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**FIRST AMENDMENT TO DECEMBER 10, 1987
COMPREHENSIVE WATER SETTLEMENT AGREEMENT**

BETWEEN

CITY OF AUSTIN

AND

LOWER COLORADO RIVER AUTHORITY

OCTOBER 7, 1999

**FIRST AMENDMENT TO DECEMBER 10, 1987
COMPREHENSIVE WATER SETTLEMENT AGREEMENT
BETWEEN CITY OF AUSTIN AND LOWER COLORADO
RIVER AUTHORITY**

This First Amendment to the December 10, 1987 Comprehensive Water Settlement Agreement (this "First Amendment") is made and entered into as of this _____ day of _____, 1999, "Effective Date," by and between the LOWER COLORADO RIVER AUTHORITY ("LCRA") and the CITY OF AUSTIN (the "City").

RECITALS

WHEREAS, the City and LCRA are parties to a set of agreements including a Comprehensive Water Settlement Agreement Between City of Austin and Lower Colorado River Authority dated as of December 10, 1987 (the "1987 Agreement") and an Agreement dated December 15, 1966 (the "1966 Agreement") concerning various water-related matters of mutual concern to the City and LCRA;

WHEREAS, the 1987 Agreement is in full force and effect to and including December 31, 2020, and thereafter until terminated at any time by either party giving to the other not less than three (3) years' prior written notice, and the 1987 Agreement amends the terms of the 1966 Agreement to extend to and including December 31, 2020, until terminated at any time thereafter by either party giving to the other not less than three (3) years' prior written notice, provided, however, the provisions in Section 1.2 of the 1987 Agreement concerning the priority date of the City's rights concerning Lake Austin under Certified Filing No. 330 shall survive the termination of the 1987 Agreement;

WHEREAS, in the 1966 Agreement as amended by the 1987 Agreement, LCRA agreed to make available to the City 250,000 acre-feet per year of stored water from Lakes Travis and

Buchanan to firm up and/or supplement the water available under the City's independent water rights for the City's diversion and use for municipal water supply;

WHEREAS, in the 1966 Agreement as amended by the 1987 Agreement, the LCRA agreed to impose no charge upon the City for any calendar year during which the water diverted by the City is less than or equal to 150,000 acre-feet, regardless whether the water is diverted by the City pursuant to the City's run-of-river water rights or is from dependable water supplied by LCRA pursuant to LCRA's water right, and to charge no reservation fee for all use up to 250,000 acre-feet per year;

WHEREAS, in the 1966 Agreement as amended by the 1987 Agreement, the City agreed to pay LCRA, in addition to the other consideration given by the City to LCRA pursuant to the 1966 Agreement and the 1987 Agreement, for all municipal, industrial and/or irrigation use described in pp. 67-70 of the 1987 Agreement, amending Paragraphs A through C, Article IV of the 1966 Agreement, above 150,000 acre feet per year at LCRA's then current water rate, up to 250,000 acre-feet, regardless whether the water is diverted by the City pursuant to the City's run-of-river water rights or is firm dependable water supplied by LCRA pursuant to LCRA's water rights;

WHEREAS, in the 1987 Agreement the City granted to LCRA an option to purchase from the City an ownership interest in Water Treatment Plant 4 to be built within a reasonable time by the City, near the intersection of RR 2222 and State Highway 620; however, the option will lapse without Water Treatment Plant 4 being built and will be of no further force and effect on January 1, 2000, pursuant to the terms of the 1987 Agreement, and the LCRA believes that it may have certain claims or causes of action related thereto;

WHEREAS, on September 17, 1998, the City and LCRA entered into another agreement concerning water issues entitled "City of Austin-LCRA Agreement", the terms of which will remain in full force and effect;

WHEREAS, the City and LCRA both agree that it is desirable to resolve certain matters regarding the 1966 Agreement and 1987 Agreement (collectively, the “Agreements”) by modifying the Agreements; and

WHEREAS, in addition, the City and LCRA both desire that an additional 75,000 acre-feet of firm dependable water annually (“First Amendment Additional Amount”) be made available to help satisfy the City’s projected municipal water supply demands to January 1, 2051;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual benefits, covenants, and provisions hereinafter contained in this First Amendment, the City and LCRA hereby agree that the 1987 Agreement is amended as follows:

- (1) The phrase “, and that LCRA be given a reasonable opportunity to acquire an undivided interest in the plant” is hereby deleted from the fourth sentence in Paragraph 2, Page 1.
- (2) All of Sections 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16, and 2.17 of Article II are hereby deleted.
- (3) Section 2.2 of the 1987 Agreement is stricken and this new Section 2.2 is substituted to read as follows:

“LCRA Permit. LCRA issued to the City the permit concerning Lake Travis intake facility attached hereto as Exhibit “C” on December 10, 1987. Acceptance of the permit by the City is not to be construed as an agreement or admission by the City that the permit was required prior to establishment of the Lake Travis intake facility. LCRA agrees that no further authorizations are required to be obtained by the City from LCRA prior to the establishment of such Lake Travis intake facility as contemplated herein. Should the City desire, subsequent to the Effective Date of this First Amendment, to construct, operate, and maintain a water treatment plant with a Lake Travis intake facility other than that contemplated in Exhibit C, the City agrees to request a new permit from LCRA

prior to the construction of a Lake Travis intake facility, and the LCRA agrees that such permit will not be unreasonably withheld.

- (4) Section 2.18 of the 1987 Agreement is stricken and this new Section 2.18 is substituted to read as follows:

“ No Inferences Regarding Additional Water. The right of the City to expand or modify the Lake Travis intake structure or any other intake facility located on Lake Travis does not create, directly or inferentially, any right in the City to divert water from Lake Travis beyond the amount which LCRA agrees to make available to the City under Paragraph A of Article IV of the 1966 Agreement, as amended by Subsection 3.2(c) of this Agreement.”

- (5) Section 3.2 of the 1987 Agreement is stricken and this new Section 3.2 is substituted to read as follows:

“3.2(a) LCRA and the City agree that the term of the 1966 Agreement, as set forth in Article III of the 1966 Agreement and as it pertains to the several contracts and agreements between the parties set forth and amended therein, is amended to extend to January 1, 2051. The City is granted an option to renew and extend appropriate sections of the 1966 Agreement regarding LCRA making available a firm water supply to the City for an additional fifty-year period to January 1, 2101. If the City elects to exercise this option, LCRA shall have an option to renew and extend appropriate sections of the 1966 Agreement regarding electric power, use of City property, Tom Miller Dam, and the use of water for the generation of hydroelectric power at Tom Miller Dam for an additional fifty-year period to January 1, 2101.

3.2(b) The City and LCRA agree that the first two sentences of Paragraph A of Article III of the 1966 Agreement are stricken and the following is substituted:

The 1938 Agreement, 1940 Lease, the 1944 Modifying Agreement, the 1947 Land Lease Agreement, the 1954 Agreement, this 1966 Agreement, the March 6, 1981 Letter Agreement, and the 1990 Amendment to Leases shall be in full force and effect until January 1, 2051 , with an option by the City to renew appropriate sections of the 1966 Agreement relating to LCRA making available a firm water supply to the City for an additional fifty-year period until January 1, 2101 and, if the City elects to exercise this option, LCRA shall have an option to renew appropriate sections of the 1966 Agreement relating to electric power, use of City property, Tom Miller Dam, and the use of water for the generation of hydroelectric power at Tom Miller Dam for an additional fifty-year period until January 1, 2101 .

Section 3.2(c) The City and LCRA agree that Article IV of the 1966 Agreement is stricken and the following is substituted:

ARTICLE IV

WATER

- A. Lake Travis Diversions. The “Lake Travis Point of Diversion” is that point of diversion on Lake Travis, such point being within a segment bordering on Lake Travis described

and depicted in Exhibit "E" attached hereto, said Exhibit depicting the segment by reference to a corner of an original land survey and/or other survey point, giving both course and distance. LCRA agrees to make available to the City for diversion by the City at the Lake Travis Point of Diversion or some other point of diversion on Lake Travis subsequently identified by the City not to exceed 170,000 acre-feet per year of stored water under Certificate Nos. 14-5482, as amended, and 14-5478, as amended, from Lakes Travis and Buchanan respectively, for municipal use. The City may divert such water at a maximum daily peak day diversion rate of 150 MGD; provided, however, that the City may divert such water at higher rates in light of fluctuations in the level of Lake Travis, utilizing pumping facilities that have a rated capacity, with one pump not pumping, of 150 MGD with Lake Travis at 667 feet MSL; and, provided further, however, if the City desires to increase its diversion rate hereunder, the City may demonstrate its need for the higher diversion rate and how the Lake Travis Point of Diversion will be operated in relation thereto, and LCRA may allow the higher diversion rate without amending this First Amendment. LCRA presently believes that the maximum amount of water that can be supplied on a dependable basis from Lakes Travis and Buchanan to the City for the City's use at the Lake Travis Point of Diversion or some other point of diversion on Lake Travis subsequently identified by the City without impeding LCRA's overall water management responsibilities, is 170,000 acre-feet per year, at the diversion rate set forth above in this Paragraph A. LCRA hereby commits to make available up to 170,000 acre-feet per year to the City for the City's use, but LCRA makes no commitment, expressed or implied, to make available additional water above 170,000 acre-feet to the City for the City's use. Notwithstanding any other provisions of this 1966 Agreement, both LCRA and the City may seek additional water or rights to water from Lakes Travis and Buchanan under the laws of Texas that then exist, and each party reserves its right to

oppose any such effort by the other. LCRA shall bear all transportation and evapotranspiration losses in the delivery of the stored water to the Lake Travis Point of Diversion or some other point of diversion on Lake Travis subsequently identified by the City and permitted by LCRA as provided herein.

- B. Downstream Municipal Water Supply. The “Downstream Points of Diversion” are: (1) those three points of diversion presently designated by the Texas Natural Resource Conservation Commission as D-0160 (Davis WTP), D-0180 (Ullrich WTP), and D-0320 (Green WTP) at which the City currently diverts water from Lake Austin and Town Lake for municipal use; (2) such other points of diversion on Lake Austin and Town Lake which the City may so designate from time to time; and (3) such other points of diversion on the Colorado River downstream of Longhorn Dam that the City may so designate from time to time, provided that any such point downstream of Longhorn Dam must be either approved by LCRA, or authorized under independent water rights that are held by the City at such time. LCRA agrees to make available to the City at the Downstream Points of Diversion sufficient firm and/or stored water lawfully available under LCRA’s independent adjudicated water rights, Certificates 14-5482, as amended, and Certificate 14-5478, as amended, for Lakes Travis and Buchanan respectively, or from any other source made available in the Colorado River and its tributaries to LCRA, as may be required from time to time to firm up and/or supplement the water available under the City’s independent water rights (regardless of what those rights may be), to allow the City to divert at the Downstream Points of Diversion and use for municipal use each year the Downstream Firm Amount (hereinafter defined). The “Downstream Firm Amount” for any year is the difference between 325,000 acre-feet of water, consisting of 250,000 acre-feet plus the First Amendment Additional Amount of 75,000 acre-feet, and the amount of water, if any, actually diverted from Lake Travis by the City during that year

at the Lake Travis Point of Diversion. LCRA and the City agree that the firm and/or stored water to be made available by LCRA below Mansfield Dam hereunder for municipal use is to be made available by LCRA only when there is insufficient water available for the City to divert for such use under independent water rights that are held by the City at such time. LCRA and the City further agree that the aggregate amount of water diverted by the City in any year at the Downstream Points of Diversion and used for municipal use may exceed the Downstream Firm Amount for that year because of additional diversions by the City for such use under independent water rights that are held by the City at such time; provided, however, LCRA does not make any commitment under this Agreement, except pursuant to Paragraphs D, E and F, below, to make available any additional firm and/or stored water during any year after the City has diverted 325,000 acre-feet of water for municipal use from the Colorado River under any water right during that year. LCRA shall bear all transportation and evapotranspiration losses in the delivery of firm and/or stored water to the Downstream Points of Diversion.

- C. Other Uses. The “Other Use Points of Diversion” are (1) any Point of Diversion used by the City for municipal use (as defined above) which the City may so designate from time to time; (2) such other points of diversion on Lake Austin and Town Lake which the City may so designate from time to time; and (3) except for the points of diversion designated by the City to supply the City’s share of water to the Fayette Power Project, such other points of diversion on the Colorado River downstream of Longhorn Dam that the City may so designate from time to time provided that any such point downstream of Longhorn Dam must be either approved by LCRA or authorized under independent water rights that are held by the City at such time. LCRA agrees to make available to the City for diversion by the City at the Other Use Points of Diversion the Remaining Amount (hereinafter defined) of firm and/or stored water each year under LCRA’s independent

adjudicated water rights, Certificates 14-5482, as amended, and 15-5478, as amended, for Lakes Travis and Buchanan, respectively, or from any other source made available in the Colorado River and its tributaries to LCRA for industrial and irrigation use. The “Remaining Amount” for any year is the difference between 325,000 acre-feet and the total amount of water which was diverted by the City during that year at the Lake Travis Point of Diversion or another point of diversion on Lake Travis pursuant to Paragraph A above and the Downstream Points of Diversion (together, the “Points of Diversion”) and used by the City for municipal use. LCRA and the City specifically agree that the aggregate amount of water diverted by the City in any year at the Other Use Points of Diversion for industrial use and irrigation may exceed the Remaining Amount for that year because of additional diversions for such uses by the City under its independent water rights, as such rights exist at the time. LCRA shall bear all transportation and evapotranspiration losses in the delivery of firm and/or stored water to the Other Use Points of Diversion.

- D. Lake Austin Level. LCRA agrees to pass through such inflows and release such stored water from Lake Travis as necessary to maintain the level of water in Lake Austin at not lower than three (3) feet below the crest of the dam, except in cases of emergency when the water level may be five (5) feet below the crest of the dam as currently constructed; provided, however, that the City shall not divert water from Lake Austin at any time in excess of the amounts set forth in this Agreement and the amounts that the City is authorized to divert pursuant to independent water rights that are held by the City at such time. The stored water made available by LCRA under this Paragraph D is in addition to the amounts made available under Paragraphs A, B, and C, above. The parties recognize that the City will need periodically to have the level of Lake Austin lowered for periods of time for various purposes including, without limitation, for maintenance of docks and

other structures and for control of aquatic vegetation. LCRA and the City agree to cooperate with each other to establish reasonable guidelines for any such lowering of Lake Austin.

- E. Town Lake Cooling Water. During periods when LCRA is releasing stored water from Lake Travis for any reason and such stored water flows into Town Lake, the City may divert, circulate, and recirculate such water from Town Lake for industrial (cooling) purposes, with no limitation as to amount or rate of diversion or the number or location of points of diversion on Town Lake, provided that not more than 24,000 acre-feet of water may be consumptively used by such use in any year. The City agrees that it will call on the inflow of the Colorado River and its tributaries to be passed through the Highland Lakes to honor the City's industrial (cooling) rights under Certified Filing No. 330, only to the extent that such inflow is needed to be impounded in Town Lake, and/or to the extent that it is necessary to pass such flow through Town Lake to reduce the temperature of the water in Town Lake, to allow the City to divert and use such water for industrial (cooling) purposes at all times to the full extent authorized under Certified Filing No. 330. LCRA agrees that during periods when it is not otherwise releasing sufficient stored water from Lake Travis, it will release such additional amounts of stored water requested by the City and deliver such water to Town Lake, in addition to releases of inflows and other stored water, to the extent that such additional stored water is needed to be impounded in Town Lake, and/or to the extent that it is necessary to pass such additional flow through Town Lake to reduce the temperature of the water in Town Lake, to allow the City to divert and use such water for industrial (cooling) purposes at all times to the full extent authorized under Certified Filing No. 330. The stored water made available by LCRA under this Paragraph E is in addition to the amounts made available under Paragraphs A, B, and C, above.

- F. Decker Lake Makeup. LCRA agrees to make available to the City for diversion by the City at the City's diversion point D-0470 (Decker Lake) on the Colorado River, up to 16,156 acre-feet of such water per year to the extent needed to firm up and/or supplement the City's independent water rights, and impound such water in Decker Lake for subsequent use therefrom for industrial (cooling) purposes. The City agrees to give LCRA prior notice of the duration and rate of the City's projected diversions of such water. The stored water made available under this Paragraph F is in addition to the amounts made available under Paragraphs A, B, and C, above, and is not subject to charges of the Water Rate by LCRA pursuant to Paragraph H(3).
- G. City's Service Area and Interbasin Transfers. The City agrees that all firm and/or stored water made available by LCRA to the City for municipal use, industrial use, and/or irrigation use pursuant to Paragraphs A, B, and C hereof shall only be used within the area described/depicted in Exhibit F, attached hereto and incorporated by reference, which includes (1) those areas on the Effective Date located within the City's municipal boundaries and the City's extraterritorial jurisdiction; (2) those areas outside the City's extraterritorial jurisdiction receiving retail service; and (3) those areas served by all customers having the right to water from the City under wholesale contracts in existence on the Effective Date. LCRA agrees that the City may, without prior written consent of LCRA, revise Exhibit F from time to time to reflect expansion of the City's municipal boundaries by annexation and changes in the City's extraterritorial jurisdiction. The City agrees that, if it intends subsequent to the Effective Date to provide retail service to additional areas outside the City's extraterritorial jurisdiction not described/depicted in Exhibit F, the City shall provide notice to LCRA of the City's intention to use the firm and/or stored water made available by LCRA to the City for municipal use, industrial use, and/or irrigation use pursuant to paragraphs A, B, and C hereof to provide retail service

to such areas. LCRA agrees that it will take no action to prevent the City from taking such action. The City agrees that, if it intends to provide treated water outside the City's extraterritorial jurisdiction under a wholesale contract to be entered into subsequent to the Effective Date, it may require the customer party to the contract to provide its own raw water purchased by the customer from the LCRA or some other source, and the City will revise Exhibit F to reflect the additional customer. Unless otherwise required by law, the City agrees to provide reasonable notice to LCRA if the City intends to take action subsequent to the Effective Date, whether by annexation, changes to the City's extraterritorial jurisdiction, or by entering into a wholesale contract to provide treated water under a wholesale contract, that will affect the City's service area described/depicted in Exhibit F and the City will revise Exhibit F and shall submit to LCRA the revised Exhibit F within thirty (30) days of such action. Failure by the City to notify LCRA of an annexation shall not (1) invalidate that annexation or (2) breach this First Amendment, the 1987 Agreement, or the 1966 Agreement. The City can cure failure to notify by providing a revised Exhibit F. The City may not extend its service area in accordance with that annexation until the City provides notice to LCRA of the annexation and submits a revised Exhibit F. To the extent allowed by the Texas Natural Resource Conservation Commission, all water transferred and used by the City outside of the Colorado River Basin or outside of the boundaries of LCRA's ten-county statutory district shall be deemed to be transferred and used under the City's independent water rights and so reported by the City, in which case no approval by LCRA shall be required.

- H. Additional Consideration. In addition to the other consideration given by the City to LCRA pursuant to the terms of this Agreement and pursuant to the terms of the 1987 Comprehensive Water Settlement Agreement by and between the City and LCRA, the

City shall pay LCRA for firm and/or stored water made available by LCRA to the City pursuant to the terms of this Agreement as follows:

- (1) As shown in Exhibit G attached hereto, LCRA agrees to impose no charge upon the City during the term of this Agreement and during the following fifty-year period, should the City elect to exercise its option to extend the 1987 Agreement to January 1, 2101, for the first 150,000 acre-feet of water diverted by the City in any calendar year for municipal use, industrial use, and/or irrigation pursuant to Paragraphs A, B, and C hereof, regardless whether the water is diverted by the City pursuant to the City's run-of-river water rights or is firm dependable water made available by LCRA under this Agreement.
- (2) As shown in Exhibit G attached hereto, LCRA agrees to impose no reservation fee during the term of this Agreement and during the following fifty-year period should the City elect to exercise its option to renew and extend appropriate sections of the 1966 Agreement for any portion of the first 250,000 acre-feet of firm and/or stored water made available by the LCRA to firm up and/or supplement the water diverted under the City's independent water rights by the City for municipal use, industrial use, and/or irrigation pursuant to Paragraphs A, B, and C hereof. LCRA agrees to require no additional payment as reservation fee for any portion of the First Amendment Additional Amount during the term of the Agreement and during the following fifty-year period should the City elect to exercise its option to renew and extend appropriate sections of the 1966 Agreement.

- (3) Except as otherwise provided in Paragraph H(4) below, the City agrees to pay LCRA an amount of money equal to the Water Rate (hereinafter defined) applicable for the previous year multiplied by the amount of water, if any, by which the Payment Amount (hereinafter defined) for the previous year exceeds 150,000 acre-feet regardless of whether the water is diverted by the City pursuant to the City's run-of-river water rights or is firm dependable water made available by LCRA under this Agreement. The "Water Rate" applicable for any year is that rate determined by the Board of Directors of LCRA to be in effect on January 1 of that year for LCRA's sales of firm and/or stored water under this Agreement for municipal use, which rate shall be just and reasonable as required by law. The Water Rate currently in effect for such sales is \$105.00 per acre-foot of water diverted. The "Payment Amount" for any year is the sum of the following:
- (a) the total amount of water diverted by the City during that year at the Points of Diversion for municipal use pursuant to Paragraphs A and B hereof; plus
 - (b) the net amount of water diverted by the City during that year at the Other Use Points of Diversion for industrial use and irrigation pursuant to Paragraph C hereof, such amount specifically not to include any water diverted by the City for such purposes of use under independent water rights that are held by the City at such time.

The Payment Amount shall not include any firm and/or stored water diverted or used by the City or otherwise made available by LCRA pursuant to Paragraphs D, E, and F hereof.

- (4) To postpone the date when the City will be required to make payments to LCRA in accordance with Paragraph H(3) above, the City in accordance with Paragraph H(5) below, agrees to make to LCRA, and LCRA agrees to accept, a payment for the right to divert in any calendar year amounts of water in excess of the 150,000 acre-feet and up to and including 201,000 acre-feet for municipal use, industrial use, and/or irrigation pursuant to Paragraphs A, B, and C hereof. The parties agree that when the annual average amount of water diverted by the City during any calendar period of two consecutive years exceeds 201,000 acre-feet per year for municipal use, industrial use, and/or irrigation pursuant to Paragraphs A, B, and C hereof, the City will pay LCRA for all of the water in excess of 150,000 acre-feet diverted by the City in all subsequent calendar years for municipal use, industrial use, and/or irrigation pursuant to Paragraphs A, B, and C hereof with said amount of money to be determined by LCRA in accordance with Paragraph H(3) above, regardless of whether the water is diverted by the City pursuant to the City's run-of-river water rights or is firm dependable water made available by LCRA under this Agreement . Should the City decide to exercise its option to extend the term of the 1987 Agreement to January 1, 2101, the rate charged by the LCRA for any and all amounts of water in excess of 150,000 acre-feet will be the Water Rate as defined in Paragraph H(3), above, in effect at that time and as may be amended from time to time.

- (5) The parties recognize that simultaneously with the execution of this First Amendment, the City has paid the LCRA \$100 million. The payment of \$100 million made by the City in accordance with this Paragraph H(5) is as follows: \$27,337,448 for the right to divert and use for municipal use, industrial uses, and/or irrigation pursuant to Paragraphs A, B, and C hereof, the amounts of water above 150,000 acre-feet and up to and including 201,000 acre-feet for the period beginning on the Effective Date and ending at the end of any calendar period of two consecutive years during which the City's use for municipal, industrial and irrigation purposes pursuant to Paragraphs A, B and C hereof exceeds 201,000 acre-feet per year, as discussed in Paragraph H(4), above, and \$72,662,552 in payment of a reservation fee for the First Amendment Additional Amount.

Subject to the provisions of the LCRA Act and any other applicable law and the Master Resolution authorizing the LCRA financing program adopted by the LCRA Board of Directors on September 22, 1999, and any future changes, supplements, additions or replacements of same, the LCRA intends to utilize the \$100 million received from the City in accordance with this Paragraph H(5) for improvements to dams and hydroelectric facilities on the Colorado River; for the purchase of water rights; for expansion of LCRA's Hydromet system; for flood management projects; for water quality management and other river management costs; and for other general and administrative costs of the LCRA's WaterCo line of business related to river management functions and the repayment of any debt associated with any such purposes. The LCRA will not

dedicate any of the \$100 million received from the City in accordance with this Paragraph H(5) for purposes of funding the costs of the water transmission line expansion of the West Travis County Regional Water System into western Travis and northern Hays counties. LCRA agrees to separately account for the \$100 million paid by the City to LCRA pursuant to this Paragraph H(5). The LCRA further agrees that such separate accounting will be audited on an annual basis and a copy of the auditor's annual report will be provided to the City showing the use of the funds pursuant to this Paragraph H(5).

- (6) The City agrees to pay LCRA an amount of money equal to the Additional Charge (hereinafter defined), if any, multiplied by the number of acre-feet of water diverted by the City at the Lake Travis Point of Diversion or some other point of diversion on Lake Travis subsequently identified by the City during the immediately preceding calendar year up to a maximum payment of \$1,000,000 in any year. The "Additional Charge" is a fixed rate of \$20.00 per acre-foot. LCRA agrees that the Additional Charge shall not be increased and that the maximum charge upon the City under this Paragraph H(6) shall not exceed \$1,000,000 in any year. There shall be no charge imposed upon the City under this Paragraph H(6) for any calendar year during which no water was diverted by the City at the Lake Travis Point of Diversion or some other point of diversion on Lake Travis subsequently identified by the City. In each year that the City is obligated to make payments to LCRA pursuant to the requirements of Paragraph H(3) and H(4) above and pursuant to this Paragraph H(6), the City shall pay LCRA the greater of the amounts owed as determined under

Paragraphs H(3) and H(4) as compared to the payments owed under this Paragraph H(6).

- I. Appeal of LCRA's Water Rate. At any time, the City has the right to appeal or otherwise challenge in a legal or regulatory proceeding the Water Rate as defined in Paragraph H(3).
- J. Reduction of First Amendment Additional Amount by City. After the tenth (10th) anniversary of the Effective Date of this First Amendment, and every ten (10) years thereafter throughout the term of the Agreement, the City may notify LCRA that the City intends to permanently reduce the First Amendment Additional Amount by up to 25,000 acre-feet a year. Provided, however, the aggregate amount by which the City may permanently reduce the First Amendment Additional Amount shall not exceed 25,000 acre-feet. After the City gives LCRA one (1) year's written notification of the City's intent to reduce the First Amendment Additional Amount, LCRA and the City agree to negotiate such a reduction in the First Amendment Additional Amount and (1) any related offsetting credit based upon the value of the water at the time of such reduction, to the City of a prorated portion of any future payments otherwise due to LCRA with the credit to be applied to future payment otherwise due to LCRA by the City pursuant to Paragraph H(4) and/or (2) an increase above 201,000 acre-feet in the amount of water for which the City has paid pursuant to Paragraph H(4).
- K. Water Rights. Nothing in this Agreement shall in any way be construed as a waiver or abandonment by the City or by LCRA of any of their respective water rights, or as a reduction, limitation or restriction of those rights. Nothing in this 1966 Agreement shall be construed as constituting an undertaking by LCRA to furnish water to the City except pursuant to the terms of this Agreement. Nothing in this Agreement shall in any way be construed to limit the City or LCRA in hereafter seeking the grant of amendments to their

respective water rights, the grant of additional rights to water from any source or at any location, or the acquisition of existing rights from third parties, or to limit the parties in opposing the grant of any such amendments or additional rights.

- L. Billing and Payment. In addition to the payment requirement set forth in Paragraph H(5) above, LCRA shall submit one bill for the amount, if any, due under Paragraphs H(3), H(4), and H(6) hereof for each year, on or before January 15 of the following year. Each such bill shall be paid by the City at LCRA's office in Austin, Texas, by check or bankwire on or before sixty (60) days from the date of receipt of the bill. Without limiting LCRA's rights in such event, if the City fails to pay the full amount due LCRA when the same is due, as herein provided, interest on the unpaid amount shall accrue at the maximum rate of interest allowed by law, such interest to apply from the date when such payment was due until such payment is made. In addition, the City shall be required to reimburse LCRA for all costs incurred by LCRA in seeking to collect any such payment, including, without limitation, reasonable attorneys fees. If the City should dispute its obligation to pay all or any part of the amount stated in any bill, in addition to all other rights that the City may have under law, the City may pay such amount under protest, in which case the amount in dispute shall be deposited by LCRA in an interest bearing account acceptable to both the LCRA and the City pending final resolution of such dispute.
- M. Metering of Diverted Water. To measure the amount of water withdrawn from each Point of Diversion for municipal use, and to measure the amount of firm and/or stored water withdrawn from each Other Use Point of Diversion for industrial use or irrigation, the City agrees at the City's expense to install (if such facilities are not already installed)

such flow meters and recording devices as are approved by LCRA, such meters to permit, within five percent (5%) accuracy, determination of quantities of water withdrawn in units of 1,000 gallons at such points of diversion for such purposes of use; provided, however, that the City shall not be obligated hereunder to install or maintain any flow meter to measure any water diverted pursuant to Paragraph E above. Such meters may be calibrated at any reasonable time by either party to this agreement, provided that the party making the calibration shall notify the other party at least two (2) weeks in advance and allow the other party to witness the calibration. LCRA may install, at its expense, check meters in or to any of the City's metering equipment at any time and may leave such check meters installed for such periods as is reasonably necessary to determine the accuracy of the City's metering equipment. On or before the first day of each month, LCRA shall have the right to make a reading of the meters installed by the City at each Point of Diversion. The City shall provide reasonable means of access to the meters for the representatives of LCRA.

Further, such meters shall be tested for accuracy by and at the expense of the City at least once each calendar year at intervals of approximately twelve (12) months and a report of such tests shall be furnished to LCRA. However, in the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon the demand of LCRA, the expense of such test to be borne by LCRA if the meter is found to be correct and by the City if it is found to be incorrect. Readings within five percent (5%) of accuracy shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of five percent (5%) of accuracy), the readings of such 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; and

(2) a period extending back half of the time elapsed since the last previous test; and the records of readings shall be adjusted accordingly.

Following each test of a meter, the same shall be adjusted by the City to register accurately. The City shall notify LCRA prior to making each test of any of the City's meters and LCRA shall have the right to have a representative present at each test to observe the same and any meter adjustments found to be necessary.

If the records of meter readings are adjusted pursuant to this Paragraph M, LCRA shall correct any bill submitted pursuant to Paragraph L above that includes charges for the period for which records of readings were adjusted, LCRA shall issue a corrected statement ("Corrected Statement"). If the City was charged and paid to LCRA more than the amounts shown on the Corrected Statement, the LCRA shall refund to the City the difference between the amount shown on the Corrected Statement and the amount paid by the City, or at LCRA's option credit the difference to the City's next annual statement submitted pursuant to Paragraph L above. If the City was charged and paid to LCRA less than the amounts shown on the Corrected Statement, the City shall pay to the LCRA the difference between the amount shown on the Corrected Statement and the amount previously paid by the City. Such refund or payment shall be paid or credited by one

party to the other by check or bankwire on or before ninety (90) days from the date of mailing of the Corrected Statement.

- N. Availability of Water. Notwithstanding any other provisions herein, LCRA does not represent or warrant that water will be available at any particular time or place or that Lakes Buchanan and Travis will be retained at any specific level at any particular time. It is fully understood by the parties hereto that the level of said lakes will vary as a result of LCRA's operation of its dams on the Colorado River and that this instrument is merely an agreement to require LCRA to make water available when and if water is present in said lakes or other sources made available in the Colorado River and its tributaries to LCRA, and to allow the City to make withdrawals of such water subject to applicable laws respecting the distribution and allocation of water during shortages of supply. If LCRA is unable to make water available at any time during the calendar period when the City is exercising its right to divert amounts of water in excess of 150,000 acre-feet and up to and including 201,000 acre-feet and for which the City has paid LCRA pursuant to Paragraph H(5) above, LCRA shall refund to the City a portion of the payment proportional to the amount of water not available.
- O. Pumping Facilities. The City's pumping and related facilities shall be installed, operated and maintained by the City at the City's sole expense and risk.
- P. Quality. LCRA makes no representation as to the quality of the water in Lakes Travis and Buchanan or from any other sources made available in the Colorado River and its tributaries to LCRA.
- Q. Impact Committee. The City and LCRA agree to establish, commencing within six (6) months after the Effective Date of this Agreement, a joint committee to discuss the

impact on the environment of water supply decisions by the City and the LCRA regarding the provision of water and wastewater services within Bastrop, Hays, Travis and Williamson Counties that affect the quality of water of the City or LCRA. The committee shall consist of three (3) members appointed by the City Council of the City and three (3) members appointed by the Board of the LCRA. The committee shall submit regular reports to the City Council and the Board of the LCRA for so long as the parties hereto deem it appropriate. After five (5) years, the committee is dissolved unless the parties mutually agree otherwise.

- R. Notice. Each notice under this agreement shall be mailed by certified mail, return receipt requested, and shall be effective on the date actually received. All notices and bills to the City shall be addressed to:
Director, Water and Wastewater Utility
City of Austin, Texas
P.O. Box 1088
Austin, Texas 78767

and all notices and payment to LCRA shall be addressed to:

General Manager
Attention: WaterCo
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

Either party may change its address by giving written notice of such change to the other party.

- S. No Third Party Beneficiary. The parties are entering into this agreement solely for the benefit of themselves and agree that nothing herein is intended to confer nor shall be

construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

- T. Captions. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and shall have no bearing upon the interpretation thereof.
 - U. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.
 - V. Waiver. Any waiver at any time by either party with respect to a default or any other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.
- (6) Section 3.3 of the 1987 Agreement is stricken and this new Section 3.3 is substituted to read as follows:

Continued Effectiveness. Except and to the extent that the 1966 Agreement and the contracts and agreements referred to in Section 3.2(b) above are modified, amended, and/or changed herein, said in full force and effect in accordance with the provisions contained therein until terminated as provided therein and as may be amended herein.”

- (7) Section 6.2 of the 1987 Agreement is stricken and this new Section 6.2 is substituted to read as follows:

Term. This Agreement shall be in full force and effect to January 1, 2051. In the event that the City exercises its option pursuant to Section 3.2 to renew applicable sections of the 1966 Agreement relating to LCRA making available a firm water supply to the City

for an additional fifty-year period or if LCRA elects to exercise its option to renew applicable sections of the 1966 Agreement relating to electric power, use of City property, Tom Miller Dam, and the use of water for the generation of hydroelectric power at Tom Miller Dam for an additional fifty-year period, then this Agreement shall be in full force and effect until January 1, 2101.”

- (8) New Section 6.11 is hereby added to read as follows:

“Force Majeure. In the event that either the City or LCRA shall be prevented from performing any of its obligations due under the terms of the First Amendment as a result of some act, decision, or order of the Legislature or a court of the State of Texas, which by the exercise of due diligence neither the City nor LCRA was able to prevent or overcome, the City and LCRA shall each be excused from any further performance of the obligations and undertakings to make payments and to provide the First Amendment Additional Amount, and the LCRA shall refund a proportional amount of the monies by the City previously paid by the City as a reservation fee for the First Amendment Additional Amount and for any amount of water above 150,000 acre-feet and up to and including 201,000 acre-feet not yet used, nor to be used in the future, by the City.”

- (9) New Section 6.12 is hereby added to read as follows:

“Short Term Sales of Firm Water to Third Parties. In accordance with applicable LCRA Board Policies as amended from time to time, and consistent with the intent of the parties expressed in the

Memorandum of Understanding (MOU), dated June 8, 1999, LCRA agrees to adopt procedures to implement such policies as well as the parties' intent expressed in the June 8, 1999 MOU. LCRA agrees that the City shall be a party to any agreement with a third party for purchase on a short-term basis of any portion of the water reserved by the City pursuant to this First Amendment."

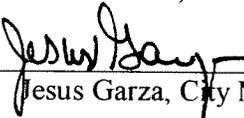
(10) New Section 6.13 is hereby added to read as follows:

"Mutual Release. The parties hereby mutually release each other from any claims or causes of action, if any, accruing prior to the Effective Date and arising out of, and directly related to, the provisions of Section 2 of the 1987 Agreement related to proposed construction of Water Treatment Plant No. 4 by the City."

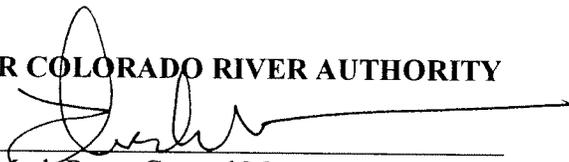
All Sections of the 1987 Agreement not amended hereby shall remain in full force and effect.

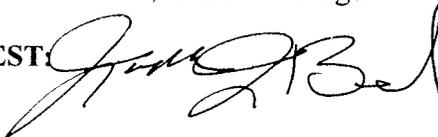
IN WITNESS WHEREOF, this First Amendment to the December 10, 1987 Comprehensive Water Settlement Agreement Between the City of Austin and the Lower Colorado River Authority is executed as of the date first written above on behalf of the City and LCRA by their respective authorized officers, in multiple counterparts, each of which shall constitute an original.

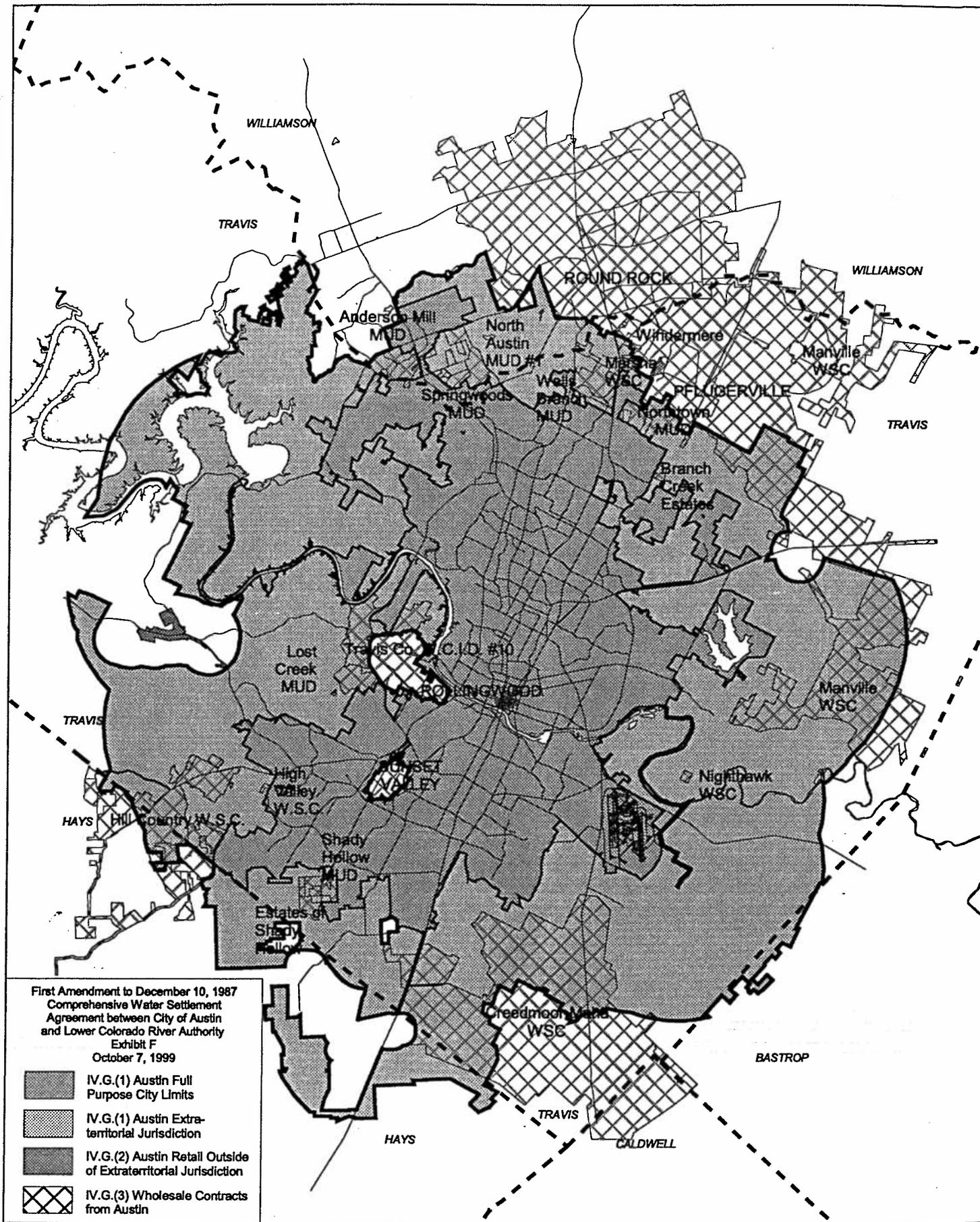
CITY OF AUSTIN, TEXAS

By: 
Jesus Garza, City Manager

ATTEST: 

LOWER COLORADO RIVER AUTHORITY
By: 
Mark Rose, General Manager

ATTEST: 



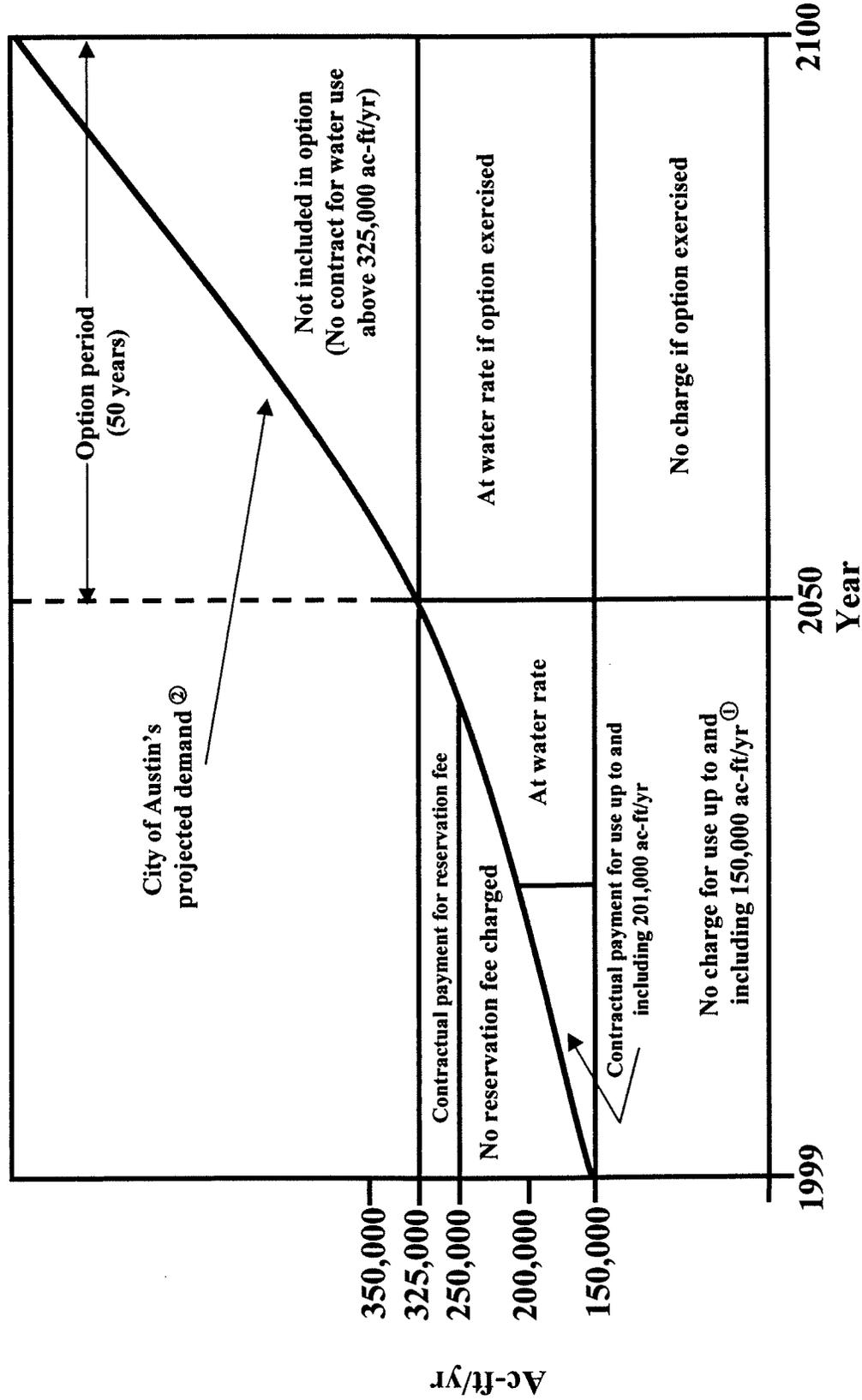
First Amendment to December 10, 1987
 Comprehensive Water Settlement
 Agreement between City of Austin
 and Lower Colorado River Authority
 Exhibit F
 October 7, 1999

-  IV.G.(1) Austin Full Purpose City Limits
-  IV.G.(1) Austin Extraterritorial Jurisdiction
-  IV.G.(2) Austin Retail Outside of Extraterritorial Jurisdiction
-  IV.G.(3) Wholesale Contracts from Austin

EXHIBIT F

Exhibit G

(Illustrative purposes only)



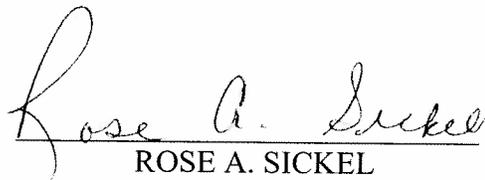
① Consists of City of Austin's independent run-of-river water rights firmed up and/or supplemented with water from the LCRA.

② Based on 1999 projections. Actual demand curve may vary. Dates are approximate. Annual water use volumes, not dates, control changes in payment requirements.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Rose A. Sickel, Associate City Clerk of the City of Austin, do hereby certify that the foregoing instrument is a true and correct copy of the First Amendment to December 10, 1987 Comprehensive Water Settlement Agreement between the City of Austin and Lower Colorado River Authority, executed the 7th day of October, 1999, consisting of 30 pages, as on file in the City Clerk's Office, this 17th day of November, 1999.



ROSE A. SICKEL
ASSOCIATE CITY CLERK
CITY OF AUSTIN

