In the event any dispute, controversy or claim between or among the Parties arises under this Contract or is connected with or related in any way to this Contract or any right, duty or obligation arising hereunder or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation, or enforcement of this Contract, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this subsection (1). In the event a Dispute or Controversy arises, any party shall have the right to notify the other party to such Dispute or Controversy that it has elected to implement the procedures set forth in this subsection (1). Within thirty (30) days after delivery of any such notice by one party to the other regarding a Dispute or Controversy, the designated representatives of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Parties' designated representatives for such purpose or should no such meeting take place within such thirty (30) day period, then any party may by notice to the other party, as the case may be, refer the Dispute or Controversy to senior management of the Parties for resolution. Within thirty (30) days after delivery of any such notice by one party to the other referring such Dispute or Controversy to senior management of the Parties for resolution, representatives of senior management of each of the Parties shall meet at a mutually agreed upon time



and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should mutual resolution and settlement not be obtained at the meeting of representatives of senior management of each of the Parties for such purposes or should no such meeting take place within such thirty (30) day period (unless extended by mutual agreement), then any party may by notice to the other party, as the case may be, submit the Dispute or Controversy to binding arbitration in accordance with the provisions of subsection (2) and Exhibit H. Upon the receipt of notice of referral to arbitration hereunder, and except as otherwise expressly provided by this Contract, the Parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section IV.H and Exhibit H without regard to the justiciable character or executory nature of such Dispute or Controversy.

2. Arbitration.

Except as otherwise expressly provided by this Contract, each party hereby agrees that any Dispute or Controversy that is not resolved pursuant to the provisions of subsection (1) may be submitted to binding arbitration hereunder and, if submitted timely according to this Contract, shall be resolved exclusively and finally through such binding arbitration. Except as otherwise expressly provided by this Contract, this Section IV.H and Exhibit H constitute a written agreement by the Parties to submit to arbitration any Dispute or Controversy arising under or in connection with this Contract within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code.

3. Emergency Relief.

Notwithstanding the Parties' agreement to arbitrate Dispute and Controversies, either party may seek injunctive relief or other form of emergency relief at any time from any state court of competent jurisdiction in Austin, Texas, the federal court for such district, or any state or federal regulatory agency of competent jurisdiction.

4. Survival.

The provisions of this Section IV.H shall survive expiration or earlier termination of this Contract.

**I. ACTUAL DAMAGES.**

NEITHER PARTY SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DELAY-RELATED OR PERFORMANCE-RELATED DAMAGES INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. SUCH LIMITATION ON LIABILITY SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE OR ANY OTHER THEORY OF LIABILITY. THE PROVISIONS OF THIS SECTION IV.I SHALL HAVE NO EFFECT ON THE PARTY'S INDEMNITY OBLIGATIONS UNDER SECTION IV.C.

**J. AMENDMENT.**

This Contract may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

**K. BINDING EFFECT.**

The terms of this Contract shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns.

**L. COMPLETE CONTRACT.**

This Contract, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the subject matter of this Contract and supersedes all prior contracts, agreements or understandings with respect to the subject matter hereof, both oral or written.

Each party agrees that the other party (and its agents and representatives) has not made, and has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

**M. COUNTERPARTS.**

This Contract may be executed by the Parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.

**N. FURTHER ASSURANCES.**

Each party agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this Contract.

**O. GOVERNING LAW.**

This Contract and the rights and duties of the Parties arising out of this Contract shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to the conflict of laws rules thereof.

**P. HEADINGS; TABLE OF CONTENTS.**

The headings of the Articles and Sections of this Contract and the Table of Contents are included for convenience only and shall not be deemed to constitute a part of this Contract.

**Q. INCORPORATION OF WATER CONTRACT RULES.**

PURCHASER acknowledges receipt of LCRA's Water Contract Rules ("Rules"), and further acknowledges that, unless expressly stated otherwise in this Contract, such Rules, as may be amended by LCRA's Board of Directors from time to time, are incorporated herein by reference in their entirety and made a part hereof for all purposes.

**R. INTERPRETATION AND RELIANCE.**

No presumption will apply in favor of any party in the interpretation of this Contract or in the resolution of any ambiguity of any provisions thereof.

**S. RELATIONSHIP OF PARTIES.**

This Contract and the transactions contemplated hereunder are based upon the active participation of all Parties.

Neither the execution nor delivery of this Contract, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this Contract. Except as is expressly agreed to in writing in this Contract, no party (or any of its agents, officers or employees) shall be an agent or employee of the other party, nor shall a party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other party.



Nothing contained in this Contract shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement among LCRA on the one hand and the PURCHASER on the other hand, except for the contractual arrangements specifically set forth herein.

**T. SEVERABILITY.**

In the event that any provision of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment to the provisions of this Contract with the view to effecting, to the extent possible, the original purpose and intent of this Contract, and the validity and enforceability of the remaining provisions shall not be affected thereby.

**U. NO ADDITIONAL WAIVER IMPLIED.**

No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this Contract, or of performance by the other party of any duty or obligation under this Contract, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

**V. SHORT TERM SALES OF FIRM WATER TO THIRD PARTIES.**

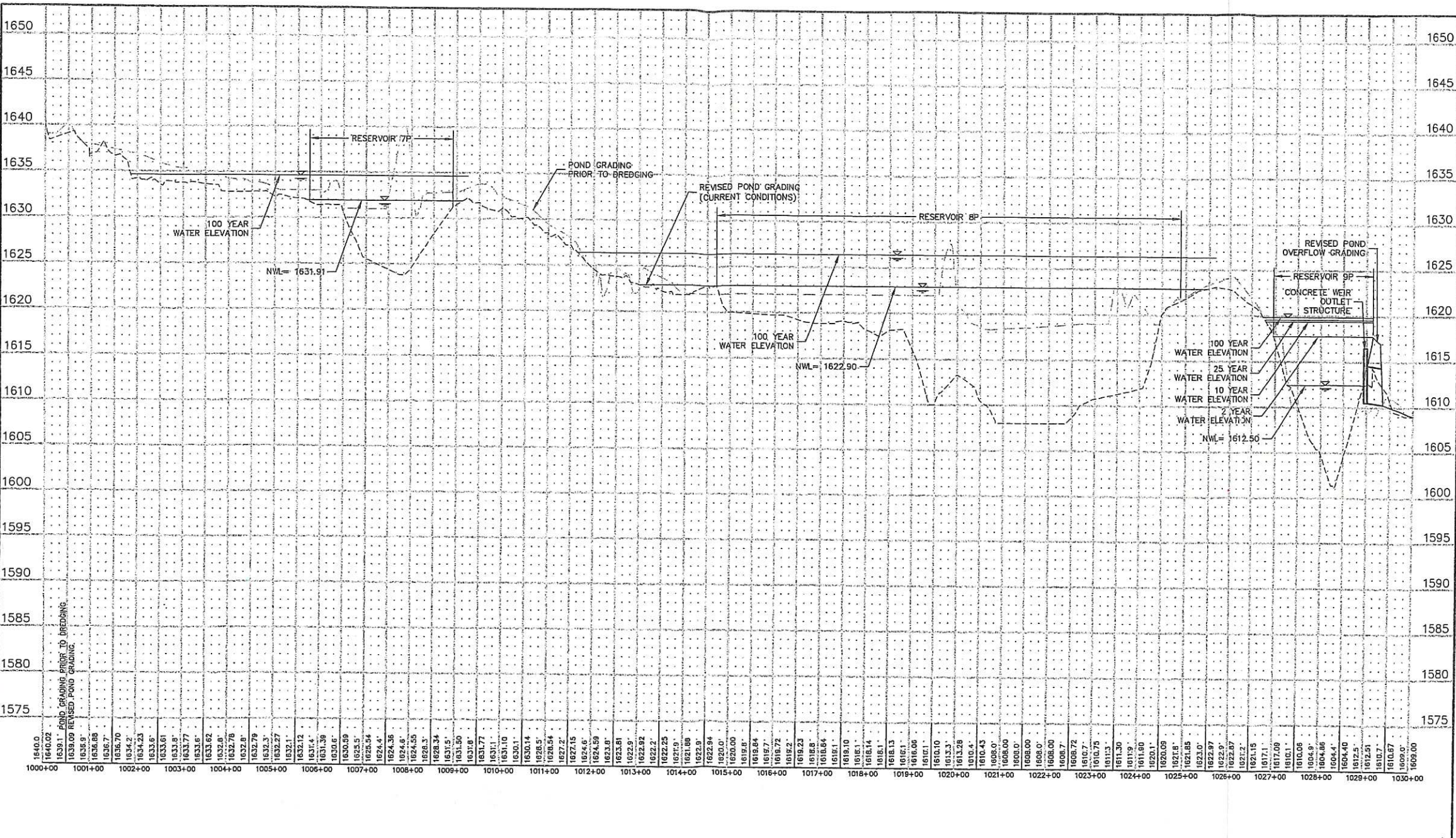
In accordance with LCRA Board Policy 501, Water Resources Management, LCRA and PURCHASER agree that LCRA may market and re-sell any portion of PURCHASER's Reserved Water to third parties on a limited term basis for a management fee and under terms mutually acceptable to LCRA and PURCHASER and in accordance with LCRA Board Policies.

**Exhibit B and D**

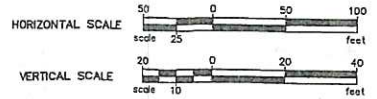
**Description of Point(s) of Availability  
Depiction of Service Area**



P:\FAV\HEB\13454\5-final-dgn\31-drawings\10-Ch\10a\10a.dwg North Ponds -Water Rights.dwg 5/24/2019 3:45 PM kfranklin



# NORTH PONDS



DRAWN BY:	KLF	1	KLF	09/27/17	REVISED OUTLET STRUCTURE FLOWS
DESIGNER:	KLF				
CHECKED BY:	RBJ				
DESIGN TEAM	NO.	BY	DATE	REVISIONS	

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

*Randy B. Jennings*  
 Randy B. Jennings, PE  
 Lic. No. 121391  
 Date: 07/18/17

**SEH**  
 PHONE: 320.229.4300  
 1200 25TH AVENUE SOUTH  
 P.O. BOX 1717  
 ST. CLOUD, MN 56302-1717  
 www.sehinc.com

**FRIEDEN DEVELOPMENT**

**NORTH POND GRADING PROFILE**

FILE NO.  
FRDEL 137621

**FIGURE 3**





DRAWN BY: KLF  
 DESIGNER: KLF  
 CHECKED BY: RBJ

NO.	BY	DATE

REVISIONS

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

Date: 07/18/17  
 License No. 121391  
 Raymond B. Jones, PE  
 1200 15TH AVENUE SOUTH  
 P.O. BOX 1717  
 ST. CLOUD, MN 56302-1717  
 WWW.SBHINC.COM  
 PHONE: 320.228.4300



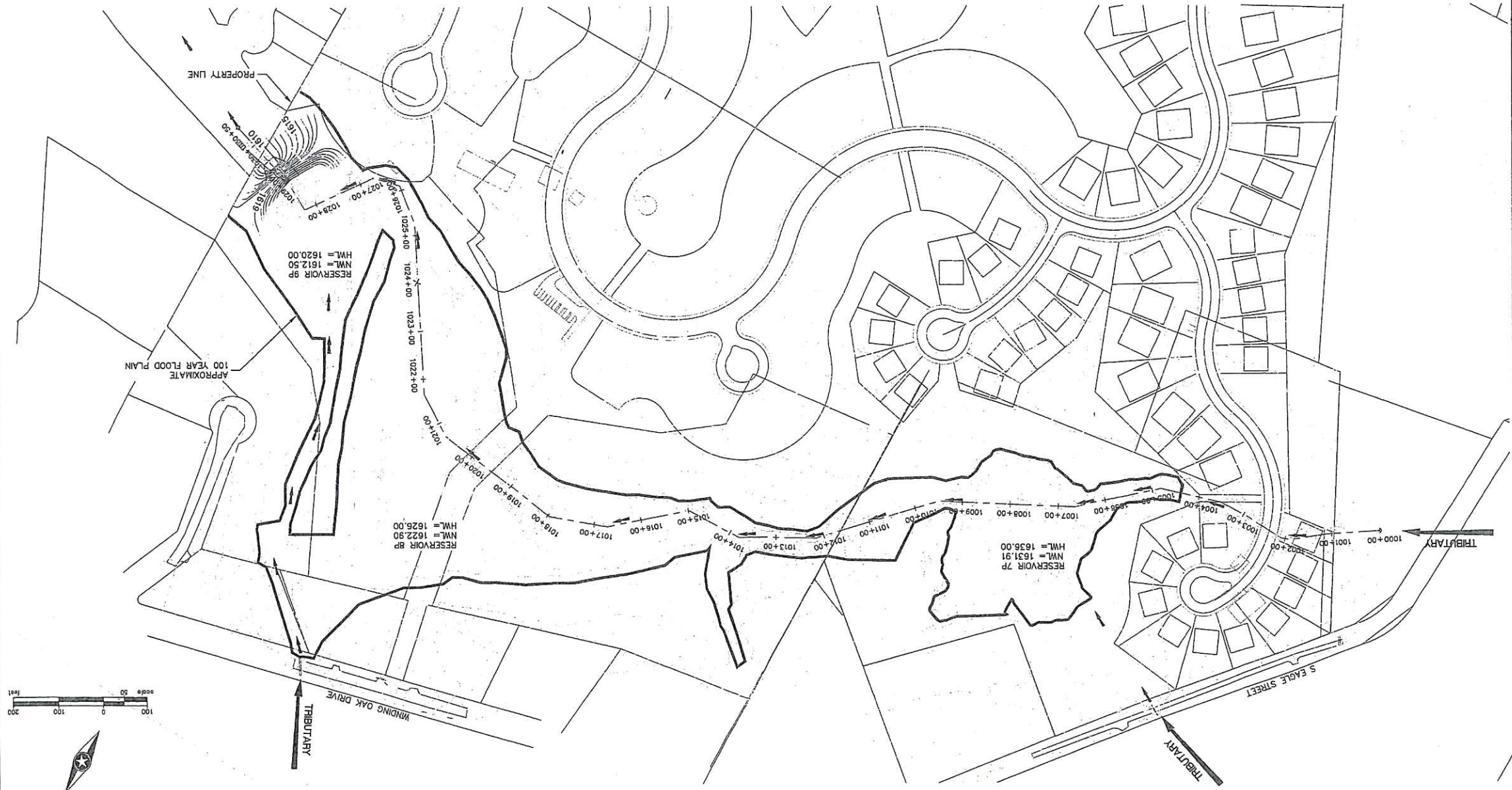
FRIEDEN DEVELOPMENT

NORTH POND GRADING PLAN

FILE NO. FREDL 137621

FIGURE 2

# NORTH PONDS



P:\FVN\HEB\131310\5-fred-dgn\51-drawing\10-civ\lead\eng\yoshita\North Ponds - Water Right.dwg 5/24/2019 3:45 PM kronkin



## **Exhibit C**

### **Description of Service Area**

218-017



6 pgs  
LD

20181539

**SPECIAL WARRANTY DEED WITH VENDOR'S LIEN**

**Date:** March 29, 2018

**Grantor:** BRT RESOURCES, LLC, a Texas limited liability company

**Grantor's Mailing Address:** 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209

**Grantee:** FREDERICKSBURG DEVELOPMENT, INC., a Texas corporation

**Grantee's Mailing Address:** 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209

**Consideration:** Cash and a note of even date executed by Grantee, payable to the order of Grantor in a certain principal amount. The note is secured by a vendor's lien retained for the benefit of Grantor in this deed and by a deed of trust of even date from Grantee to James C. Norman, Trustee for Grantor.

**Property (including any improvements):**

219.460 acres of land located in the City of Fredericksburg, Gillespie County, Texas, more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** All and singular any liens described herein, ad valorem taxes for the current and all subsequent years, zoning ordinances, utility district assessments and standby fees, if any, applicable to and enforceable against the Property, and all valid utility easements created by the dedication deed or plat of the subdivision in which the Property is located, covenants and restrictions common to the platted subdivision in which the Property is located, maintenance assessment liens, if any, applicable to and enforceable against the Property as shown by the records of the County Clerk of the County in which said real property is located, and any statutory water rights, or the rights or interests of the State of Texas or the public generally in any waters, tidelands, beaches and streams being situated in proximity to the Property.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.



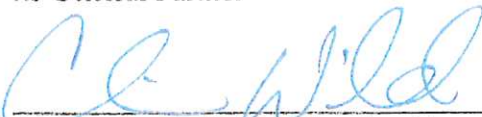
The vendor's lien against and superior title to the Property are retained and transferred, without recourse, to Lender until each note described is fully paid according to its terms, at which time this deed will become absolute.

When the context requires, singular nouns and pronouns include the plural.

**BRT RESOURCES, LLC,**  
a Texas limited liability company

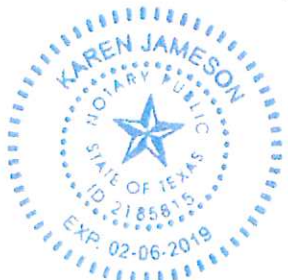
By: 3BRT Investments, Limited Partnership,  
a Texas limited partnership  
its sole Member


By: SBW Management, Inc.,  
a Texas corporation,  
its General Partner

By:   
Christopher S. Wilde, Vice-President

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me this 27<sup>th</sup> day of March, 2018, by Christopher S. Wilde, as Vice-President of SBW Management, Inc., a Texas corporation, the General Partner of 3BRT Investments, Limited Partnership, a Texas limited partnership, the sole Member of **BRT RESOURCES, LLC**, a Texas limited liability company, on their behalf.



  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
Fredericksburg Development, Inc.  
1250 N.E. Loop 410, Suite 333  
San Antonio, Texas 78209

# EXHIBIT "A"

## Property

# TX LANDMARK SURVEYING

39350 IH 10 West, Suite 1 Boerne, TX 78006 830-428-0290  
FBPLS Firm No. 10164600

### FIELD NOTES FOR FRIEDEN SUBDIVISION 219.460 ACRES OF LAND

BEING 219.460 acres of land comprised of 89.500 acres out of the SAMUEL WILSON SURVEY No. 38, ABSTRACT No. 735, and 129.960 acres out of the JOHN OWENS SURVEY No. 54, ABSTRACT No. 537, located in the City of Fredericksburg, Gillespie County, Texas, said 219.460 acres being out of the following tracts and lots:

- 63.231 acres, all the BRT RESOURCES, LLC 63.231 acre tract recorded in Doc 20154947, Official Public Records of Gillespie County, Texas (OPRGCT);
- 25.32 acres, all LOT 13R, EQUESTRIAN PARK (REPLAT) recorded in Volume 5, Page 18, Plat Records of Gillespie County, Texas (PRGCT);
- 0.949 acres, abandoned EQUESTRIAN DRIVE ROW adjacent to LOT 13R, EQUESTRIAN PARK (REPLAT) recorded in Volume 5, Page 18, PRGCT;
- 14.609 acres, all the BRT RESOURCES, LLC 14.609 acre tract recorded in Doc 20161322, OPRGCT;
- 81.910 acres, remainder of the DANZ ORCHARDS (REPLAT) recorded in Volume 4, Page 29, PRGCT;
- 20.648 acres, Lot 1 & 2 of the DANZ ORCHARDS recorded in Volume 2, Page 14, PRGCT;
- 12.793 acres, all the BRT RESOURCES, LLC 12.8 acre tract recorded in Doc 20151405, OPRGCT;

said 219.460 acres being more particularly described by metes and bounds as follows:

**BEGINNING** at a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for a northwest corner of this tract, the northwest corner of said BRT RESOURCES, LLC 63.231 acre tract (R1), the southwest corner of LOT 8, EQUESTRIAN PARK SUBDIVISION as shown on plat recorded in Volume 3, Page 55, (PRGCT) (R2), located on the east ROW line of STATE HIGHWAY No. 87, from which a found 1/2" rebar with plastic cap "BONN SURVEY 4447" bears North 1°16'25" West for 341.07 feet (North 0°22'25" West for 341.25' (R2) for reference;

**THENCE** North 89°05'33" East generally with a fence, at 267.00 feet passing a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for the southwest corner of Lot 9, said EQUESTRIAN PARK, continuing for an additional 266.95 feet passing a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for the southwest corner of Lot 10, said EQUESTRIAN PARK, continuing for an additional 266.95 feet for a total distance of 800.90' to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for an angle point and for the southwest corner of Lot 11, said EQUESTRIAN PARK;

**THENCE** North 89°05'06" East for 928.88 feet continuing generally with a fence to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for an angle point and for a southeastern corner of Lot 12, said EQUESTRIAN PARK;

**THENCE** through the interior of said abandoned EQUESTRIAN DRIVE ROW the following courses and distances:

1. North 20°37'30" East for 29.90 feet to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point in the centerline of the abandoned EQUESTRIAN DRIVE at the beginning of a curve to the right;
2. Northwesterly along a curve to the right for a distance of 163.63 feet (R=400', D=23°29'02", CB=North 57°38'28" West, CH=162.69') to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point of tangency;
3. North 45°53'17" West for 193.55 feet to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a point in the centerline of the abandoned EQUESTRIAN DRIVE at the beginning of a curve to the left;
4. Northwesterly along a curve to the left for a distance of 146.14 feet (R=400', D=21°13'11", CB=North 56°31'48" West, CH=147.30') to a set 1/2" rebar with plastic cap stamped "TXLMS.COM RPLS#6002" for a corner;
5. North 22°49'40" East for 30.00 feet to a found 1/2" rebar with no identification for the southwest corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION, the southeast corner of LOT 7R of said EQUESTRIAN PARK SUBDIVISION;

**THENCE** along a western boundary of this tract, the common lot line between said LOT 7R and said LOT 13R the following courses and distances:

1. North 28°43'59" East for 234.65 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for an angle point;
2. North 00°57'32" West for 507.51 feet to a found 1/2" rebar with plastic cap "BONN SURVEY 4447" for a northwest corner of this tract, the northwest corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION (REPLAT), the northeast corner of LOT 7R of said EQUESTRIAN PARK SUBDIVISION (REPLAT), located on the south boundary of the KEVIN ECKHARDT 52.095 acre tract recorded in Volume 186, Page 374, Deed Records of Gillespie County, Texas (DRGCT);



THENCE North 89°08'47" East for 1038.00 feet to a found 1/2" rebar with no identification for the northeast corner of this tract, the northeast corner of said LOT 13R, EQUESTRIAN PARK SUBDIVISION (REPLAT), the southeast corner of the GREGORY & HOLLY TATSCH 2.00 acre tract recorded in Volume 462, Page 676. (OPRGCT), located on the western boundary of the GREGORY & HOLLY TATSCH 0.820 acre tract recorded in Volume 186, Page 275. (DRGCT):

THENCE South 01°42'34" East for 263.97 feet along the eastern boundary of this tract to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for an interior corner of this tract, the southwest corner of said GREGORY & HOLLY TATSCH 0.820 acre tract;

THENCE North 89°04'03" East for 39.94 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for a northeastern corner of this tract, the southeast corner of said GREGORY & HOLLY TATSCH 0.820 acre tract, located on the west boundary of the GREGORY & HOLLY TATSCH 29.550 acre tract (remainder) recorded in Volume 163, Page 590. DRGCT:

THENCE South 01°40'04" East for 109.64 along the eastern boundary of this tract to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner, the northwest corner of the BRT RESOURCES, INC 14.609 acre tract recorded in Document No. 20161322. OPRGCT;

THENCE North 86°58'38" East for 1123.32 feet along a north boundary of this tract, the south boundary of said remainder of the GREGORY & HOLLY TATSCH 29.550 acre tract to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner, the southeast corner of the remainder of the GREGORY & HOLLY TATSCH 29.550 acre tract recorded in Volume 163, Page 590. DRGCT:

THENCE along a western boundary of this tract, the eastern boundary of the GREGORY & HOLLY TATSCH properties the following courses and distances:

1. North 26°47'09" West for 366.33 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
2. North 10°14'53" West for 308.46 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
3. North 31°38'46" West for 199.94 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for the northeast corner of a 0.679 acre tract conveyed to TATSCH, the southeast corner of a 0.643 acre tract;

THENCE along a western boundary of this tract, the eastern and northern boundary of the 0.643 acre tract the following courses and distances:

1. North 31°38'47" West for 342.79 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;
2. South 80°59'27" West for 101.34 feet to a found 1/2" rebar with plastic cap "SCHWARZ 4780" for a corner;;

THENCE North 28°24'31" West for 210.42 feet along the western boundary line of this tract, the eastern boundary line of the GEORGE & JEAN SULTEMEIER 2.370 acre tract recorded in Document No. 20121997. OPRGCT, to a found 1/2" rebar with no identification for a northwest corner of this tract, located on the southeastern ROW of SOUTH EAGLE DRIVE:

THENCE along a northwestern boundary of this tract, the northwestern boundary of said BRT RESOURCES, LLC 12.793 acre tract, southeastern ROW of said SOUTH EAGLE DRIVE the following courses and distances:

1. North 38°26'44" East for 100.81 feet to a found 1/2" rebar with no identification for an angle point;
2. North 39°29'57" East for 299.89 feet to a found 1/2" rebar with no identification for an angle point;
3. North 37°27'14" East for 212.53 feet to a found 1/2" rebar with no identification for a northern corner of this tract, a western corner of the ROBERT C BROWN 2.010 acre tract recorded in Volume 167, Page 625. DRGCT;

THENCE along a northern boundary of this tract, the southern boundary of said ROBERT C BROWN 2.010 acre tract the following courses and distances:

1. South 50°49'53" East for 249.50 feet to a found 1/2" rebar with no identification for an interior corner;
2. North 43°44'10" East for 327.34 feet to a found 1/2" rebar with no identification for a northern corner, located on the southwestern boundary of the ALICE HILTON 2.800 acre tract recorded in Document No. 20122812. OPRGCT;

THENCE along a northern boundary of this tract, the southern boundary of said ALICE HILTON 2.800 acre tract the following courses and distances:

1. South 50°52'18" East for 233.20 feet to a found 1/2" rebar with no identification for an interior corner;
2. North 01°48'37" West for 328.50 feet to a found 1/2" rebar with plastic cap "BONN 4447" for a northern corner, the southwestern corner of the LESLIE K LANDRETH 1.290 acre tract recorded in Document No. 20135413. OPRGCT;

**THENCE** along a northern boundary of this tract, the northern boundary of said LOT 1 & LOT 2, DANZ ORCHARDS, and the northern boundary of said LOT 3AR, DANZ ORCHARDS (REPLAT) the following courses and distances:

1. North 80°41'43" East for 287.92 feet to a found 1/2" rebar with no identification for an angle point;
2. North 72°06'07" East for 407.35 feet to a found 1/2" rebar with no identification for an angle point;
3. North 72°19'45" East for 10.23 feet to a found 1/2" rebar with no identification for an interior corner;
4. North 12°45'32" West for 166.70 feet to a found 1/2" rebar with no identification for a northern corner;
5. North 75°40'31" East for 40.06 feet to a found 1/2" rebar with no identification for a northern corner;
6. South 12°42'15" East for 184.29 feet to a found 1/2" rebar with no identification for an interior corner;
7. North 72°44'55" East for 10.29 feet to a found 1/2" rebar with no identification for an angle point;
8. North 72°40'12" East for 275.47 feet to a found 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an angle point;
9. North 73°42'12" East for 164.68 feet to a found 1/2" rebar with no identification for a northeast corner;
10. South 10°28'48" East for 223.71 feet to a found 1/2" rebar with no identification for an angle point;
11. South 11°03'16" West for 54.28 feet to a found 1/2" rebar with no identification for a point of curvature;
12. Southeasterly along a curve to the left having an arc length of 78.39 feet (R=50.00', D=89°49'26", CB=South 55°32'56" East, CH=70.60') to a found 1/2" rebar with no identification for an angle point;
13. South 76°35'54" East for 215.44 feet to a found 1/2" rebar with no identification for a northeast corner, located on the west boundary of LOT 6, MORIN SUBDIVISION;

**THENCE** South 01°30'45" East for 359.22 feet generally with a fence along the east boundary of this tract, the west boundary of said MORIN SUBDIVISION to a found 1/2" rebar with no identification for an angle point, the southwest corner of LOT 5, MORIN SUBDIVISION;

**THENCE** South 00°32'18" East for 297.33 feet generally with a fence continuing along the east boundary of this tract, the west boundary of the HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 150, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W;

**THENCE** South 01°21'04" East for 175.60 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 153, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W;

**THENCE** South 01°34'25" East for 1047.84 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 2W and the west boundary of the HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1 to a found 1/2" rebar with no identification for an angle point, located on the west boundary of LOT 71, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1;

**THENCE** South 01°48'52" East for 317.05 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1 to a found 1/2" rebar with no identification for an angle point, the southwest corner of LOT 67, HILL COUNTRY HERITAGE SUBDIVISION, UNIT 1, the northwest corner of MARIPOSA DRIVE (60' public ROW);

**THENCE** South 01°49'19" East for 60.01 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said MARIPOSA DRIVE (60' public ROW) to a found 1/2" rebar with no identification for an angle point, the southwest corner of said MARIPOSA DRIVE (60' public ROW), the northwest corner of said LOT 2, KINMAN SUBDIVISION;

**THENCE** South 01°47'34" East for 210.21 feet generally with a fence continuing along the east boundary of this tract, the west boundary of said LOT 2, KINMAN SUBDIVISION to a found 1/2" rebar with no identification for the southeast corner of this tract, the southeast corner of said LOT 3CR, the northeast corner of the MICHAEL HODGES 158.76 acre tract recorded in Document No. 20112558, OPRGCT, the west boundary of LOT 2, KINMAN SUBDIVISION;

**THENCE** South 89°18'54" West for 1513.77 feet along the south boundary of this tract, the north boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for an angle point and the southeast corner of said BRT RESOURCES, LLC 14.609 acre tract;

**THENCE** South 89°24'02" West for 1374.40 feet continuing along the south boundary of this tract, the north boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for an interior corner, the southwest corner of said BRT RESOURCES, LLC 14.609 acre tract;

**THENCE** along the east boundary of this tract, the west boundary of said MICHAEL HODGES 158.76 acre tract for the following courses and distances:

1. South 01°34'56" East for 188.06 feet to a found 1/2" rebar with plastic cap "BONN 4447" for an angle point, the northeast corner of EQUESTRIAN DRIVE (60' public ROW);
2. South 01°34'02" East for 30.06 feet to a found 1/2" rebar with no identification for an angle point, the southeast corner of said EQUESTRIAN DRIVE (60' public ROW);
3. South 01°39'46" East for 1,262.09 feet along the eastern boundary line of this tract generally with a fence, the western boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for the southeast corner of this tract, the northeast corner of the LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract as recorded in Document 20125145, OPRGCT;



THENCE South 01°39'48" East for 1,262.09 feet (South 00°33'06" East for 1,261.65 feet, R1) along the eastern boundary line of this tract generally with a fence, the western boundary of said MICHAEL HODGES 158.76 acre tract to a found 1/2" rebar with no identification for the southeast corner of this tract, the northeast corner of the LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract as recorded in Document 20125145, OPRGCT (R3);

THENCE South 89°06'09" West along a southern boundary line of this tract generally with a fence, at 771.16 feet (South 89°39'27" West for 771.15 feet, R3) passing a found 1/2" rebar with no identification for the northwest of the said LISA COLLINS & JENNIFER LAKOSKIE 84.24 acre tract, the northeast corner of the RICHARD & LINDA GRAY 11.353 acre tract recorded in Document 20104425, OPRGCT (R4), continuing for an additional distance of 513.68 feet (513.53 feet, R4) to a found 1/2" rebar with no identification for a southwest corner, located on an eastern boundary line of the PEDERNALES BREWING CO. 6.84 acres / Lot 24 as recorded in Document 20112340, OPRGCT;

THENCE North 00°02'50" East for 271.51 feet (North 00°43' East for 271.2 feet, R1) along a western boundary of this tract generally with a fence to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;

THENCE South 88°25'51" West for 122.63 feet (North 89°16' West for 122.5 feet, R1) along a southern boundary of this tract generally with a fence to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for a southwestern corner;

THENCE North 04°24'09" West for 108.22 feet (North 02°06' West for 108.1 feet, R1) along a western boundary of this tract to a set 1/2" rebar with plastic cap "TXLMS.COM RPLS#6002" for an interior corner;

THENCE North 89°47'03" West for 600.98 feet along a southern boundary of this tract, along the northern boundary line of said PEDERNALES BREWING CO. 6.84 acres / Lot 24 to a found 1/2" rebar with no identification for a point on line and the northeast corner of the PEDERNALES BREWING CO. 5.37 acres / Lot 1 as recorded in Document 20112340, OPRGCT;

THENCE continuing North 89°47'03" West for 567.02 feet, a total distance of 1,168.00 feet (1168.00 feet, R1) along a southern boundary of this tract, along the northern boundary line of said PEDERNALES BREWING CO. 5.37 acres / Lot 1 to a found 2" steel sign post for the southwest corner of this tract, the northwest corner of said PEDERNALES BREWING CO. 5.37 acres / Lot 1, located on the eastern ROW line of said STATE HIGHWAY No. 87;

THENCE North 01°16'29" West for 860.80 feet (North 00°25'00" West for 860.80 feet, R1) along the western boundary of this tract, the eastern ROW line of said STATE HIGHWAY No. 87 to the POINT OF BEGINNING.

CONTAINING: 219.460 acres of land.



The Basis of Bearings is Texas State Plane Coordinate System, NAD 1983, Central Zone (4203). This description was based on a survey made on the ground under my supervision completed on September 30, 2015.

  
Robert S. Rugloski, RPLS #6002  
Job #11607051 (RSR) | October 23, 2017

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



Mary Lynn Rusche, County Clerk

Gillespie County Texas

April 02, 2018 03:50:40 PM



FEE: \$36.00 CCHEESEMAN 20181539

LD

**UNANIMOUS WRITTEN CONSENT IN LIEU OF ORGANIZATIONAL MEETING  
BY THE BOARD OF DIRECTORS OF  
FREDERICKSBURG DEVELOPMENT, INC.  
A TEXAS CORPORATION**

Pursuant to section 6.201 of the Texas Business Organizations Code, the undersigned, being all of the members of the initial Board of Directors of **FREDERICKSBURG DEVELOPMENT, INC.**, a Texas corporation (hereinafter "Corporation"), named in the Certificate of Formation filed with the Secretary of State of Texas, hereby adopt the following resolutions in lieu of holding an organizational meeting of the Board of Directors.

**CERTIFICATE OF FORMATION**

**RESOLVED**, that the acknowledgment of filing issued by the Secretary of State of Texas and the certified copy of the Certificate of Formation of the Corporation filed with the Secretary of State of Texas on December 19, 2017, is approved; and the Secretary of the Corporation is instructed to place same in records of the Corporation.

**BYLAWS**

**RESOLVED**, that the Bylaws submitted to the undersigned are approved and adopted as the Bylaws of the Corporation and the Secretary of the Corporation is instructed to place same or a certified copy thereof in the records of the Corporation.

**RESOLVED**, that the Secretary of the Corporation will maintain a copy of the Bylaws at the principal office of the Corporation available for inspection by the shareholders of the Corporation.

**PRINCIPAL OFFICE**

**RESOLVED**, that the Corporation's principal office be located and maintained at 1250 N.E. Loop 410, Suite 333, San Antonio, Texas 78209, and that meetings of the Board of Directors from time to time may be held either at the principal office or at such other place as the board of directors shall from time to time order.

**CORPORATE RECORDS**

**RESOLVED**, that the Corporation will maintain appropriate corporate records, including but not limited to originals, copies or certified copies of the Corporation's original and any amended, corrected or restated, acknowledgment of filing, Certificate of Formation, Bylaws, minutes of meetings of shareholders and directors, and written consents of shareholders and directors.



## SEAL

**RESOLVED**, that the Corporation shall not be required to use a corporate seal and the lack of a corporate seal shall not affect an otherwise valid contract or other instrument executed by the Corporation.

## OFFICERS

**RESOLVED**, that the following persons are elected to the offices set forth opposite their names to serve as such at the pleasure of the Board of Directors or pursuant to the terms of any written employment agreement executed by the Corporation and the respective officer:

<u>Name</u>	<u>Office</u>
Stephen B. Wilde	President/Treasurer
Christopher Smyth Wilde	Vice President/Secretary

## SHARE CERTIFICATES

**RESOLVED**, that the form of the share certificate presented to the undersigned is adopted to represent shares of the Corporation; that any issued certificates bear all legends and restrictions required by the Bylaws or resolution of the Corporation, contract or by law; that any issued certificates comply with any requirements of the Bylaws or resolution of the Corporation, contract or applicable law; and that the Secretary of the Corporation insert a specimen copy of said share certificate in the records of the Corporation.

## ISSUANCE OF SHARES

**RESOLVED**, that the Corporation issue 1,000 shares of the Corporation's authorized shares of common stock at \$1.00 par value, as follows:

<u>Shareholder Name and Address</u>	<u>Number of Shares</u>	<u>Consideration</u>	<u>Value</u>
Lara Wilde Huddleston 1250 N. E. Loop 410, Suite 333 San Antonio, Texas 78209	33.33 shares	\$333.33	\$333.33
Christopher Smyth Wilde 1250 N. E. Loop 410, Suite 333, San Antonio, Texas 78209	33.34 shares	\$333.34	\$333.34
Jennifer Wilde Sargent 1250 N. E. Loop 410, Suite 333 San Antonio, Texas 78209	33.33 shares	\$333.33	\$333.33

**RESOLVED**, that the undersigned has determined that the fair value of the consideration described above is as set forth above.

**RESOLVED**, that upon receipt of the consideration, the officers of the Corporation are authorized to issue share certificates to the persons named above and to obtain, if advisable, representations from any purchaser that the shares are being acquired for investment purposes and not for distribution.

**RESOLVED**, that the Board of Directors of the Corporation may upon such terms as the Board of Directors in its discretion may determine, issue authorized shares of the Corporation for consideration consisting of any tangible or intangible benefit to the Corporation or other property of any kind or nature, including cash, promissory notes, services performed, contracts for services to be performed, other securities of the Corporation, or securities of any other corporation, domestic or foreign, or other entity.

**RESOLVED**, that any shares issued pursuant to these resolutions be offered and sold in reliance upon exemptions from registration under the Federal Securities Act of 1933 and the Texas Securities Act.

#### **ASSUMPTION OF DEBT**

**RESOLVED**, that the Corporation assume the debts and liabilities of its predecessor, Fredericksburg Development, Limited Partnership, as set forth in the records of Fredericksburg Development, Limited Partnership, and that the officers of the Corporation are authorized to take all actions necessary to evidence this assumption.

#### **ASSUMPTION OF CONTRACTS**

**RESOLVED**, that the Corporation assume the contractual obligations of its predecessor, Fredericksburg Development, Limited Partnership, that have been previously disclosed to the undersigned, and that the officers of the Corporation are authorized to take all actions necessary to evidence this assumption.

#### **BANK ACCOUNT**

**RESOLVED**, that the Corporation establish in its name one or more accounts with one or more financial institutions on such terms and conditions as may be agreed with said financial institutions, and that the officers of the Corporation are authorized to execute any resolutions required by said financial institutions for such accounts and to designate the person or persons authorized to write checks on such accounts on behalf of the Corporation.

#### **ORGANIZATIONAL COSTS**

**RESOLVED**, that the attorney's fees, filing fees and other expenses and charges incurred and that may be incurred by the Corporation or persons acting on behalf of the Corporation in



connection with the formation of the Corporation are reasonable and shall be paid or reimbursed by the Corporation.

#### **FISCAL YEAR**

**RESOLVED**, that the fiscal year of the Corporation shall begin on January 1<sup>st</sup> and end on December 31<sup>st</sup>, provided that the initial fiscal year of the Corporation shall begin as of the date hereof.

#### **ACCOUNTING METHOD**

**RESOLVED**, that the Corporation shall use the cash method of accounting.

#### **TAXES**

**RESOLVED**, that the officers of the Corporation obtain information and instructions from the Internal Revenue Service, Comptroller of the State of Texas and other applicable taxing authorities regarding withholding and other taxes.

#### **ELECTION AS SMALL BUSINESS CORPORATION**

**RESOLVED**, that the Corporation elects to be a subchapter S corporation for income tax purposes under the provisions of Section 1362 of the Internal Revenue Code, and that the officers of the Corporation are authorized to take the necessary steps to complete said election with the Internal Revenue Service.

#### **ACCOUNTABLE PLAN**

**RESOLVED**, that the Corporation establish an "Accountable Plan" whereby directors, officers and employees may receive advances for or reimbursement of expenses if: (1) the expense has a stated business purpose related to the Corporation; (2) the director, officer, or employee provides substantiation to the Corporation for all expenses; and (3) the director, officer or employee returns all excess reimbursements within a reasonable time.

**RESOLVED**, that the following methods will meet the "reasonable time" definition: (1) an advance is made within 30 days of when an expense is paid or incurred; (2) an expense is substantiated to the Corporation within 60 days after the expense is paid or incurred; and (3) an excess amount is returned to the Corporation within 120 days after the expense is incurred.

**RESOLVED**, that substantiation of business expenses will include: business purpose, business relationship (including names of persons present), cost (itemized accounting), time, and place; and auto mileage reimbursed must be substantiated by a daily mileage log which separates business and personal miles.

**LICENSES AND PERMITS**

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

**QUALIFICATION IN OTHER JURISDICTIONS**

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

**FURTHER INSTRUCTIONS TO OFFICERS**

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

Dated to be effective on December 19, 2017.

Directors:

\_\_\_\_\_  
LARA WILDE HUDDLESTON

  
\_\_\_\_\_  
CHRISTOPHER SMYTH WILDE

\_\_\_\_\_  
JENNIFER WILDE SARGENT



## LICENSES AND PERMITS

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

## QUALIFICATION IN OTHER JURISDICTIONS

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

## FURTHER INSTRUCTIONS TO OFFICERS

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

Dated to be effective on December 19, 2017.

Directors:

Lara Wilde Huddleston  
LARA WILDE HUDDLESTON

CHRISTOPHER SMYTH WILDE

JENNIFER WILDE SARGENT

**LICENSES AND PERMITS**

**RESOLVED**, that the officers of the Corporation are authorized to obtain on behalf of the Corporation all licenses and permits that may be required for the Corporation to carry out its lawful business and activities.

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary to qualify the Corporation to carry out its lawful business and activities in compliance with applicable federal, state and local laws, ordinances and regulations.

**QUALIFICATION IN OTHER JURISDICTIONS**

**RESOLVED**, that for the purpose of authorizing the Corporation to do business in any state, territory or dependency of the United States or any foreign country in which it is necessary or expedient for the Corporation to transact business, the proper officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize the Corporation to transact business therein.

**FURTHER INSTRUCTIONS TO OFFICERS**

**RESOLVED**, that the officers of the Corporation are authorized to do all things and take all action necessary and helpful to carry out the above resolutions; and all acts of the officers and any persons acting for the Corporation which are consistent with the above resolutions are ratified and adopted as the acts of the Corporation.

Dated to be effective on December 19, 2017.

Directors:

\_\_\_\_\_  
LARA WILDE HUDDLESTON

\_\_\_\_\_  
CHRISTOPHER SMYTH WILDE

Jennifer Wilde Sargent  
\_\_\_\_\_  
JENNIFER WILDE SARGENT



## **Exhibit E and F**

### **Water Conservation Plan Drought Contingency Plan**

**This contract does not authorize the diversion of water.  
Thus, specific water conservation and drought contingency  
measures are not required.**

## **Exhibit G**

### **Demand Schedule**

**This contract does not authorize the diversion of water. This, a document detailing initiation of diversions, initial usage, annual water usage, and any increases to it over time is not required.**



**Exhibit H**

**Arbitration Procedures**

## EXHIBIT H

### ARBITRATION PROCEDURES

#### **Section 1. Arbitration.**

**1.1. Binding Arbitration.** Binding arbitration shall be conducted in accordance with the following procedures:

- (a) The party seeking arbitration hereunder shall request such arbitration in writing, which writing shall be delivered to the opposing party or parties and include a clear statement of the matter(s) in dispute. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction (other than a proceeding for injunctive or ancillary relief) then such notice of election under this section shall be delivered within ninety (90) days of the date the electing party receives service of process in such legal proceeding. Otherwise, the legal proceeding shall be allowed to continue and binding arbitration shall not apply to the matter(s) in dispute in that legal proceeding.
  
- (b) Except to the extent provided in this Exhibit, the arbitration shall be conducted in accordance with the commercial rules of the American Arbitration Association by a single arbitrator to be appointed as follows: (i) upon the issuance and receipt of a request for arbitration, the requesting and receiving party each shall designate a representative for the sole purpose of selecting, by mutual agreement with the other party's designee, the individual who shall arbitrate the Dispute or Controversy referred to arbitration hereunder; (ii) within twenty (20) days of their appointment, the two representatives shall designate a third individual who shall be the arbitrator to conduct the arbitration of the Dispute or Controversy; (iii) said individual shall be qualified to arbitrate the Dispute or Controversy referred to arbitration hereunder and have a schedule that permits him or her to serve as arbitrator within the time periods set forth herein. In order to facilitate any such appointment, the party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Dispute or Controversy to the opposing party. In the event the parties' two representatives are unable to agree on a single arbitrator of the Dispute or Controversy within the twenty (20) day period, then the arbitrator shall be appointed by the then-serving chief administrative district judge of Travis County, Texas, or any successor thereto within the next ten (10) day period. The party seeking arbitration shall make the parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Dispute or Controversy to said judge. Each party may, but shall not be required to, submit to said judge a list of up to three (3) qualified individuals as candidates for appointment as the arbitrator whose schedules permit their service as arbitrator within the time periods set forth herein. The arbitrator appointed by the judge need not be from such lists.
  
- (c) Within thirty (30) days of the date the arbitrator is appointed, the arbitrator shall notify the parties in writing of the date of the arbitration hearing, which hearing date shall be not less than one-hundred twenty (120) days from the date of the arbitrator's appointment. The arbitration hearing shall be held in Austin, Texas. Except as otherwise provided



herein, the proceedings shall be conducted in accordance with the procedures of the Texas General Arbitration Act, Tex. Civ. Prac. & Remedies Code § 171.001 et seq. (the "Texas General Arbitration Act"). Depositions may be taken and other discovery may be made in accordance with the Texas Rules of Civil Procedure, provided that (i) depositions and other discovery shall be completed within ninety (90) days of the appointment of the arbitrator, (ii) there shall be no evidence by affidavit allowed, and (iii) each party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the party in the arbitration hearing at least twenty (20) days prior to the arbitration hearing. The arbitrator shall issue a final ruling within thirty (30) days after the arbitration hearing. Any decision of the arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and not appealable by, the parties, and judgment thereon may be entered or enforcement thereof sought by either party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with this Exhibit.

- (d) Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter, change, amend, modify, waive, add to or delete from any of the provisions of the contract.

**Section 2. Further Qualifications of Arbitrators; Conduct.** All arbitrators shall be and remain at all times wholly impartial and, upon written request by any party, shall provide the parties with a statement that they can and shall decide any Dispute or Controversy referred to them impartially. No arbitrator shall be employed by any party, the State of Texas, or have any material financial dependence upon a party, the State of Texas, nor shall any arbitrator have any material financial interest in the Dispute or Controversy.

**Section 3. Applicable Law and Arbitration Act.** The agreement to arbitrate set forth in this Exhibit shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act. In deciding the substance of any such Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. The arbitrator shall have authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of the State of Texas, except that the arbitrator shall have no authority to award incidental or punitive damages under any circumstances (whether they be exemplary damages, treble damages or any other penalty or punitive type of damages) regardless of whether such damages may be available under the laws of the State of Texas. The parties hereby waive their right, if any, to recover punitive damages in connection with any arbitrated Dispute or Controversy.

**Section 4. Consolidation.** If the parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the parties hereby agree that all such proceedings may be consolidated into a single arbitration proceeding.

**Section 5. Pendency of Dispute; Interim Measures.** The existence of any Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either party from its ongoing duties and obligations under the contract or any right, duty or obligation arising therefrom; provided, however, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a party, the arbitrator may issue interim measures for preservation or protection of the status quo.

**Section 6. Complete Defense.** The parties agree that compliance by a party with the provisions of this Exhibit shall be a complete defense to any Action or Proceeding instituted in any federal or state court, or before any administrative tribunal by any other party with respect to any Dispute or Controversy that is subject to arbitration as set forth herein, other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder.

**Section 7. Costs.** Each party shall bear the costs of its appointed representative to select the arbitrator of the Dispute or Controversy and its own attorneys' fees, while the costs of the arbitrator of the Dispute or Controversy incurred in accordance with the foregoing shall be shared equally by the parties. Additional incidental costs of arbitration shall be paid for by the nonprevailing party in the arbitration; provided, however, that where the final decision of the arbitrator is not clearly in favor of either party, such incidental costs shall be shared equally by the parties.