

## WATER SUPPLY CONTRACT

This Water Supply Contract ("**Contract**") is entered into by and between ELECTRO PURIFICATION, LLC, a Texas Limited Liability Company ("**Seller**") and CITY OF BUDA, a municipal corporation ("**Buyer**"). The effective date of this Contract ("**Effective Date**") shall be the date on which it has been signed by both parties.

WHEREAS, Buyer owns and operates a public water system that provides retail water utility service to customer locations within Certificate of Convenience and Necessity No. 11953;

WHEREAS, Buyer desires to secure a supply of potable water for distribution to its customers; and

WHEREAS, Seller intends to develop a groundwater supply project (the "**Project**"), as more particularly described in Exhibit "A" attached hereto, that includes development of a well field in Hays County in the Trinity Aquifer and construction of ground storage facilities (to the extent necessary), an approximately 13-mile transmission line, treatment facilities, and related appurtenances necessary to treat to the standards herein required, deliver and sell water to Buyer in the quantities described in this Contract.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Seller and Buyer agree as follows:

### ARTICLE 1 INVESTIGATION PHASE; OPTION PERIOD

#### 1.01 Seller's Option Period.

- (a) For and in consideration of an additional \$100 consideration, paid by Seller to Buyer, the receipt of which is hereby acknowledged, Seller shall have the Option to initiate this Contract by delivery to the Buyer on the date that is the earlier of (i) the date that the "Feasibility Notice", as that term is defined herein, is delivered to Buyer or (ii) nine (9) months after the Effective Date of this Contract (the "**Option Period**") and thereby trigger the rights and obligations of the parties under this Contract. The purpose of this Option Period is (i) to allow Seller to secure groundwater rights, conduct groundwater well tests, and take such other actions as are necessary to ensure that Sufficient Water is available to produce the volume, delivery rate, and quality of water reserved to Buyer under the terms of this Contract and, thereafter, (ii) to deliver the "Feasibility Notice" to the Buyer.
- (b) For purposes of this Contract, "Sufficient Water" is defined as a quantity of water, delivered at a rate equal to the sum of the maximum contractually committed daily delivery rate, as of the Effective Date, for all other contracted users exclusive of Buda, and 1.25 times the maximum daily delivery rate in this Contract for the City of Buda.

- (c) Seller's determination of the availability of Sufficient Notice in the Feasibility Notice shall be supported by a "Hydrogeologic Report", signed and sealed by a Professional Geoscientist or Engineer, licensed to practice in Texas. The Hydrogeologic Report shall contain the results of Aquifer Testing (pump tests) performed on each of Seller's Wells relied upon for purposes of establishing the existence of Sufficient Water in the Feasibility Notice delivered to Buyer pursuant to subsection 1.01(a). Pump testing on each of Seller's Wells shall be for a minimum of 48 hours for each Well, and shall include monitoring of the impacts (drawdown) of the Aquifer Testing on at least two of the other Wells relied upon by Seller in the Feasibility Notice closest to the Well on which the Aquifer Testing is being conducted.
- (d) Seller agrees to use commercially reasonable efforts during the Option Period to accomplish such purpose. Seller may exercise its option by delivering a letter, substantially in the form attached hereto as Exhibit "B" (the "**Feasibility Notice**") to Buyer in the manner provided for notices in Article 11 of this Contract, together with copies of groundwater leases and reports of licensed hydrogeologist and other experts demonstrating the ability of the Seller to produce the volume, delivery rate, and quality of water reserved to Buyer under the terms of this Contract. If Seller fails to timely deliver to Buyer the Feasibility Notice, this Contract shall terminate and shall be of no further force or effect.
- (e) Upon receipt of the Feasibility Notice, the Buyer may elect, at Buyer's sole expense, to extend the Option Period by ninety (90) days from the date of receipt of the Feasibility Notice to hire a hydrogeologist and/or other qualified expert(s) to conduct groundwater well tests, and/or take such other actions as are necessary to verify Seller's determination that Sufficient Water is available to produce the volume, delivery rate, and quality of water reserved to Buyer under the terms of this Contract.
- (f) Notwithstanding anything in subsection 1.01(e) to the contrary, Buyer's decision to extend the Option Period shall not toll, delay, postpone, extend or otherwise affect Buyer's obligation to commence payment of the Reservation Fee described in Section 4.02 of the Contract triggered by Seller's timely delivery of the Feasibility Notice. Pending Buyer's verification of Sufficient Water in the Feasibility Notice, Buyer will pay the Reservation Fees into escrow, which funds shall be held in a segregated account for a maximum of the earlier of, 90 days or the day the Buyer issues notice of confirmation of Seller's Feasibility. Buyer's failure to issue notice of confirmation within the ninety (90) days shall automatically terminate this Contract, unless Buyer unconditionally releases all escrowed Reservation Fees to Seller and agrees to pay all future Reservation Fees to Seller as the same become due and owing.

1.02 Initiation of Contract. (a) Unless and until this Contract is initiated pursuant to Section 1.01 of this Contract, the obligations of Seller and Buyer shall be limited to those set forth in Section 1.01.

(b) Once initiated, this Contract shall be in full force and effect and Seller and Buyer will be subject to all of the rights and obligations provided for in this Contract.

(c) If Seller does not initiate this Contract on or before the end of the Option Period, this Contract may be extended for a mutually agreeable time by amendment, or, if either party does not wish to extend the time for initiation of this Contract, it shall automatically terminate.

1.03 Seller's Obligations. Following initiation of this Contract, except as otherwise provided by this Contract, Seller shall have the following obligations regarding the Project:

- (i) Purchasing or leasing all groundwater rights for the Project;
- (ii) Securing and maintaining all permits, licenses and approvals for the Project, including water well drilling, production and other permits from the appropriate groundwater conservation district, if any, and public water system approvals from the Texas Commission on Environmental Quality (TCEQ);
- (iii) Performing all design, engineering and construction for the Project, including evaluating the quality and quantity of groundwater;
- (iv) Purchasing all materials and equipment for the Project and paying all costs;
- (v) Constructing the gathering system, storage tanks as and if necessary, treatment facilities necessary to comply with the provisions of this Contract, pump stations, transmission pipeline, and related infrastructure;
- (vi) Acquiring easements or other rights-of-way for the Project and associated appurtenances, except for the Easements (hereafter defined) that will be acquired by Buyer for the water transmission pipeline;
- (vii) Acquiring all well sites, facility sites and sanitary control easements;
- (viii) In the event of a water supply shortfall, Seller shall prioritize delivery of water from the Project to Buyer before supplying Buyers who executed water supply contracts after the Effective Date of this Contract;
- (ix) Delivery of the groundwater meeting all TCEQ standards applicable under this Contract at 35 pounds per square inch (PSI) delivered at ground level;
- (x) Operating and maintaining the Project; and
- (xi) Parties have agreed to develop a mitigation plan.

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Providing written notice to the Buyer: 60 days prior to offering the project for sale, or within 10 business days of receipt of an unsolicited offer to purchase by a 3<sup>rd</sup> party.

ARTICLE 2  
RESERVATION AND CONSTRUCTION PERIODS

2.01 Reservation Period.

(a) Following timely delivery of the Feasibility Notice to Buyer, and Buyer's acceptance of the same pursuant to Section 1.01 of this Contract, both Buyer and Seller shall be bound by the terms of this Contract and Seller shall be obligated to deliver the quality and quantity of water herein provided on not less than eighteen (18) months' advance written notice from Buyer to Seller (the "Construction Notice") to Buyer's Point of Delivery at the intersection of FM 1626 and Kohlers Crossing as reflected on Exhibit C. Seller shall have the option to delay the start of construction after receiving the Construction Notice until after Buyer has acquired all of the Easements (as hereinafter defined). Buyer shall have a five year period of time after receipt of the Feasibility Notice (the "Reservation Period"), within which period Buyer may delay providing the Construction Notice, provided however that if Buyer has not provided to Seller the Construction Notice within the Reservation Period and Buyer has obtained all of the Easements, then at the expiration of the Reservation Period Seller will proceed as if the Construction Notice was given. In order to compensate the Seller for its work as herein provided, and as consideration to Seller to reserve water production capacity for the use of Buyer, Buyer shall pay to Seller, on or before the first day of each calendar month for the period commencing with the date of the Feasibility Notice and ending on the Completion Date (hereafter defined), a reservation fee in the amount of \$0.36 per 1,000 gallons of reserved water per month (the "Reservation Fee"). The Reservation Fee shall be pro-rated during any partial month during the Reservation Period.

(b) In the event Buyer elects to develop the delivery point at Beacon Hill shown on Exhibit C as the "Alternative Take Point", whether as an additional or alternative Buyer's Point of Delivery under this Contract, (i) Buyer shall immediately bring such information to Seller's attention in writing, and (ii) the Parties will discuss the timing and cost of construction of any additional or alternative Buyer's Point of Delivery.

(c) The Parties agree, however, that notwithstanding anything in subsection 2.01(b), or otherwise in this Contract to the contrary, that Seller shall have no obligation to abandon its ongoing construction of facilities to Buyer's Point of Delivery contemplated by Section 2.01 and reflected on Exhibit "C" of this Contract, unless and until Buyer agrees in writing (i) to pay Seller for all reimbursable costs associated with construction for the original Buyer's Point of Delivery, (ii) to pay for all costs to construct the necessary facilities and deliver water to Buyer's additional or alternate point of delivery at Beacon Hill, and (iii) to pay the rates set forth in Exhibit "D-1" of this Contract established for water delivered to the additional or alternative take point.

(d) Provided, further, that Buyer's decision to develop an additional or alternative Buyer's Point of Delivery at Beacon Hill shall not toll, delay, postpone, extend or otherwise

affect Buyer's obligation to commence payment of the Reservation Fee described in Section 4.02 of this Contract.

2.02 Construction Period. Following the receipt by Buyer of the Construction Notice, Seller shall have eighteen (18) months from the date of the Construction Notice, or if Seller exercises its option under Section 2.01, Seller shall have eighteen (18) months from the date Buyer has obtained all of the Easements, to complete the wells, gathering system and transmission lines necessary to deliver the amount of water reserved to Buyer under this Contract. Upon Seller's completion of the wells, gathering system, transmission lines and other infrastructure necessary to deliver to Buyer the volume of water identified in Section 3.01 of this Contract, and receipt of the results of any tests and laboratory analyses required by Buyer to confirm that Seller can deliver to Buyer the volume, delivery rate, and quality of water identified in Article 3 of this Contract (the "**Completion Date**"), then Buyer shall be obligated to begin making the payments described in Article 4 of this Contract.

2.03 Easements for Transmission Pipeline.

(a) Acquisition. No easements are necessary from Buyer to get to their Primary Point of Delivery. If Buyer elects to construct as an additional or alternative Point of Delivery the "Alternative Take Point" at Beacon Hill as shown on Exhibit "C" pursuant to Section 2.01(b) of this Contract, Buyer shall to acquire all required right-of-way easements (the "**Easements**") or equivalent use rights authorizing the construction, use, maintenance, repair, inspection, and replacement of Seller's water transmission pipeline as may be necessary to facilitate Seller's delivery of water to Buyer's Point of Delivery at the "Alternative Take Point" identified as Beacon Hill on Exhibit "C." Buyer and Seller agree to cooperate to determine and, if necessary, adjust the alignment of the water transmission pipeline so that Buyer may obtain the Easements at a reasonable cost and in a reasonable time period. Because the pipeline is necessary for public use and public purposes, Buyer agrees to exercise its power of eminent domain to acquire the Easements if Buyer determines such action is necessary and if authorized by law.

(b) Lease of Easements. Buyer agrees to lease the rights under the Easements to Seller beginning after Seller's reimbursement of Buyer's costs and expenses and continuing through the end of the initial term and any renewal terms of this Contract for the total amount of \$100.00. As part of such lease, Seller shall have the obligation to maintain the property described in the Easements in good condition and repair, including by trimming trees, undergrowth and other vegetation on such property.

(c) Cooperation. Buyer and Seller agree to cooperate in good faith in the acquisition and leasing of the Easements.

ARTICLE 3  
RESERVATION AND SUPPLY OF WATER

3.01 Water Reservation.

(a) If Seller timely delivers the Feasibility Notice to Buyer, conditional upon Buyer's right to confirm feasibility as described in subsection 1.01(b) above, Buyer agrees to reserve from Seller, and Seller agrees to reserve for supply to Buyer, 1.00 million gallons per day ("MGD") of water from the Project, calculated as an annual average (the "**Reservation Volume**"). The Seller agrees to make the Reservation Volume available for delivery to Buyer as follows:

- (i) Beginning on the Completion Date and for a period of one (1) year thereafter, Seller shall make available for delivery to Buyer, on a take or pay basis, at the Point of Delivery, 0.50 MGD of water, calculated as an annual average (the "**Take or Pay Volume**"); provided, however, that Buyer, at Buyer's option, may obtain a lower initial Take or Pay Volume if another customer of Seller commits to purchase water from Seller on a take or pay basis such that the combined amount from Buyer and such customer is at least 0.50 MGD of water; and
- (ii) Beginning at the expiration of the period described in (i) above, and every one (1) year thereafter, the Take or Pay Volume shall increase in increments of 0.125 MGD, calculated as an annual average, up to the Reservation Volume, and Seller will make available for delivery to Buyer, on a take or pay basis, at the Point of Delivery, the revised Take or Pay Volume.

(b) Notwithstanding anything in subsection 3.01(a) above to the contrary, nothing in this Contract shall toll, delay, postpone, extend or otherwise affect Buyer's obligation to commence payment of the Reservation Fee described in Section 4.02 of the Contract triggered by Seller's timely delivery of the Feasibility Notice.

3.02 Maximum Delivery Rate.

(a) The maximum amount of water that Seller shall be required to deliver in any one calendar day shall be the then Take or Pay Volume irrespective of the number of Buyer's Point of Delivery may be established (the "**Maximum Delivery Rate**"). Seller agrees to use its best efforts during the Option Period to ensure that the Project will accomplish and maintain the Maximum Delivery Rate.

(b) Notwithstanding the limitations set forth in subsection 3.02(a) above, in the event that Seller determines that Seller has additional water and water capacity available for the sale and delivery of water in excess of the current Maximum Delivery Rate prescribed in the Contract necessary to meet Buyer's demand in excess of the Maximum Delivery Rate, Seller agrees to sell the same to Buyer at the then current price per 1000 gallons. Notwithstanding anything in this subsection 3.02(b) to the contrary, all sales to Buyer of any of Seller's excess water and water capacity shall be made on a one-time spot sale basis only, and shall not constitute either (i) an

amendment to this Contract and/or the Maximum Delivery Rate, and/or (ii) obligate Seller to maintain and/or sell any such excess water or water capacity to Buyer in the future or to reserve the same for Buyer or Buyer's benefit.

3.03 Point of Delivery; Pressure. Subject to the conditions set forth herein, Seller agrees to deliver water from the Project to Buyer at Buyer's Point of Delivery at the intersection of FM 1626 and Kohlers Crossing, as more particularly shown in Exhibit "C" attached hereto (the "**Point of Delivery**"). Seller shall furnish water to the Buyer's Point of Delivery at ground level at a reasonably constant gauge pressure of 35 pounds per square inch, or at such other pressure agreed upon by Seller and Buyer. Any emergency failures of pressure or supply due to water line breaks; power failure; repairs to supply or distribution lines; flood; fire; earthquake; or other catastrophe shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.

3.04 Reliability. Seller will operate and maintain the Project in a reasonable, efficient and effective manner and will take such action as may be necessary to furnish Buyer with the quantity and delivery rate of water set forth in Sections 3.01 and 3.02 of this Contract. Temporary failures to deliver water shall be remedied with all reasonable dispatch. As necessity may arise in case of a break, emergency or other unavoidable case, Seller shall have the right to temporarily interrupt water delivery to Buyer in order to make necessary repairs; provided, however, that in the event such interruption extends for more than 48 hours, whether consecutive or aggregated, in any 30-day period (the "**Maximum Downtime Period**"), Buyer's obligation to pay the Take or Pay Charge in Section 4.01 shall be suspended and shall be reduced by the amount of the average daily Take or Pay Charge for each day, or part of a day, that the interruption of water delivery continues beyond the Maximum Downtime Period. In addition, in the event of a total failure of the Project, meaning Seller's inability to deliver the quantity or quality of water required by Section 3.01(i) within twenty-four (24) months after delivery of the Construction Notice, then Buyer shall have the right to terminate this Contract, and thereafter the parties shall have no further obligations to each other except those that have accrued prior to such termination.

3.05 Well-Site Requirements. The Seller's well sites will be securely fenced in accordance with the requirements of the TCEQ. Seller will install meters, of adequate size and manufacture at each well site. Seller shall be responsible for providing electricity at each well site. Wells shall be located within valid sanitary control easements to the extent required by applicable law.

3.06 Title to Water. Title to all water supplied herein shall be in Seller up to the Point of Delivery, at which point title will pass to Buyer. Each of the parties hereby agrees to save and hold the other party hereto harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of the water while title remains in such party.

3.07 Quality. The water delivered by Seller to Buyer at the Point of Delivery shall be potable water of a quality conforming to the requirements of any applicable state laws, rules, regulations or orders, including the requirements of the TCEQ, or its successors, for human

consumption or other domestic use. In addition, Seller agrees that water from each groundwater well supplying water for the Project will meet the TCEQ's secondary standards described in 30 Tex. Admin. Code § 290.118(b) on an individual basis. The parties agree that all references to "water" for supply under this Contract shall refer to water meeting the quality requirements set forth in this Section 3.07. Seller agrees to ensure that Seller's method of disinfection is compatible with Buyer's method of disinfection for Buyer's public water system, which is currently treatment with chlorine gas.

3.08 Access to Project Information. In addition to the reports and information provided by Seller to Buyer under Section 1.01, during the term of this Contract, Seller agrees to make available to Buyer, at Buyer's request, all tests, studies, reports and other documentation concerning operation of the Project, including information regarding groundwater wells, water quality, hydrology, geology, reliability of water, permitting, maintenance, and repair of the Project.

#### ARTICLE 4 FEES, BILLING AND PAYMENT

##### 4.01 Take or Pay Rate.

(a) Beginning on the Completion Date, to the extent authorized by law, Buyer shall pay an initial rate for the Take or Pay Volume of \$3.25 per 1,000 gallons per month (the "**Take or Pay Charge**"). The rates (i) inclusive of the anticipated "rollback" in years 5 through 8, inclusive, but (ii) exclusive of the CPI escalation factor described in Section 4.03 of this Contract, are provided in rate schedule as attached as Exhibit "D".

(b) Except as otherwise provided herein (including Sections 3.01 and 3.04), so long as Seller is willing and able to deliver the Take or Pay Volume, to the extent authorized by law, Buyer agrees that it shall be obligated to pay, without off-set or counterclaim, the Take or Pay Charge regardless of whether or not Seller delivers any water to Buyer, or whether or not Buyer actually receives or uses water from Seller.

(c) In the event Buyer elects to have Seller construct the Alternative Take Point at Beacon Hill reflected in Exhibit "C", then to the extent authorized by law, the Take or Pay Charge Buyer shall pay for all water delivered to the Alternative Take Point shall have an initial rate of \$3.81 per 1,000 gallons per month (the "**Alternative Take Point Take or Pay Charge**"). The rates (i) inclusive of the anticipated "rollback" in years 5 through 8, inclusive, but (ii) exclusive of the CPI escalation factor described in Section 4.03 of this Contract, are provided in **Alternative Take Point Take or Pay Charge** rate schedule attached as Exhibit "D-1".

4.02 Reservation Fee. After the delivery of the Feasibility Notice, but in no case earlier than nine (9) months after the Effective Date, to the extent authorized by law, Buyer agrees to pay a Reservation Fee on a monthly basis of \$0.36 per 1,000 gallons per month for that portion of the Reservation Volume that is not currently part of the Take or Pay Volume. As each increment of the Reservation Volume is converted to the Take or Pay Volume as described in



Section 3.01, such increment of water shall no longer be subject to the Reservation Fee, but shall be subject to the Take or Pay Charge.

#### 4.03 Adjustment of Costs and Charges.

(a) On each anniversary of the Completion Date, the Reservation Fee, and Take or Pay Charge in Exhibit "D", and if applicable in Exhibit "D-1", shall each be adjusted by providing for an increase equal to the percentage by which the CPI (as hereinafter defined) has increased after the Completion Date through the subject anniversary date; provided, however, that no increase over the prior year's charge shall be greater than 5% on any anniversary.

(b) For the purposes of this Section 4.03, "CPI" shall mean the Consumer Price Index for All Urban Consumers, All Items, U.S.A. Area, 1982-1984 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor (U.S. City Average). If such index is discontinued, CPI shall then mean the most nearly comparable index published by the Bureau of Labor Statistics or other official agency of the United States Government. The initial base index shall mean the CPI for the month which is two months prior to the Completion Date. Thereafter, the index used shall mean the CPI for the month which is two months prior to the subject anniversary date.

(c) Seller will notify Buyer of the increase within twenty (20) days after the end of each anniversary of the Completion Date. The revised price shall take effect at the time of the next bill.

4.04 Pass Through of Groundwater Charges. If, after the execution of this Contract, a Groundwater District or similar entity is created that levies an export or production tax on water delivered pursuant to this Contract, the amount of such tax will be added to the foregoing price per 1,000 gallons. Seller agrees to use its best efforts to eliminate or minimize any export or production tax imposed on water delivered pursuant to this Contract, including, but not limited to, taking steps to oppose the imposition of such tax. Seller further agrees that Buyer shall have the right to work directly with any Groundwater District or similar entity to eliminate or minimize any export or production tax and that Seller shall take no action to oppose Buyer's efforts or to encourage or assist any third party in opposing such efforts, provided that both Buyer and Seller agree to fully inform the other party of all actions and communications taken with respect to such entity.

4.05 Billing. Seller shall read the meters once each month. Bills shall be delivered to Buyer by mail, facsimile or electronic mail within the first ten (10) business days of each month. The due date shall be the last business day of each month. Any amount billed to Buyer that is not paid on or before the due date shall accrue a late fee at the rate of 1.5% per month, or the maximum legal rate, whichever is less.

## ARTICLE 5 METERING

5.01 Seller shall provide, operate, maintain and read the meters at the Point of Delivery which shall record all water that is produced and delivered to Buyer. Seller shall keep accurate records of all measurements of water required under this Contract, and the measuring devices and the records shall be open to inspection by the Buyer during business hours. Buyer shall have access to the metering equipment at all reasonable times. Upon written request of the Buyer, Seller will give Buyer copies of such records or permit Buyer to have access to the same in the office of Seller during reasonable business hours.

5.02 Seller shall calibrate its meter(s) once every one (1) year, at Seller's expense, and, if requested by Buyer, shall do so in the presence of a representative of Buyer. Buyer may request, in writing, Seller to calibrate the meter(s) at any time. In that event Seller shall calibrate its meter(s) and, if requested by Buyer, shall do so in the presence of a representative of Buyer. If upon test of the meter(s) pursuant to the request of Buyer the percentage inaccuracy of such metering equipment is found to be in excess of four percent (4%), Seller shall pay the cost of the calibration. If the percentage inaccuracy of such metering equipment is found to be less than four percent (4%), the cost thereof shall be paid by Buyer.

5.03 If upon any test of the meter(s) the percentage inaccuracy of such metering equipment is found to be in excess of four percent (4%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then for a period extending back one-half time elapsed since the latest date of calibration, but in no event further back than a period of six months. If any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the periods such meter(s) are out of service or repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available.

## ARTICLE 6 REGULATION OF GROUNDWATER

6.01 Groundwater Conservation District. If the groundwater leases pursuant to which Seller delivers water to Buyer, or water produced pursuant to those groundwater leases are, or become, subject to the regulatory jurisdiction of a Groundwater Conservation District, or other similar entity of the State of Texas, which regulates the pumping of groundwater, then Buyer and Seller agree to expedite, in a professional and cooperative manner, the joint beneficial effort of making application(s) for and completion of the administrative process to obtain the necessary permit(s), if any, recognizing the right to drill for and pump pursuant to the groundwater leases.

6.02 Buyer and Seller agree to proceed as follows if the application/recognition/notice/approval process is necessary:

(a) Seller agrees to take any and all necessary steps to apply for the recognition of Seller's rights to the water pursuant to the groundwater leases and shall request (i) authorization

to pump the maximum allotted acre feet per year of water related to the groundwater leases allowed by law, and (ii) authorization, if necessary, to transport the water. Buyer will take all reasonable steps to obtain the governing agency's approval of Seller's application. Seller shall be responsible for all expenses, costs, and fees necessary to complete the application process before the governing agency. Additionally, Seller agrees to reimburse Buyer for all of Buyer's actual reasonable expenses, costs, and fees (including reasonable attorney's fees) necessary to complete the application process before the governing agency.

(b) Buyer and Seller agree to cooperate in a professional and expeditious manner to fully complete the administrative process regarding the application process identified in this Section 6.02.

## ARTICLE 7 INDEMNITY AND FORCE MAJEURE

7.01 INDEMNITY. SELLER SHALL INDEMNIFY, SAVE HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES, ATTORNEY'S FEES AND ANY AND ALL OTHER COSTS OR FEES (WHETHER GROUNDED IN CONSTITUTIONAL LAW, TORT, CONTRACT, OR PROPERTY LAW, OR RAISED PURSUANT TO LOCAL, STATE OR FEDERAL STATUTORY PROVISION), ARISING OUT OF THEIR PERFORMANCE OF THE RESULTING AGREEMENT AND/OR ARISING OUT OF A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE SELLER, ITS OFFICERS, AGENTS, AND EMPLOYEES.

7.02 Force Majeure. Seller shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to "Force Majeure" so long as Seller uses its best efforts to mitigate the impact and promptly remedy any condition that constitutes a "Force Majeure." The term "Force Majeure" as employed herein shall mean: any act of God including but not limited to storms, floods, washouts, droughts, landslides, and lightning; acts of a public enemy, wars, blockades, insurrections, or riots; strikes or lockouts; or epidemics or quarantine regulations; or laws, acts, or orders of federal, state, municipal, or other governments or governmental officers or agents under color of authority. If Seller is required, ordered, or directed to cease drilling operations, reworking operations, or production of water intended for delivery to Buyer by action of Force Majeure, until such time as such Force Majeure is terminated, the obligations of Seller and Buyer under this Contract shall be suspended and inoperative, but this Contract shall otherwise continue in full force. In the event that Seller believes a "Force Majeure" condition has occurred, it shall immediately notify Buyer of the details of the condition and its plans to mitigate and remedy the condition.

## ARTICLE 8 TERM OF CONTRACT

If Seller initiates this Contract pursuant to the provisions of Section 1.01 above, this Contract shall be in force and effect from the Effective Date and shall continue for an initial term

of thirty (30) years after the Completion Date. Following completion of the initial term, this Contract will automatically renew for two (2) successive renewal terms of ten (10) years each, provided that Buyer shall first give to Seller not less than one (1) year's prior written notice of its intent to renew. If the Buyer fails to give Seller the required notice, Buyer's right to extend the term of this Contract and a future renewal, if any, shall terminate. All terms and conditions set forth in this Contract will remain the same during each renewal term unless otherwise mutually agreed by the Parties. If any terms and conditions are changed for a renewal term, a new or amended agreement will be executed by the Parties.

## ARTICLE 9 SELLER'S OTHER CONTRACTS

Most Favored Nations. Seller agrees that for as long as this Contract is in effect, Buyer is entitled to pricing terms that are at least equally favorable to the pricing terms offered by Seller (or its affiliates) to any other wholesale water purchaser for the purchase of groundwater from the Trinity Aquifer in Hays County. Therefore pursuant to this "most favored nations" provision, Seller agrees that, for the Term of this Contract, Buyer shall be entitled to receive, at Buyer's sole election made with reasonable notice to Seller, payment under this Contract in accordance with pricing terms included in any other agreement made by Seller (or its affiliates) for the acquisition of groundwater from the Trinity Aquifer in Hays County. Seller agrees to inform Buyer in the event Seller (or its affiliates) makes an agreement for groundwater from the Trinity Aquifer after the date hereof, and furthermore, Buyer shall have the right of reasonable inspection of any agreements made by Seller for the acquisition of groundwater from the Trinity Aquifer in Hays County. Notwithstanding anything above to the contrary, the Buyer's most favored nation provision applies solely to the price charged by Seller or its affiliates per thousand gallons of water for similar volumes of water and taking into account any difference in transportation costs due to the distance to the respective points of delivery.

## ARTICLE 10 DEFAULT AND REMEDIES

10.01 Remedies. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party hereto and shall be cumulative. Recognizing, however, that failure in the performance of either party's obligations hereunder could not be adequately compensated in money damages alone, each party agrees in the event of any default on its part that each party shall have available to it the equitable remedy of mandamus and specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available. **In the event of default by Seller which is not cured timely, subject to the prior and superior rights of the GoForth Water Supply Corporation ("GoForth"), the Buyer has first right of refusal to purchase the system which includes but is not limited to the water rights, the well field in Hays County, ground storage facilities, transmission lines, treatment facilities, and related appurtenances necessary to treat to the standard herein required, deliver and sell water to buyer.**

10.02 Notice and Opportunity to Cure. Except for Buyer's payment obligations in Article 4, if either party (referred to herein as the "**Defaulting Party**") fails to comply with its obligations under this Contract or is otherwise in breach or default under this Contract (collectively, a "**Default**") then the other party (referred to herein as the "**Non-Defaulting Party**") shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "**Default Notice**") that specifies the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within ten (10) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money within a reasonable period of time after the Defaulting Party's receipt of the Default Notice or fails to thereafter pursue curative action with reasonable diligence to completion.

10.03 Facility Repairs. In the event that any well, transmission line, or other facility of Seller for providing water for delivery to Buyer needs repair, if Seller has not begun repairs within 48 hours of notice to Seller that a problem exists, Buyer shall have the right, but not the obligation to repair the well, transmission line, or other facility, and recover the expense of the repair from Seller.

## ARTICLE 11 NOTICES

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery, by facsimile, or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when received by facsimile or by personal delivery, or three days after deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to Seller shall be addressed:

Electro Purification, LLC  
4605 Post Oak Place Drive, Ste. 212  
Houston, Texas 77027  
Attn: Tim Throckmorton  
Fax: (713) 871-9487  
E-mail: tintmgs@hotmail.com

Any such notice mailed to Buyer shall be addressed:

Kenneth Williams  
City Manager  
121 S. Main  
Buda, Texas 78610-3375

*with a copy to:*

George Hyde  
City Attorney  
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.  
2500 W. William Cannon Drive, Suite 609  
Austin, Texas 78745

Either party may change the address or facsimile number for notice to it by giving notice of such change in accordance with the provisions of this section.

## ARTICLE 12 GENERAL TERMS

12.01 Assignment. Neither Seller nor Buyer may assign all or any part of this Contract without the prior written approval of the other party.

12.02 Approvals. Whenever the term "approve" or "approval" is used in this Contract, the party whose approval is required will not unreasonably withhold or delay it. Where approval is necessary, the party seeking approval may request approval in writing. If the party whose approval is requested fails to either approve the submittal or provide written comments specifically identifying the required changes within 21 working days, the submittal, as submitted by the requesting party, will be deemed to have been approved by the party whose approval is requested. If the matter has not been approved or deemed approved and the parties are unable to agree on a modification, the parties will mediate a resolution of the matter. Each party will be responsible for 50% of the costs and fees associated with hiring the mediator.

12.03 Waiver. The failure on the part of either party to require performance by the other of any portion of this Contract shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision in the future. Any waiver by either party of any provision of this Contract shall not be a waiver of any other provision hereof.

12.04 Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

12.05 Attorney's Fees. In the event either party shall become a party to any litigation against the other to enforce or protect any rights or interest under this Contract and shall prevail, the losing party shall reimburse the prevailing party for all investigative and court costs and attorney's fees incurred in such litigation.

12.06 Governing Law. This Contract shall be governed by the laws of the State of Texas and venue shall lie in Hays County, Texas.

12.07 Binding Effect. The Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

12.08 Time. Time is of the essence. Unless otherwise specified, all references to "days" means "calendar days". If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

12.09 No Partnership, Agency or Third Party Beneficiaries Intended. Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties, nor shall either party be authorized to act as an agent for the other party. Nothing in this Contract shall be construed to confer any right, privilege or benefit on, or to otherwise create any vested right or third-party beneficiary relationship with any person or entity not a party to the Contract.

12.10 Authority. Each of the persons signing on behalf of Buyer and Seller hereby confirm that they have the authority to execute this Contract on behalf of the party indicated by their signature and have the authority to bind such party hereto.

12.11 Headings. The captions and headings appearing in this Contract are inserted merely to facilitate reference and will have no bearing upon its interpretation.

12.12 Further Assurances. Buyer and Seller shall take all further actions and shall execute and deliver to the other any other document or instrument which is necessary to fully carry out the transactions evidenced by this Contract. Seller and Buyer shall cooperate with each other and act in good faith to accomplish the purposes of this Contract.

12.13 Compliance with All Laws. Buyer and Seller agree that each of them will comply with all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any of the authorities having jurisdiction in carrying out its duties and obligations hereunder. However, nothing contained in this Contract shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction.

12.14 Entire Agreement. This Contract constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

12.15 Counterparts. This Contract may be executed by the parties in any number of counterparts, each of which when so executed and delivered shall be deemed an original instrument, but all such counterparts together shall constitute but one and the same instrument.

[SIGNATURES TO FOLLOW]

**SELLER:**

ELECTRO PURIFICATION, LLC

By: Tim N Throckmorton  
Tim N. Throckmorton, Manager

Date of Signature: 1-15-15

By: R.D. Bart Fletcher  
R.D. Bart Fletcher, Manager

Date of Signature: January 20, 2015

By: \_\_\_\_\_  
Andrew Echolds, Manager

Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Norbert Barcena, Manager

Date of Signature: \_\_\_\_\_

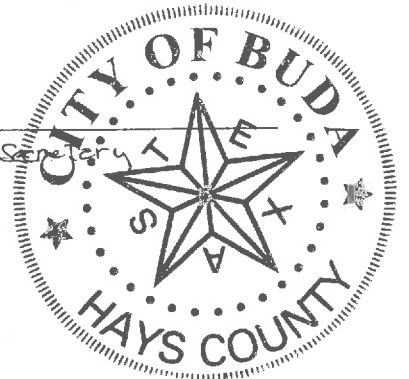
**BUYER:**

CITY OF BUDA  
By: Kenneth Williams  
Kenneth Williams, City Manager

Date of Signature: January 20, 2015

Attest:

Alicia Ramirez  
Alicia Ramirez, City Secretary





**SELLER:**


ELECTRO PURIFICATION, LLC

By: \_\_\_\_\_  
Tim N. Throckmorton, Manager

Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
R.D. Bart Fletcher, Manager

Date of Signature: \_\_\_\_\_

By:   
\_\_\_\_\_  
Andrew Echolds, Manager

Date of Signature: January 20, 2015

By: \_\_\_\_\_  
Norbert Barcena, Manager

Date of Signature: \_\_\_\_\_

**BUYER:**

CITY OF BUDA

By: \_\_\_\_\_  
Kenneth Williams, City Manager

Date of Signature: \_\_\_\_\_

**SELLER:**

ELECTRO PURIFICATION, LLC

By: \_\_\_\_\_  
Tim N. Throckmorton, Manager


Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
R.D. Bart Fletcher, Manager

Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew Echolds, Manager

Date of Signature: \_\_\_\_\_

By:  \_\_\_\_\_  
Norbert Barcena, Manager

Date of Signature: January 20, 2015

**BUYER:**

CITY OF BUDA

By: \_\_\_\_\_  
Kenneth Williams, City Manager

Date of Signature: \_\_\_\_\_

## **EXHIBIT "A" TO WATER SUPPLY CONTRACT**

### **DESCRIPTION OF THE GROUNDWATER SUPPLY PROJECT**

The Project will include the following:

- Purchasing or leasing all groundwater rights necessary to produce and deliver the quantity of water reserved by Buyer under this Contract;
- Drilling and producing groundwater from not less than four (4) groundwater wells in the Trinity Aquifer in Hays County, Texas;
- Constructing, operating, maintaining and repairing the gathering system, storage tanks, treatment facilities, pump stations, approximately 13-mile transmission pipeline, and related infrastructure necessary to produce, treat and deliver water from Seller's groundwater well field to Buyer's Point of Delivery; and
- Delivering potable water meeting the standards described in this Contract to Buyer's Point of Delivery.

## EXHIBIT "B" TO WATER SUPPLY CONTRACT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Exercise of Option to Enter Into Water Supply Contract

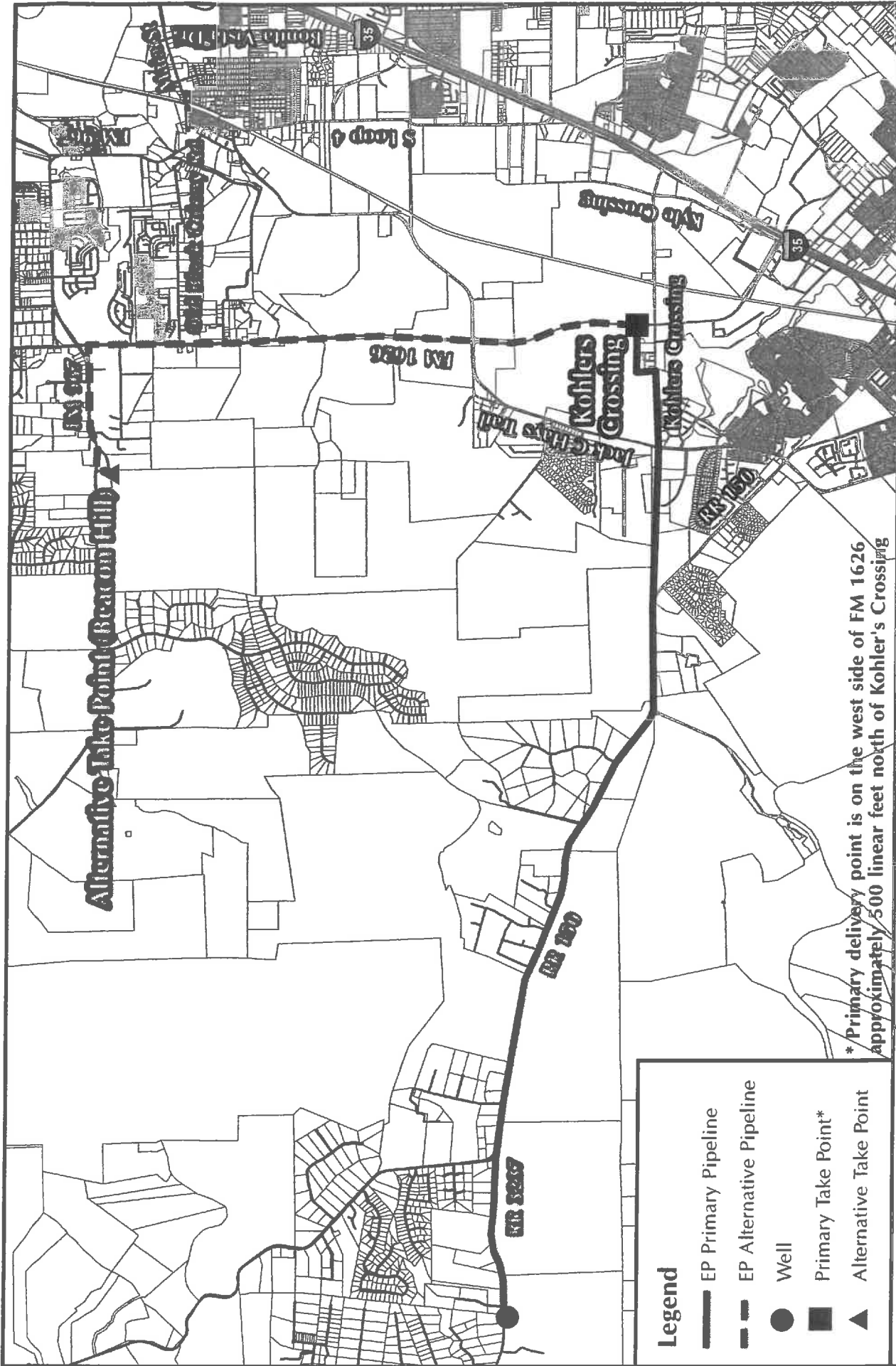
Dear Sir:

Pursuant to Section 1.01 of the Water Supply Contract by and between Electro Purification, LLC and City of Buda, with Effective Date \_\_\_\_\_, please be advised that Electro Purification, LLC, hereby exercises its option to initiate the rights and obligations of the parties under that Contract. The Contract is now in effect pursuant to all terms and conditions therein.

Very truly yours,

ELECTRO PURIFICATION, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



N  
NTS

## Exhibit C Primary & Alternative Take Points

Release Date  
January 2015

**LAN**  
**Lockwood, Andrews  
& Newnam, Inc.**  
A LEO A DALY COMPANY

Lockwood, Andrews & Newnam Inc. makes no representations or warranties regarding accuracy or completeness of the information depicted on this map or the data from which it was produced. This map is NOT suitable for survey purposes and does not purport to depict or establish boundaries between land owners or locations of utility infrastructure where survey data is available and field locations have been established.

**EXHIBIT "D" TO WATER SUPPLY CONTRACT**  
**EXAMPLE TAKE OR PAY CHARGE WITH ROLLOBACK AMOUNT**  
**FOR DELIVERY AT FM 1626 AND KOHLERS CROSSING<sup>1</sup>**

<b>Year(s) After Completion Date</b>	<b>Maximum Daily Volume (Million Gallons/Day)</b>	<b>Take-Or-Pay Charge<sup>2</sup> At FM 1626 &amp; Kohlers Crossing</b>
1	500,000	\$3.25
2	625,000	\$3.25
3	750,000	\$3.25
4	875,000	\$3.25
5	1,000,000	\$3.11
6	1,000,000	\$3.11
7	1,000,000	\$2.56
8	1,000,000	\$2.56
9	1,000,000	\$2.56
10	1,000,000	\$2.56
11	1,000,000	\$2.56
12	1,000,000	\$2.56
13	1,000,000	\$2.56
14	1,000,000	\$2.56
15	1,000,000	\$2.56
16	1,000,000	\$2.56
17	1,000,000	\$2.56
18	1,000,000	\$2.56
19	1,000,000	\$2.56
20	1,000,000	\$2.56
21	1,000,000	\$2.56
22	1,000,000	\$2.56
23	1,000,000	\$2.56
24	1,000,000	\$2.56
25	1,000,000	\$2.56
26	1,000,000	\$2.56
27	1,000,000	\$2.56
28	1,000,000	\$2.56
29	1,000,000	\$2.56
30	1,000,000	\$2.56

<sup>1</sup> This example (i) assumes delivery of the water at ground level, and (ii) does not reflect the agreed escalation of costs and charges provided for in Section 4.03 of the Contract using the Consumer Price Index ("CPI"). Nothing in this Exhibit "D" is intended to modify the Contract. To the extent of any conflict with the terms of the Contract, the terms of the Contract shall control.

<sup>2</sup> Beginning with year 2 of the Contract, and continually annually thereafter for the remaining term of the Contract, the Take-Or-Pay Charge shall be multiplied by the compounded CPI pursuant to Section 4.03 of the Contract.

## EXHIBIT "D-1" TO WATER SUPPLY CONTRACT

### EXAMPLE TAKE OR PAY CHARGE WITH ROLLBACK AMOUNT FOR DELIVERY AT BUYER'S BEACON HILL "ALTERNATIVE TAKE POINT",<sup>3</sup>

Year(s) After Completion Date	Maximum Daily Volume (Million Gallons/Day)	Take-Or-Pay Charge <sup>4</sup> At the Alternative Take Point
1	500,000	\$3.81
2	625,000	\$3.81
3	750,000	\$3.81
4	875,000	\$3.81
5	1,000,000	\$3.56
6	1,000,000	\$3.56
7	1,000,000	\$3.14
8	1,000,000	\$3.14
9	1,000,000	\$3.14
10	1,000,000	\$3.14
11	1,000,000	\$3.14
12	1,000,000	\$3.14
13	1,000,000	\$3.14
14	1,000,000	\$3.14
15	1,000,000	\$3.14
16	1,000,000	\$3.14
17	1,000,000	\$3.14
18	1,000,000	\$3.14
19	1,000,000	\$3.14
20	1,000,000	\$3.14
21	1,000,000	\$3.14
22	1,000,000	\$3.14
23	1,000,000	\$3.14
24	1,000,000	\$3.14
25	1,000,000	\$3.14
26	1,000,000	\$3.14
27	1,000,000	\$3.14
28	1,000,000	\$3.14
29	1,000,000	\$3.14
30	1,000,000	\$3.14

<sup>3</sup> This example (i) assumes delivery of the water at ground level, and (ii) does not reflect the agreed escalation of costs and charges provided for in Section 4.03 of the Contract using the Consumer Price Index ("CPI"). Nothing in this Exhibit "D-1" is intended to modify the Contract. To the extent of any conflict with the terms of the Contract, the terms of the Contract shall control.

<sup>4</sup> Beginning with year 2 of the Contract, and continually annually thereafter for the remaining term of the Contract, the Take-Or-Pay Charge shall be multiplied by the compounded CPI pursuant to Section 4.03 of the Contract.