

## WHOLESALE TREATED WATER SUPPLY AGREEMENT

This Wholesale Treated Water Supply Agreement ("**Agreement**") is entered into by and between the Upper Colorado River Authority ("**UCRA**"), the City of Bronte, Texas ("**Bronte**"), and the City of Robert Lee, Texas ("**Robert Lee**"), sometimes referred to collectively as the "**Parties**" or individually as a "**Party**".

### RECITALS

WHEREAS, UCRA has the right to divert and use water in an amount not to exceed 672 acre feet per year from the Oak Creek Reservoir for domestic and municipal purposes pursuant to Certificate of Adjudication No. 14-1031, as amended effective January 7, 1986 (the "**UCRA Water Right**"); and

WHEREAS, UCRA and Bronte entered into a contract dated effective January 19, 1952 authorizing Bronte to purchase water from UCRA in connection with the construction of a water pipeline for a period of years (the "**Bronte Contract**"); and

WHEREAS, after the expiration of the Bronte Contract, Bronte continued to acquire and purchase water under the terms thereof; however, the rights of Bronte under the Bronte Contract are in question; and

WHEREAS, UCRA, Bronte, and Robert Lee desire to clarify the relationship of the Parties in a mutually agreeable fashion while also providing water to residents of Coke County, Runnels County, and other areas within the jurisdiction and boundaries of UCRA.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, UCRA, Bronte and Robert Lee agree as follows:

#### ARTICLE I SUPPLY OF TREATED WATER

##### Section 1.1. Source of Supply.

A. All water referenced and dealt with under this Agreement is only the water impounded in the Oak Creek Reservoir, situated in Coke County, Texas, and which is subject to the UCRA Water Right.

##### Section 1.2. Quality and Quantity.

A. The City of Bronte shall have the right to take and use all 672 acre-feet of water encompassed by the UCRA Water Right, subject to the conditions set forth below.

B. In consideration for the use of the UCRA Water Right, Bronte agrees to treat and deliver 150 acre-feet of water per year to Robert Lee upon the request of Robert Lee (the "**Robert Lee Allocation**").

C. In the event Robert Lee has not requested its allocation of the 150 acre-feet of water provided for in Section 1.2(B) above by September 1 of any particular year, then UCRA may use any or all of the Robert Lee Allocation.

D. Bronte shall pay for water taken under the UCRA Water Allocation, tendering the rate called for in the Sweetwater Contract for all water actually used. Robert Lee and/or UCRA will reimburse Bronte for any water taken or diverted by UCRA or Robert Lee.

E. Bronte shall treat all of the water provided to Robert Lee under the Robert Lee Allocation.

Section 1.3. Diversion Rate and Delivery Point.

A. The Parties agree that the water delivery rate shall not exceed 200,000 gallons per day, and that the delivery point shall be located at the Bronte water treatment plant at a point designated in writing by the City of Bronte and attached as Exhibit "A" to this Agreement.

B. Bronte, UCRA, and Robert Lee hereby mutually agree that any water provided for herein may be transported through the existing and proposed pipelines, facilities, and impounds owned by the other as necessary to obtain possession and to use such water. On an interim basis, water shall be transported from Oak Creek reservoir through Bronte's existing pipelines and treated by Bronte's existing treatment plant until Bronte's new pipelines, treatment plant, and other facilities are in place. Once Bronte's new facilities are in place, treated water provided under this contract shall be transported and treated by Bronte's new facilities. Notwithstanding the foregoing, the Parties agree that UCRA may take any water to which it becomes entitled under Section 1.2(C) in the form of "raw" or untreated water at any delivery point prior to treatment by Bronte. In such event, UCRA shall designate the delivery point and rate of delivery in writing and shall attach such designation to this Agreement. In the event UCRA takes raw or untreated water under this contract, UCRA shall bear its cost of acquiring the water, but such cost of acquisition shall not include any charge for the treatment of water by Bronte.

Section 1.4. The City of Robert Lee shall be responsible for the construction or establishment of all pipelines and/or transmission or pumping facilities necessary to transport treated water from Bronte's water treatment plant except as mutually agreed otherwise or as Robert Lee may contract in writing with any third party. Bronte shall be responsible for designing, and constructing all water supply and treatment facilities except for the treated water pipeline from Bronte's facilities to Robert Lee, and except for the pumping facility required to pump to Robert Lee. In the event Robert Lee agrees to participate in the costs of any water treatment or distribution costs of Bronte's water system, then Bronte and Robert Lee will enter into a contract between the two cities which is mutually agreeable to both.

**ARTICLE II**  
**CONDITIONS PRECEDENT TO WATER SUPPLY**

Section 2.1. The obligations of any Party to provide water to the other shall be contingent upon the availability of water from the Oak Creek Reservoir. In the event the water supply in Oak Creek Reservoir is not sufficient to allow all Parties to obtain all water provided to such Party (or so much of such allocation as they may desire), then the rights of all Parties to capture, divert, use, or possess water under the terms of this Agreement shall be reduced on a pro-rata basis, based upon the acre-feet allocation set forth in Article I, above.

**ARTICLE III**  
**RATES AND PAYMENTS**

Section 3.1. Bronte shall pay for all water used from the UCRA Water Right at the rate and pursuant to the terms of that certain *Memorandum of Understanding* dated on or about April 18, 1949 between UCRA and the City of Sweetwater, Texas, a copy or facsimile of which is attached and incorporated as Exhibit "B" ("**the Sweetwater Contract**"). Such payment shall be made to the City of Sweetwater, Texas.

Section 3.2. UCRA and Robert Lee shall reimburse Bronte for its cost in all treated water provided to UCRA or Robert Lee plus a mark-up of ten percent of all such costs. Bronte's cost of providing treated water shall include but shall not be limited to all costs of operation and maintenance, all capital improvements in place on the date of billing, including all associated costs, debt payments and any other costs which are required by Bronte to furnish water to Robert Lee and/or UCRA. The cost for water shall be reviewed on an annual basis and each new fiscal year's water rate will be established by the budget adopted by the Bronte city council. Any cost variations (more or less) throughout the year from the adopted budget shall be taken into account when establishing the following year water rate. The adopted water rate shall be effective from October 1<sup>st</sup> through September 30<sup>th</sup> of each calendar year.

Section 3.3. Each Party shall maintain records of all water diverted and/or used by it on an annual basis from October 1<sup>st</sup> through September 30<sup>th</sup> of the following year. These records shall be made available to the other Parties under this Agreement on reasonable notice.

**ARTICLE IV**  
**TERM**

This Agreement shall extend for a term of forty (40) years from the Effective Date and thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser (the "**Term**").

**ARTICLE V**  
**FORCE MAJEURE**

Section 5.1. In the event any Party is rendered unable, in whole or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of that Party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest

practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Parties.

Section 5.2. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage, or accidents to dams, equipment, pipelines, canals, or other structures, partial or complete failure of water supply including pollution (accidental or intentional), and any other inability of a Party, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the Party having the difficulty.

#### **ARTICLE VI** **GENERAL PROVISIONS**

Section 6.1. Entire Agreement. This Agreement 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, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.

Section 6.2. No Waiver. If any Party fails to insist on strict performance of any provision of this Agreement, such failure shall not be deemed a waiver by such Party of its right to insist on strict performance of such provision in the future or strict performance of any other provision of this Agreement.

Section 6.3. Amendment. This Agreement may be amended by the Parties at any time, but only by an instrument in writing duly executed and delivered on behalf of each of the Parties.

Section 6.4. Headings. The section headings are not to be considered part of this Agreement and are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof.

Section 6.5. Non-Assignability. This Agreement is entered into for the exclusive benefit of the Parties and none of the Parties hereto shall, without the consent of the others, assign or transfer this Agreement or any rights or obligations hereunder.

Section 6.6. Venue. All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tom Green County, Texas, which is the county in which the principal

administrative offices of UCRA are located. It is specifically agreed that Tom Green County, Texas, is a principal place of performance of this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Tom Green County, Texas.

Section 6.7. Notices.

A. Any notice to be given under this Agreement shall be in writing and may be effected by certified mail, electronic mail, or facsimile transmission with confirmation of delivery addressed as follows:

to UCRA: Upper Colorado River Authority  
512 Orient  
San Angelo, TX 76903  
Attn: Stephen Brown  
Fax: 325.655.1371

to Bronte: City of Bronte  
P.O. Box 370  
Bronte, Tx 76733  
Fax: 325-453-4531

to Robert Lee: City of Robert Lee  
P.O. Box 26  
Robert Lee TX 76945  
6 E 7th Street  
Fax: 325-453-4531

B. All notices will be deemed to have been given on the date of mailing or sending of such notice. Each Party may change its address upon five days' written notice to the other Parties.

Section 6.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

Section 6.9. Severability. The provisions of this Agreement are severable, and in the event that any one or more provisions are deemed illegal or unenforceable, the remaining provisions shall remain in full force and effect.

Section 6.10. Due Authorization and Binding Obligation. Each Party represents to the other that this Agreement has been duly authorized, executed and delivered by all necessary action of the Party, including approval of the Party's governing board, and is enforceable against the Party in accordance with its terms.

Section 6.11. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, acting under authority of their respective directors, officers, or governing entities, have caused this Agreement to be duly executed to be effective as of the day and year agreed, and in multiple counterparts, each of which shall constitute an original.

UPPER COLORADO RIVER AUTHORITY

By: Callie H. Roberts  
Name: Callie H. Roberts  
Title: CHAIRPERSON

STATE OF TEXAS §  
COUNTY OF Tarrant §

This instrument was acknowledged before me on this 3rd day of October, 2011 by Callie H. Roberts CHAIRPERSON for Upper Colorado River Authority.



Ellen Sheffield Croth  
Notary Public, State of Texas

CITY OF BRONTE, TEXAS

By: Gerald Sandusky  
Name: Gerald Sandusky  
Title: MAYOR

STATE OF TEXAS §  
COUNTY OF Coke §

This instrument was acknowledged before me on this 27th day of September, 2011 by Gerald Sandusky MAYOR for the City of Bronte, Texas



Pat Martindale  
Notary Public, State of Texas

CITY OF ROBERT LEE, TEXAS

By: John R Jacobs  
Name: John R. Jacobs  
Title: Mayor

STATE OF TEXAS  
COUNTY OF Coke

This instrument was acknowledged before me on this 26<sup>th</sup> day of September, 2011 by John R. Jacobs, Mayor for the City of Robert Lee, Texas.



Sharon Kay Torres  
Notary Public, State of Texas

FILED FOR RECORD  
AT 1:00 O'CLOCK P M  
ON THE 6 DAY OF October  
A.D., 2011

STATE OF TEXAS  
COUNTY OF COKE  
I hereby certify that this instrument was  
FILED on the date and at the time stamped  
hereon by me and was duly RECORDED in  
the Volume and Page of the OPR  
Records of Coke County, Texas.

Mary Dinn  
COUNTY CLERK, COKE COUNTY, TEXAS  
BY Martha Ratliff  
JUDY GARTRELL DEPUTY  
MARTHA RATLUFF DEPUTY

Mary Dinn  
County Clerk, Coke County, Texas  
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