

**EXHIBIT A**

**WATER TRANSMISSION AND PURCHASE AGREEMENT**

**VISTA RIDGE REGIONAL SUPPLY CONTRACT**

**WATER TRANSMISSION AND  
PURCHASE AGREEMENT  
(Execution Copy)**

Execution Copy

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VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS

ACTING BY AND THROUGH  
THE SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

and

ABENGOA VISTA RIDGE, LLC

Dated

\_\_\_\_\_, 2014

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**ABENGOA**  
VISTA RIDGE, LLC

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VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

This VISTA RIDGE REGIONAL SUPPLY PROJECT WATER TRANSMISSION AND PURCHASE AGREEMENT is entered into on \_\_\_\_\_, 2014, between the City of San Antonio, Texas (the "**City**"), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code ("**SAWS**"), and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Project Company**").

RECITALS

WHEREAS, the City and SAWS have determined that it is in the City's and SAWS' best interests to contract with a private entity to supplement and diversify SAWS' existing and projected water inventory; and

WHEREAS, the water supply project will consist of the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, based on the acquisition of water rights and the design, construction, financing, operation and maintenance of new production wells, pumping stations, raw water collection and transmission pipelines, storage tanks and appurtenant facilities; and

WHEREAS, pursuant to Section 252.021 of the Texas Local Government Code, SAWS issued on January 14, 2011, Solicitation No. P-11-003-DS entitled Request for Competitive Sealed Proposals Regarding the Provision and Delivery of Alternative Water Supplies for the purpose of bringing SAWS' future water supply needs to the marketplace and inviting proposals for potential non-Edwards Aquifer supplies to be compared, selected or rejected on a competitive basis; and

WHEREAS, SAWS received nine responses to the solicitation on July 22, 2011, from a variety of public and private vendors, including a response submitted by Abengoa Water USA, an Affiliate of the Project Company; and

WHEREAS, on March 8, 2013, SAWS issued Addendum #1 to the solicitation and received revised proposals in response to Addendum #1; and

WHEREAS, SAWS engaged in a comprehensive evaluation of the competing proposals in accordance with the criteria of the solicitation; and

WHEREAS, at its July 1, 2014 meeting, the Board of Trustees accepted the proposal by the Project Company in response to the solicitation on the basis that it was the most advantageous to SAWS and the City considering the evaluation factors set forth in the solicitation, subject to the negotiation of an acceptable contract and receipt of required support from the City Council; and

WHEREAS, in July, 2014 negotiations were initiated with the Project Company, which negotiations have concluded with this Water Transmission and Purchase Agreement; and

WHEREAS, on September 29, 2014, the Board of Trustees adopted Resolution Number \_\_\_ authorizing the execution and delivery of this Water Transmission and Purchase Agreement and requesting its approval by the San Antonio City Council; and

WHEREAS, on \_\_\_\_\_, 2014, by Ordinance Number \_\_\_\_, the San Antonio City Council approved this Water Transmission and Purchase Agreement; and

WHEREAS, SAWS desires to purchase and take delivery of, and the Project Company desires to produce, transport, make available and sell potable water in accordance with this Water Transmission and Purchase Agreement; and

WHEREAS, the Project Company intends to cause a Texas non-profit water supply corporation to be formed in a manner consistent with Texas Water Code 49.222(a) for the purpose of acquiring easements, rights of way and other interests necessary to construct and own a transmission line for the transportation of potable water to SAWS for the public use of the citizens of San Antonio and regional communities; and

WHEREAS, payment of the monthly water purchase payments and all other amounts payable hereunder by SAWS to the Project Company will be made solely from revenues of SAWS available thereto under City Ordinance No. 75686, and shall not be an obligation of the City's general fund, any other City enterprise fund or any other asset or revenue of the City.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto, intending to be legally bound, covenant and agree as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### SECTION 1.1. DEFINITIONS.

As used in this Water Transmission and Purchase Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Water Transmission and Purchase Agreement whether or not this Article contains a cross-reference to such definitions.

**"Abeinsa"** means Abeinsa Abeima Teyma General Partnership, a general partnership organized and existing under the laws of the State of Delaware.

**"Abengoa"** means Abengoa S.A., a company organized and existing under the laws of the Kingdom of Spain.

**"Abengoa Water USA"** means Abengoa Water USA LLC, a limited liability company organized and existing under the laws of the State of Texas.

**"Acceptable Disposal Site"** has the meaning set forth in Section 10.12(B) (Acceptable Disposal Site).

**"Acceptance"** means satisfaction of the Acceptance Conditions.

**"Acceptance Conditions"** has the meaning set forth in Section 8.5(A) (Conditions).

**"Acre Foot"** means 43,560 cubic feet, which is equal to 325,851.42 U.S. gallons.

**"Actual Annual Electricity Costs"** means the sum of all actual annual electricity costs resulting from the Project Company's performance of this Water Transmission and Purchase Agreement as reflected in the electricity bills paid by SAWS pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period), excluding any fines, charges and penalties imposed by the electricity provider which are required to be reimbursed by the Project Company to SAWS on a monthly basis as provided in such Section.

**"Actual Compensable Costs"** has the meaning set forth in Section 17.3(G) (Actual Compensable Costs).

**"Additional Product Water Quality Standards"** has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

**"Advance Project Company Make-Up Units"** has the meaning set forth in Section 10.4(B)(3) (Supply Following Commercial Operation Date).

**"Affiliate"** means, in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where "control" means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee,

personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of trustees or similar body governing the affairs of such person.

**“Annual Settlement Statement”** has the meaning set forth in Section 17.11(A) (Annual Settlement Statement).

**“Appendix”** means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Water Transmission and Purchase Agreement and identified as such in the Table of Contents.

**“Applicable Law”** means:

- (1) Any federal, state or local law, statute, code or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and
- (3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project.

**“Asset Registry”** has the meaning set forth in Section 11.3(A) (Asset Registry).

**“Assumed Liabilities”** has the meaning set forth in Section 12.6 (Assumed Liabilities) of Appendix 12 (Project Assets and Liabilities).

**“Avoidable Costs”** means, when used in relation to an event or circumstance, all costs and expenditures which:

- (1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) If the Project Company did not act reasonably and in accordance with this Water Transmission and Purchase Agreement (including Section 26.4(A) (Mitigation by the Project Company), such additional costs and expenses that would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects if the Project Company had acted reasonably and in accordance herewith.

**“Bankruptcy Law”** means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

**“Baseline Annual Volume”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Baseline Daily Volume”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Billing Period”** means each month of a Contract Year, except that:

(1) The first Billing Period of the first Contract Year shall begin on the Commercial Operation Date and shall continue to the last day of the month in which the Commercial Operation Date occurs, and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

**“Blue Water Systems, LP”** means Blue Water Systems, LP, a limited partnership organized and existing under the laws of the State of Texas.

**“Blue Water Vista Ridge, LLC”** means Blue Water Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Texas.

**“Board of Trustees”** means the board of trustees of SAWS.

**“Budgeted Compensable Costs”** has the meaning set forth in Section 17.3(C) (Budgeted Annual Compensable Costs).

**“Business Day”** means a day other than a Saturday, Sunday or an official SAWS holiday.

**“Capital and Raw Groundwater Unit Price”** has the meaning specified in Section 17.2 (Capital and Raw Groundwater Unit Price).

**“Capital Expenditure”** means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

**“Capital Modification”** has the meaning set forth in Section 12.1 (Capital Modifications Generally).

**“Carrizo-Wilcox Aquifer”** means the Carrizo-Wilcox Aquifer, as delineated by the TWDB.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

**“CFS”** means cubic feet per second.

**“Change in Control”** has the meaning set forth in Section 24.2(A) (Change in Control Defined).

**“Chief Executive Officer”** means the President and Chief Executive Officer of SAWS.

**“Chief Operator”** has the meaning set forth in Section 9.2(A) (Project Company’s Chief Operator).

**“City”** means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

**“City Discriminatory Change in Law”** means the coming into effect of any ordinance, resolution or other Applicable Law of the City which materially impairs or prevents the Project Company (or any person performing work on behalf of the Project Company) from carrying out any Contract Obligation or materially increases the costs to the Project Company (or any person performing work on behalf of the Project Company) of carrying out any Contract Obligation and which specifically applies to discriminate against:

(1) the Project or the Project Company (or any person performing work on behalf of the Project Company);

(2) projects or entities (including the Project or the Project Company) involved with public works-type services or projects, utility-related services or projects, or projects or services delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;

(3) Persons (including the Project Company) that have contracted with SAWS or the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is described in clauses (2) or (3) above.

**“CMMS”** has the meaning set forth in Section 11.5 (Computerized Maintenance Management System).

**“Collection Pipelines”** means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project).

**“Collection Pipelines Rights-of-Way”** means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

**“Commercial Operation Date”** has the meaning set forth in Section 8.6(D) (Commercial Operation Date).

**“Commercial Operation Longstop Date”** has the meaning set forth in Section 8.6(B) (Commercial Operation Longstop Date Defined).

**“Commissioning Plan”** has the meaning set forth in Section 4.9.1 (General Commissioning Plan Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) and in Section 8.1(B) (Commissioning Plan).

**“Compensable Costs”** has the meaning set forth in Section 17.3(A) (General Principles).

**“Compensation Adjustment Event”** has the meaning set forth in Section 17.8 (Form of Compensation Adjustment For Events Occurring After the Contract Date).

**“Confidential Project Company Information”** has the meaning set forth in Section 26.13 (SAWS’ Confidentiality Obligations).

**“Confidential SAWS Information”** has the meaning set forth in Section 26.12 (Project Company’s Confidentiality Obligations).

**“Construction Governmental Approvals”** means all Governmental Approvals required from time to time during the Construction Period for the commencement and continuance of the Construction Work, excluding the Project Company Public Water Supplier Designation.

**“Construction Management Agreement”** means the Construction Management Agreement, to be effective on or before the Financial Closing Date, required to be executed between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Construction Period”** means the period from and including the Financial Closing Date through the Commercial Operation Date.

**“Construction Quality Management Plan”** means the Project Company’s plan for quality assurance and quality control in implementing the Construction Work to be developed in accordance with the requirements set forth in Section 4.7 (Quality Management) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Construction Superintendent”** means the executive in charge of construction of the Project designated by the Project Company for communications with SAWS during the Construction Period.

**“Construction Work”** means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement prior to the date of Final Completion.

**“Contract Administration Memorandum”** has the meaning set forth in Section 26.6(D) (Contract Administration Memoranda).

**“Contract Date”** means \_\_\_\_\_, 2014, the date on which this Water Transmission and Purchase Agreement was executed and delivered by the parties following authorization by the SAWS Board of Trustees pursuant to the Resolution Number \_\_ and approval by the San Antonio City Council pursuant to Ordinance Number \_\_.

**“Contract Obligations”** means everything required to be furnished and done for and relating to the permitting, design, construction, financing, operation and maintenance of the Project and the production and delivery of Product Water by the Project Company to the Product Water Delivery Point pursuant to this Water Transmission and Purchase Agreement.

**“Contract Services”** means the Construction Work and Operating Work.

**“Contract Standards”** means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Design Requirements;
- (3) Good Engineering and Construction Practice;
- (4) The Major Repair and Replacement Plan;
- (5) The Maintenance Repair and Replacement Schedule;
- (6) The Performance Guarantees;
- (7) The Operating and Maintenance Standards;
- (8) Good Management Practice;
- (9) The Construction Quality Management Plan;
- (10) Applicable written equipment manufacturers’ specifications;
- (11) Applicable Insurance Requirements; and
- (12) Any other standard, term, condition or requirement specifically provided in this Water Transmission and Purchase Agreement to be observed by the Project Company.

Section 1.2(X) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

**“Contract Year”** means each of:

- (1) The period from the Contract Date to the next December 31;
- (2) Each subsequent period of 12 calendar months commencing on January 1; and
- (3) The period from January 1 in the year in which this Water Transmission and Purchase Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made or requirement established on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

**“Cost Substantiation”** has the meaning described in Section 17.14 (Cost Substantiation).

**“Counties”** means each of the counties in which the Project Sites are located, including Burleson, Lee, Bastrop, Caldwell, Guadalupe, Comal and Bexar Counties.

**“Creditors’ Remedies Agreement”** means the creditors’ remedies agreement to be entered into on or before the Financial Closing Date between SAWS, the Senior Debt Creditors and the Project Company pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Cross County Water Supply Corporation”** means the Cross County Water Supply Corporation, a not-for-profit water supply corporation organized and existing under Chapter 67 of the Texas Water Code.

**“Daily Delivered Water Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Daily Maximum Volume”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Deductions”** means those deductions from the otherwise applicable Monthly Water Purchase Payments that SAWS is permitted to take as offsets on account of SAWS having taken delivery of Off-Specification Water, pursuant to Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

**“Deductions Credit”** has the meaning set forth in Section 17.6 (Deductions Credit).

**“Demand Shortfall Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Design Documents”** means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Construction Work.

**“Design Requirements”** means the design requirements for the Project set forth in Appendix 3 (Technical Specifications).

**“Design Requirements Change”** means a change in the Design Requirements made between the Financial Closing Date and the Commercial Operation Date (1) as a result of a Project Company request agreed to by SAWS pursuant to Section 5.7 (Project Company-Requested Design Requirements Changes), or (2) at the request of SAWS pursuant to Section 5.8 (SAWS-Requested Design Requirements Changes).

**“Development and Financing Period”** means the period from and including the Contract Date through the Financial Closing Date.

**“Development and Financing Work”** means everything required to be furnished and done by the Project Company for and relating to the development and financing of the Project prior to the Financial Closing Date.

**“Differing Site Conditions”** means concealed or latent subsurface conditions at the Project Sites that materially differ from any of the conditions that may have been assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.

**“Direct Payments”** has the meaning set forth in Section 17.8(C) (Direct Payments by the Parties).

**“Disclosed Data”** means any information, data and documents made available or issued to the Project Company or a Project Contractor or Subcontractor in connection with the Project by or on behalf of SAWS, including any information relating to the Project Sites or the requirements of any Governmental Body, whether before or after the execution of this Water Transmission and Purchase Agreement.

**“Discriminatory Change in Tax Law”** means the coming into effect of any Applicable Law which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

(1) the Project or the Project Company with respect to the Project and not other projects or persons;

(2) other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;

(3) Persons (including the Project Company) that have contracted with SAWS, the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

No change in fees or other Taxes imposed by the POSGCD or by any other Governmental Body having regulatory jurisdiction over any Raw Groundwater pumping, production or transportation shall be considered to be a Discriminatory Change in Tax Law.

**“Draft Reinstatement Plan”** has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

**“Electronic Operation and Maintenance Manual”** means the electronic manual prepared by the Project Company as described in the Design Requirements.

**“Employee Payments”** means any liability that has been reasonably incurred by the Project Company arising as a result of termination of this Water Transmission and Purchase Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including severance (whether accrued or not) and vacation pay accrued.

**“Encumbrance”** means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

**“End of Term Performance Evaluation Period”** has the meaning set forth in Section 11.6(D) (Applicable End of Term Performance Evaluation Period).

**“End of Term Performance Evaluation Requirements”** has the meaning set forth in Section 11.5.2 (End of Term Performance Evaluation Requirements) of Appendix 11 (End of Term Project Condition Requirements).

**“Environmental Mitigation Measures”** means any environmental mitigation measures set forth in the Governmental Approvals required to be obtained by the Project Company.

**“EPA”** means the United States Environmental Protection Agency and any successor agency.

**“EPC Agreement”** means the Engineering, Procurement and Construction Agreement to be entered into between the Water Supply Corporation or the Project Company, pursuant to the Construction Management Agreement, and the EPC Contractor on or before the Financial Closing Date.

**“EPC Contractor”** means Abeinsa, or another design and construction company that is an Affiliate of Abengoa and that is reasonably acceptable to SAWS.

**“Equity Contribution Agreement”** means the Equity Contribution Agreement to be entered into on or before the Financial Closing Date between the Project Company, the Shareholders, and the Senior Debt Creditors pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Excess Product Water”** has the meaning set forth in Section 10.3 (Product Water Supply and Demand Definitions).

**“Excluded Assets”** has the meaning set forth in Section 12.5 (Excluded Assets) of Appendix 12 (Project Assets and Liabilities).

**“Excluded Liabilities”** has the meaning set forth in Section 12.7 (Excluded Liabilities) of Appendix 12 (Project Assets and Liabilities).

**“Excused Supply Shortfall Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Exit Performance Test”** has the meaning set forth in Section 11.6(C) (Non-Compliance With End of Term Performance Evaluation Requirements).

**“Expiration Date”** means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.7 (Extension of Term).

**“Fees and Costs”** means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

**“Final Completion”** means completion of the Construction Work in compliance with the Design Requirements and the requirements of Section 8.8 (Final Completion).

**“Financial Close”** has the meaning set forth in Section 4.1(B)(25) (Financial Close).

**“Financial Closing Date”** has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date).

**“Financial Closing Date Conditions”** has the meaning set forth in Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Financial Closing Longstop Date”** has the meaning set forth in Section 4.3(B) (Financial Closing Longstop Date Defined).

**“Financial Model”** has the meaning set forth in Section 4.1(B)(25) (Financial Close).

**“Fitch”** means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“Fixed Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Flow Rate”** means the rate of flow of Product Water delivered to SAWS measured at the Project Flow Meter, and expressed in CFS.

**“Force Majeure Event”** has the meaning set forth in Section 5.2(D) (Force Majeure Events).

**“GAAP”** means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

**“Good Engineering and Construction Practice”** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the design and construction of drinking water wells, treatment and pumping facilities and pipelines as observed in the State.

**“Good Management Practice”** means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices as observed for drinking water wells, treatment and pumping facilities, and pipelines as observed in the State.

**“Governmental Approvals”** means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Obligations.

**“Governmental Body”** means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including SAWS, acting in its governmental capacity other than as a party to this Water Transmission and Purchase Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Water Transmission and Purchase Agreement or the Project. A Governmental Body includes the POSGCD and any other Governmental Body with jurisdiction over Raw Groundwater or the Project Site Conveyance Instruments.

**“Groundwater Drilling and Operating Permit”** means the Amended and Restated Drilling and Operating Permit (Permit No. POS-D&O/A&M-0001), issued and effective on January 13, 2008, by Director of the Board of Trustees of the POSGCD to Blue Water Systems, LP, or a successor Drilling and Operating Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

**“Groundwater Lease Conveyance Agreement”** means the Groundwater Lease Conveyance Agreement, dated \_\_\_\_\_, between the Project Company; Blue Water Vista Ridge, LLC; Blue Water Regional Supply Project LP; and the Master Lease Trust, attached hereto as Reference Document 3 (Groundwater Lease Conveyance Agreement).

**“Groundwater Leases”** means the leases listed in Reference Document 2 (List of Blue Water Systems Groundwater Leases).

**“Groundwater Lessee”** means Blue Water Vista Ridge LLC or the Master Lease Trust, as assignee.

**“Groundwater Lessors”** means the owners of the fee interest in the Raw Groundwater and the lessors under the Groundwater Leases.

**“Groundwater Supply Agreement”** means the Groundwater Supply Agreement, dated \_\_\_\_\_, 2014, between SAWS and Blue Water Vista Ridge, LLC, executed in substantially the form set forth as Transaction Form E (Groundwater Supply Agreement).

**“Groundwater Transportation Permit”** means the Amended Permit to Transport Groundwater from within the POSGCD (Permit No. POS-T-0001), issued by the Board of Trustees of the POSGCD to Blue Water Systems, LP on September 14, 2004 and amended effective September 14, 2010, or any new permit issued to the Project Company that allows the Project Company to transport Raw Groundwater from the POSGCD, or a successor Groundwater Transportation Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

**“Guaranteed Maximum Annual Electricity Costs”** means the Project Company’s guaranteed maximum annual electricity costs for the Project for which SAWS is responsible and which are calculated based on the applicable Guaranteed Maximum Electricity Utilization, the Guaranteed Maximum Electricity Demand, Product Water delivered, and the electricity provider’s applicable per unit electric rate, all as provided in Section 17.11(B) (Annual Settlement of Electricity Costs).

**“Guaranteed Maximum Electricity Demand”** has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

**“Guaranteed Maximum Electricity Utilization”** has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

**“Guaranty Agreement”** means the Guaranty Agreement, dated the date of execution and delivery hereof, between Abengoa and SAWS, executed in the form set forth as Transaction Form A (Abengoa Guaranty Agreement).

**“Hazardous Substance”** means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law

pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“**Hazardous Substance Management Program**” means the written Hazardous Substances management program developed by the Project Company during the Construction Period in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and updated during the Operating Period.

“**High Service Pump Station**” means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project).

“**High Service Pump Station Site**” means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

“**Income Tax**” means any tax imposed on the income of a person by any federal, State or local Governmental Body.

“**Independent Evaluator**” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience of water utility property similar to the Project, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition of the Project pursuant to Section 11.3 (Project Evaluations) and Appendix 11 (End of Term Project Condition Requirements). The Independent Evaluator may be an engineer or other technical professional competent to perform such services.

“**Index Linked**” means, with respect to an amount at any time, that the amount is increased as of January 1 of each Contract Year (commencing on January 1 of the Contract Year ending on December 31, 2016) by adding to it (1) an amount equal to such amount, multiplied by (2) the percentage representing the increase in the Inflation Index from (a) the Inflation Index for the last six months of the Contract Year ending on December 31, 2014, to (b) the Inflation Index for the last six months of the Contract Year immediately preceding the Contract Year for which a determination is to be made.

“**Inflation Index**” means, with respect to items related to the Operating Work, the Consumer Price Index, All Urban Consumers (CPI-U) (1982-84 = 100) for the San Antonio MSA published by the Bureau of Labor Statistics of the United States Department of Labor; provided, however, that if such Consumer Price Index shall cease to exist or is changed, then the term “Inflation Index” shall mean such other or similar index or formula as the parties reasonably select.

“**Initial Senior Debt**” means the Senior Debt issued at Financial Close.

“**Insurance Proceeds**” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement.

“**Insurance Receivables**” means Insurance Proceeds which a person is entitled to receive but which have not been received.

**“Insurance Requirement”** means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Water Transmission and Purchase Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

**“Intellectual Property”** means any trade secrets, proprietary rights, patents, copyrights, or trademarks recognized under Applicable Law.

**“Interim Operations Approval”** has the meaning set forth in Section 8.2(A) (Authorization of Operation and Water Introduction).

**“Joint Inspection and Survey”** has the meaning set forth in Section 11.7(C) (Transfer Condition Survey and Work Plan).

**“Key Individuals”** has the meaning set forth in Appendix 14 (Project Company and Project Contractors Information).

**“Legal Proceeding”** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Water Transmission and Purchase Agreement, and all appeals therefrom.

**“Lien”** means any and every lien against the Project, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

**“Loss-and-Expense”** means, and is limited to, (in each case subject to Section 19.6 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify SAWS hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Water Transmission and Purchase Agreement.

**“Maintenance, Repair and Replacement Plan”** means the maintenance, repair and replacement plan prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

**“Maintenance, Repair and Replacement Schedule”** means the maintenance, repair and replacement schedule prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

**“Major Repair and Replacement Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Make-Up Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Master Lease Trust”** means the Burleson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act.

**“Mediator”** means any person serving as a mediator of disputes hereunder pursuant to Section 18.2 (Non-Binding Mediation).

**“mg”** or **“MG”** means millions of gallons.

**“mgd”** or **“MGD”** means millions of gallons per day.

**“mg/L”** means milligrams per liter.

**“Minimum Performance Criteria”** has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards).

**“Monthly Delivered Water Units”** means, for any Billing Period and subject to Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water), the number of Units actually made available by the Project Company and received and taken by SAWS.

**“Monthly Water Purchase Payment”** means the monthly amount to be paid by SAWS for the purchase of Product Water, calculated as provided in Section 17.5 (Monthly Water Purchase Payments).

**“Moody’s”** means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“Non-Binding Mediation”** means the voluntary system of dispute resolution established by Section 18.2 (Non-Binding Mediation) for addressing disputes arising under this Water Transmission and Purchase Agreement.

**“Notice of Acceptance”** has the meaning set forth in Section 8.5(B) (Notice and Report of Acceptance).

**“Notice of Final Completion”** has the meaning set forth in Section 8.8(B) (Notice and Report of Final Completion),

**“NPDES Project Permit”** means any National Pollutant Discharge Elimination System (NPDES) Permit for the Project required to be obtained by the Project Company from TCEQ, and all subsequent renewals.

**“NTU”** means nephelometric turbidity unit.

**“O & M Budget Panel”** has the meaning set forth in Section 17.3(A) (General Principles).

**“Off-Specification Product Water”** means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

**“Operating and Maintenance Standards”** means the standards for the operation, maintenance and management of the Project as set forth in Appendix 6 (Operating and Maintenance Standards).

**“Operating and Maintenance Unit Price”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Operating Notice”** means a written notice given by one party to the other hereunder relating to routine operational matters arising under this Water Transmission and

Purchase Agreement following the Commercial Operation Date specifically required hereunder to be given as an "Operating Notice".

**"Operating Period"** means the period between the Commercial Operation Date and the Termination Date.

**"Operating Protocol"** means the protocol governing operation of the Project, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols to be established, adopted and revised in accordance with Article 9 (Operation and Management of the Project) and Appendix 6 (Operating and Maintenance Standards).

**"Operating Service Agreement"** means the Operating Service Agreement to be entered into between the Project Company and the Operating Service Provider on or before the Financial Closing Date pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**"Operating Service Provider"** means Abengoa Water USA, or any assignee or replacement entity permitted under this Water Transmission and Purchase Agreement.

**"Operating Service Provider Breakage Costs"** means the amount payable by the Water Supply Corporation to the Operating Service Provider under the Operating Service Agreement as a direct result of the exercise by SAWS of an option to purchase the Project Assets pursuant to Section 23.1(A) (Option) and the resulting termination of this Water Transmission and Purchase Agreement, which shall be reasonable as compared to an amount that would be agreed to between comparable, independent persons in comparable transactions and comparable circumstances, as such amount shall be approved by SAWS when the Operating Service Agreement is negotiated pursuant to Section 4.1(B) (Financial Closing Date Condition Defined).

**"Operating Work"** means everything required to be furnished and done relating to the operation, maintenance and management of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement during the Operating Period.

**"OSHA"** means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

**"Other Project Assets"** has the meaning set forth in Section 12.4 (Other Project Assets) of Appendix 12 (Project Assets and Liabilities).

**"Overdue Rate"** means the maximum rate of interest permitted by the laws of the State, if applicable, or 7.5 percent annually, whichever is lower.

**"Performance Guarantees"** means the guarantees of performance made by the Project Company specifically set forth in Section 10.2 (Product Water Quality Guarantee); Section 10.12 (Project Company Disposal of Residuals); Section 10.13 (Project Company Disposal of Wastewater); and Appendix 8 (Performance Guarantee Requirements).

**"Performance Test"** means the performance test to be conducted pursuant to Appendix 5 (Performance Test Procedures and Standards) for the achievement of Acceptance.

**"Performance Test Protocol"** has the meaning set forth in Section 8.3(A) (Performance Test Protocol).

**“Permitted Debt”** has the meaning set forth in Section 7.1(C) (Limitations on Project-Secured Debt).

**“Permitted Debt Issuance Date”** has the meaning specified in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

**“Permitted Encumbrances”** means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves in accordance with GAAP;

(2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or Water Supply Corporation to construct the Project or operate the Project;

(3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(4) Those items which are (i) servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements, (ii) any other Encumbrance other than liens arising (a) in the ordinary course of business during construction, or (b) in connection with worker’s compensation or unemployment insurance or social security or pension obligations, (iii) the Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) liens or other encumbrances subordinate to this Water Transmission and Purchase Agreement, (vi) any statutory landlord’s liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or Water Supply Corporation;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(6) Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;

(7) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or Water Supply Corporation established appropriate reserves or bonded against, at SAWS' request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(10) Exceptions to title, of record, listed in a Title Insurance Policy being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(11) Encumbrances granted under any Senior Debt Financing Agreements, including the rights of the Senior Debt Creditors or to secure obligations owed by the Water Supply Corporation to the Project Company;

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness; and

(13) Encumbrances created as a result of a Change-in-Law.

**"Personal Information"** means information about a person, the disclosure of which would constitute an unwarranted invasion of privacy.

**"Plan of Development and Financing"** means the plan set forth in Appendix 16 (Plan of Development and Financing and Abengoa Letter of Support).

**“POSGCD”** means the Post Oak Savannah Groundwater Conservation District, located in Milam and Bureson Counties, Texas, Ground Water Management Area 12.

**“POSGCD Rules and Regulations”** means the Rules and Management Plan of the POSGCD, established by POSGCD pursuant to Chapter 36 of the Texas Water Code.

**“Product Water”** means Raw Groundwater which has been treated at the Project in accordance with the Contract Standards. Product Water includes Off-Specification Product Water, but does not include Unacceptable Product Water.

**“Product Water Delivery Point”** means the flange in the pipe between the Project Company Storage Tank and SAWS Storage Tanks on the Project Company Portion of the Transmission Pipeline Terminus Site designated by the parties for determining the transfer of ownership of Product Water from the Project Company to SAWS.

**“Product Water Quality Guarantee”** has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

**“Product Water Quality Sampling Location”** means the location at which the quality of Product Water is sampled and measured for purposes of determining compliance with the Performance Guarantees, which shall be located between the Product Water Delivery Point and the Project Company Storage Tank or another location approved by the parties.

**“Project”** means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System or the SAWS Interconnection Improvements.

**“Project Assets”** means the Project Real Property and the Other Project Assets.

**“Project Assets Purchase Price”** means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options).

**“Project Assets Transfer Date”** means the Projects Assets Purchase Date or the Expiration Date, as applicable.

**“Project By-Products”** means Residuals and Wastewater requiring disposal by the Project Company in accordance with Section 9.1(A) (Operation and Management Responsibility for the Project) and Article 10 (Performance).

**“Project Company”** means Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

**“Project Company Bankruptcy-Related Event”** has the meaning set forth in Section 20.1(C) (Project Company Bankruptcy-Related Event Defined).

**“Project Company Event of Default”** has the meaning set forth in Section 20.1(A) (Project Company Events of Default Defined).

**“Project Company Fault”** means:

- (1) A breach by the Project Company of any of its obligations under this Water Transmission and Purchase Agreement;
- (2) A breach of any representation or warranty made by the Project Company under this Water Transmission and Purchase Agreement;
- (3) Willful misconduct of the Project Company or any Project Company Person; or
- (4) A negligent act or omission of the Project Company or a Project Company Person.

**“Project Company Make-Up Units”** has the meaning specified in Section 10.6(A) (Project Company Make-Up Units).

**“Project Company Person”** means:

- (1) Any owner, shareholder, or member holding 5% or more of the equity ownership interests of Abengoa or the Project Company, or a director, officer, employee or agent of Abengoa or the Project Company in each case acting as such; or
- (2) A Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such Person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

**“Project Company Portion of the Transmission Pipeline Terminus Site”** has the meaning set forth in Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site).

**“Project Company Public Water Supplier Designation”** means the public water supplier designation required to be issued by TCEQ to the Project Company and authorizing the use of Product Water as a source of potable water for public consumption through the SAWS Distribution System.

**“Project Company Reimbursable Costs”** has the meaning set forth in Section 4.6(A) (Project Company Reimbursable Costs Defined).

**“Project Company Remediable Breach”** has the meaning set forth in Section 20.1(B) (Project Company Remediable Breach Defined).

**“Project Company Representative”** means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Water Transmission and Purchase Agreement.

**“Project Company-Requested Capital Modification”** means a Project Company-Requested Capital Modification made pursuant to Section 12.2 (Capital Modifications at Project Company Request).

**“Project Company-Requested Capital Modification Financing”** means a financing by the Project Company of permitting, design and construction costs resulting from a Project Company-Requested Capital Modification effected pursuant to Section 7.3 (Financing the Capital Costs of Project Company-Requested Capital Modifications).

**“Project Company Storage Tank”** means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Transmission Pipeline Terminus Site for the storage of Product Water prior to SAWS taking delivery, as more particularly described in the Design Requirements. The Project Company Storage Tank includes the pipe between the Project Company Storage Tank and the SAWS Storage Tanks up to the Product Water Delivery Point; the portion of such pipe between the Product Water Delivery Point and the SAWS Storage Tanks shall constitute part of the SAWS Storage Tanks. The Project Flow Meter and related totalizer shall be located on the Project Company Storage Tank side of the Product Water Delivery Point and constitute part of the Project Company Storage Tank.

**“Project Construction Loan Agreement”** means the Loan Agreement, to be effective on or before the Financial Closing Date, required to be entered into between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Project Contractor”** means the EPC Contractor, the Operating Service Provider, the Water Supply Corporation and the parties to the Groundwater Lease Conveyance Agreement, and **“Project Contractors”** means any two or all of them.

**“Project Contracts”** means the EPC Agreement, the Water Transportation Agreement, and the Operating Service Agreement, and the Groundwater Lease Conveyance Agreement.

**“Project Costs”** means, without duplication, costs and expenses incurred by the Project Company on or prior to the date on which Final Completion has occurred in connection with the development, design, engineering, permitting, construction, financing, installation, equipping, assembly, inspection, start-up, testing and initial operations of the Project; the leasing and preparation of the Project Sites; together with an adequate contingency, which costs and expenses shall include: (1) all amounts payable under the EPC Agreement and the other agreements relating to any of the foregoing activities, any state sales taxes on equipment or other goods or services, amounts payable for power and other utilities relating to construction, start-up and testing, and all project development expenses and fees incurred by the Project Company or any of its Affiliates; (2) interest incurred on or in respect of the Permitted Debt and any other amounts required to be paid by the Project Company under the agreements with respect to the Permitted Debt, including fiduciary fees; (3) bond insurer payments and payments contemplated by any bond insurance policy, and the fees and expenses and other reimbursement of the issuer, and any agent or trustee party to the agreements with respect to the Permitted Debt; (4) legal, accounting, consulting, financial advisory and other transaction fees and expenses incurred by the Project Company and its Affiliates prior to Final Completion; (5) operating and maintenance costs incurred on or prior to Final Completion; (6) the costs of obtaining surety bonds, letters of credit or other security required to be delivered under an agreement or Governmental Approval on or prior to Final Completion (including any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties); and (7) costs incurred in compliance with Governmental Approvals.

**“Project Equipment”** means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, including tanks (other than concrete tanks), basins (other than concrete basins), process and

treatment, mechanical, piping (with an original useful life of less than 20 years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Project.

**“Project Flow Meter”** means the flow meter built in conformance with the requirements of Appendix 3 (Technical Specifications) for measuring the volume of Product Water of which SAWS has taken delivery, and located between the Project Water Delivery Point and the Project Company Storage Tank or another location on the Transmission Pipeline Terminus Site agreed to by the parties.

**“Project Improvements”** means the Well Field Facilities and the Transmission Pipeline System.

**“Project Real Property”** means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is ancillary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

**“Project Real Property Conveyance Agreement”** means the Project Real Property Conveyance Agreement that may be executed between SAWS and the Water Supply Corporation based on the terms set forth in Section 13.2(H) (Terms of the Project Real Property Conveyance Agreement) in the event of an election by the Project Company to contract and conduct business with the Water Supply Agreement pursuant to Section 13.2(B) (Right of Election).

**“Project Schedule”** means the schedule set forth in Attachment 4A (Preliminary Project Schedule) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) and updated in accordance with Section 4.2.3 (Project Schedule Updates) of Appendix 4.

**“Project Site Conveyance Instruments”** means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

**“Project Site Leases”** means any lease of all or any portion of the Project Sites.

**“Project Site Lessors”** means the Groundwater Lessors and the Transmission Pipeline Easement Grantors.

**“Project Sites”** means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

**“Project Structures”** means all structures, buildings, concrete tanks and basins, appurtenances (including valves, gates and weirs), and piping (with an original useful life of equal to or greater than 20 years) constituting part of the Project, other than Project Equipment.

**“Proposed Financing”** has the meaning specified in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

**“Public Information Act”** means the Texas Public Information Act, Chapter 552 of the Texas Government Code.

**“Punch List”** means the list prepared at the time of Substantial Completion (and periodically revised as necessary), which list shall set forth (1) all items of Construction Work which remain to be performed or corrected in order to ensure that the Project fully complies with all of the standards and requirements set forth herein (and shall include those items of Construction Work damaged or destroyed by the Project Company during completion of the Performance Test) and which do not affect the performance or safe and continued operation of the Project, and (2) an assessed valuation of each such item of Construction Work that is equal to 150% of the estimated cost thereof. The final Punch List shall be provided to SAWS by the Commercial Operation Date. The Punch List shall not include any items of Construction Work, alone or in the aggregate, the non-completion of which (a) prevents the Project from being used for its purpose as described in this Water Transmission and Purchase Agreement in accordance with Applicable Law, (b) prevents the Project from operation and maintenance on a legal, safe, environmentally sound and reliable basis, or (c) could have a materially adverse effect on the operation, maintenance, performance, warranties, efficiency, safety or reliability of the Project or the environment.

**“Qualified Commercial Bank”** means a reputable domestic or foreign commercial bank:

- (1) Whose long term and short term debt is rated “A3” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch (the lower of the three applying if there is a split rating); and
- (2) Which maintains a banking office, branch or agency in San Antonio or Houston, Texas.

**“Qualified Insurer”** means a reputable insurer authorized to conduct business in the State and having a credit rating of:

- (1) A-VIII or better with A.M. Best; or
- (2) The equivalent thereof by any other recognized insurance rating agency.

**“Rating Service”** means Moody’s, Standard & Poor’s or Fitch.

**“Raw Groundwater”** means groundwater drawn from the Carrizo-Wilcox Aquifer or the Simsboro Aquifer for treatment and conveyance to SAWS by the Project Company in accordance with the Contract Standards.

**“Raw Groundwater Permits”** means the permits listed in Reference Document 1 (Blue Water Systems Raw Groundwater Permits) issued by the POSGCD permitting Blue Water Systems to produce and transport Raw Groundwater.

**“RCRA”** means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

**“Refinancing”** means any refinancing of the Senior Debt and any subsequent refinancings.

**“Refinancing Gain”** means the nominal cash flow savings on debt service payable with respect to the Senior Debt in each Contract Year over the remaining Term resulting from a Refinancing.

**“Regulated Site Condition”** means:

(1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;

(2) Any habitat of an endangered or protected species as provided in Applicable Law;

(3) The presence anywhere in, on or under the Project Sites of wells or underground storage tanks for the storage of chemicals or petroleum products;

(4) The presence of Hazardous Substances in, on or under the Project Sites (including presence in surface water, groundwater, soils or subsurface strata; and

(5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment.

**“Regulated Substance”** means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances and contaminated soils requiring special handling or disposal.

**“Reinstatement Plan”** has the meaning set forth in Section 15.2(C) (Reinstatement Plan).

**“Reinstatement Works”** has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

**“Required Insurance”** means the insurance specified in Appendix 7 (Insurance Requirements).

**“Residuals”** means any semi-solid or solid material resulting from the treatment of Raw Groundwater which requires disposal as waste material.

**“Response Plan”** means a Hazardous Substance emergency/spill response plan developed by the Project Company in accordance with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) during the Construction Period, and updated during the Operating Period.

**“Restricted Person”** means any person who (or any member of a group of persons acting together, any one of which):

(1) Is disbarred, suspended, or otherwise disqualified from federal, State, SAWS, Counties or City contracting for any services similar in nature to the Contract Obligations;

(2) Was or is subject to any material claim of the United States, State, SAWS, Counties or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the Board of Trustees or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Is any other person whose work on or association with the Project would be detrimental to the reputation of SAWS, as formally determined by SAWS in its discretion.

**“Right-Of-Way Easement Form”** means the form set forth in Transaction Form D (Right-Of-Way Easement Form).

**“SAWS”** means the San Antonio Water System, established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

**“SAWS Distribution System”** means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project.

**“SAWS Engineer”** has the meaning set forth in Section 5.4(I) (SAWS Engineer).

**“SAWS Event of Default”** has the meaning set forth in Section 21.1 (SAWS Events of Default).

**“SAWS Fault”** means:

- (1) A breach by SAWS of any of its obligations under this Water Transmission and Purchase Agreement; or
- (2) A breach of any representation or warranty by SAWS under this Water Transmission and Purchase Agreement; or
- (3) Willful misconduct of SAWS or a SAWS Indemnatee; or
- (4) A negligent act or omission of SAWS or a SAWS Indemnatee; or
- (5) A City Discriminatory Change in Law.

**“SAWS Indemnatee”** has the meaning set forth in Section 25.1 (Project Company’s Obligation to Indemnify).

**“SAWS Interconnection Improvements”** means the SAWS Storage Tanks and the other improvements required to be constructed by SAWS pursuant to Section 6.2 (SAWS Interconnection Improvements), as generally described in Appendix 13 (SAWS Interconnection Improvements).

**“SAWS Interface Cabinet”** means the interface for electronic communications and security information between SAWS and the Project Company to be installed by SAWS at the Transmission Pipeline Terminus Site as the operating interface between the SAWS Distribution System and the Project.

**“SAWS Make-Up Units”** has the meaning specified in Section 10.6(B) (SAWS Make-Up Units).

**“SAWS Portion of the Transmission Pipeline Terminus Site”** has the meaning set forth in Section 4.1(B)(9) (Other Due Diligence Documents for the Transmission Pipeline Terminus Site).

**“SAWS Public Water Supplier Designation”** means SAWS’ existing public water supplier designation issued by TCEQ authorizing the use of the SAWS Distribution System to supply potable water for public consumption.

**“SAWS Reimbursable Costs”** has the meaning set forth in Section 4.7(A) (SAWS Reimbursable Costs Defined).

**“SAWS Representative”** or **“SAWS Administrator”** means the individual SAWS employee specified in writing by SAWS as the representative of SAWS from time to time for all purposes of this Water Transmission and Purchase Agreement.

**“SAWS-Requested Design Requirement Change”** has the meaning set forth in Section 5.8 (SAWS-Requested Design Requirements Changes).

**“SAWS-Requested Capital Modification”** means a SAWS-Requested Capital Modification made pursuant to Section 12.3 (Capital Modifications at SAWS Request).

**“SAWS-Requested Capital Modification Financing”** means a financing by the Project Company of permitting, design and construction costs resulting from a SAWS-

Requested Capital Modification effected pursuant to Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs).

**“SAWS Storage Tanks”** means the storage tanks to be constructed by SAWS on the Transmission Pipeline Terminus Site as part of the SAWS Interconnection Improvements, as generally described in Appendix 13 (SAWS Interconnection Improvements).

**“SCADA”** means supervisory control and data acquisition.

**“Security Plan”** has the meaning set forth in Section 9.7 (Security).

**“Senior Debt”** means debt or other obligations issued or incurred by the Project Company under the Senior Debt Financing Agreements secured by a first lien on all or substantially all of the revenues and assets of the Project Company.

**“Senior Debt Creditors”** means the lenders, bondholders or other parties, as the case may be, and their respective agents and trustees holding Senior Debt under the Senior Debt Financing Agreements.

**“Senior Debt Financing Agreements”** means the following as and to the extent that the same may be in effect to document the issuance of Senior Debt that may be outstanding from time to time: (1) any loan or credit agreement and any notes issued pursuant thereto; (2) any bond indenture and the bonds issued pursuant thereto; (3) any security agreement relating to collateral pledged to secure Senior Debt, which may include all assets and contract rights of the Project Company and the Water Supply Corporation with respect to the Project; (4) any trust or collateral agency agreement relating to the administration of such collateral on behalf of the Senior Debt Creditors; (5) any interest rate hedge agreement entered into by the Project Company for the purpose of fixing or capping interest rates that might otherwise be floating rates; (6) the Creditors’ Remedies Agreement and other consents to assignment or direct agreements between the Senior Debt Creditors and SAWS relating to the assignment of this Water Transmission and Purchase Agreement by the Project Company and the rights of the Senior Debt Creditors thereunder; and (7) any guaranties, letters of credit and other third party assurances provided to the Senior Debt Creditors by third parties as additional security.

**“Service Area”** means all territory in which customers are served by SAWS Distribution System during the Term hereof.

**“Shareholder”** means any holder or owner of Shares.

**“Shares”** means shares or other equity interests of any class in the capital of the Project Company.

**“Simsboro Aquifer”** means the Simsboro aquifer, as delineated by the TWDB.

**“Specified Change in Tax Law”** means the coming into effect of any Applicable Law which results in a new Tax imposed by the United States, the State or the City and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Obligations, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

**“Standard & Poor’s”** means Standard & Poor’s Financial Services LLC, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

**“State”** means the State of Texas.

**“Subcontract”** means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Water Transmission and Purchase Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

**“Subcontractor”** means any person that enters into a Subcontract.

**“Substantial Completion”** has the meaning set forth in Section 8.1(D) (Conditions to Substantial Completion).

**“Substantial Completion Procedures”** means the procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) for determining when the Project Company has achieved Substantial Completion.

**“Substantial Completion Procedures Report”** has the meaning set forth in Section 4.12 (Substantial Completion Procedures Report) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Substantial Completion Protocol”** has the meaning set forth in Section 4.10.9 (Substantial Completion Protocol) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

**“Supply Shortfall Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Target Equity Return Amount”** has the meaning set forth in Section 23.1(B)(3) (Project Assets Purchase Price).

**“Tax”** means, from time to time, all taxes, surtaxes, fees, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection.

**“TCEQ”** means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

**“Term”** has the meaning set forth in Section 3.1 (Effective Date and Term).

**“Termination Date”** means the earlier of the Expiration Date or the date of termination of this Water Transmission and Purchase Agreement provided in Section 22.1(D) (Termination Date).

**“Title Insurance Policy”** means all title insurance policies with respect to the Project Sites issued to the Project Company.

**“Transaction Form”** means any of the Transaction Forms appended to this Water Transmission and Purchase Agreement and identified as such in the Table of Contents.

**“Transfer Condition Plan Completion Certificate”** has the meaning set forth in Section 11.7(G) (Final SAWS Condition Assessment).

**“Transfer Condition Requirements”** has the meaning set forth in Section 11.7(B) (Required Project Condition).

**“Transfer Condition Retainage”** has the meaning set forth in Section 11.7(D) (Determination of Transfer Condition Retainage).

**“Transfer Restriction Date”** has the meaning set forth in Section 24.1 (Limitation on Assignment by Project Company).

**“Transmission Pipeline”** means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Project Company Storage Tank, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications). The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

**“Transmission Pipeline Alignment”** means the real property over or within which the Transmission Pipeline is to be constructed.

**“Transmission Pipeline Easement Grantors”** means the grantors of the Transmission Pipeline Easements.

**“Transmission Pipeline Easements”** means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

**“Transmission Pipeline Pumping Stations”** means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project).

**“Transmission Pipeline System”** means the Transmission Pipeline and the Project Company Storage Tank.

**“Transmission Pipeline System Real Property Interests”** means (1) a fee simple absolute in the Project Company Portion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

**“Transmission Pipeline Terminus Site”** means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline on which the Project Company Storage Tank is to be constructed as part of the Project and SAWS Storage Tanks are to be constructed as part of the SAWS Interconnection Improvements, as described in Appendix 1 (Description of the Project).

**“TWDB”** means the Texas Water Development Board, or any predecessor or successor agency.

**“Unacceptable Product Water”** means water produced by the Project Company and made available to SAWS that does not comply with the Product Water Quality Guarantee to such an extent that it (1) does not meet primary and secondary drinking water standards under Applicable Law; (2) presents a risk to public health or safety; or (3) has the potential to materially damage or destroy SAWS or private property or create an imminent need to clean, repair, replace or restore any such property.

**“Uncontrollable Circumstances”** means any act, event or circumstance that (a) is beyond the reasonable control of the Project Company in relying on it as a justification for performance or schedule relief as provided hereunder, and (b) materially expands the scope, interferes with, delays or prevents the performance by the Project Company of the Contract Obligations, to the extent that such act, event or circumstance is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Water Transmission and Purchase Agreement by the Project Company. Subject to the forgoing, Uncontrollable Circumstances include the following acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risk):

- (1) Section 5.2(B) (Change in Law Events) – paragraphs (1), (2), (3), (4), (5) and (6) only;
- (2) Section 5.2(C) (Raw Groundwater Events) – all paragraphs;
- (3) Section 5.2(D) (Force Majeure Events) – all paragraphs;
- (4) Section 5.2(E) (Project Site and Project Site Lessor Risks) – paragraph (4); and
- (5) Section 5.2(F) (Other Circumstances) – paragraphs (1), (2), (3) (but solely to the extent that such act, circumstance or event would constitute an Uncontrollable Circumstance if applicable to the Project Company), (4), (5), (6), (7) and (8).

An Uncontrollable Circumstance also includes a SAWS Fault (without, however, limiting the Project Company’s right to bring an action for breach on account of a SAWS Fault or the obligations of SAWS to make any payments provided under Section 16.3 (Project Company Relief Due to a SAWS Fault)). The acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risks) that are not specifically referred to above in items (1), (2), (3), (4) and (5) of this definition shall not constitute Uncontrollable Circumstances.

**“Unexcused Supply Shortfall Units”** has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

**“Unit”** means an Acre Foot of Product Water, or the equivalent in gallons or cubic feet, as applicable in the circumstances.

**“Unit Price”** has the meaning set forth in Section 17.4 (Unit Price).

**“Unit Price Adjustments”** has the meaning set forth in Section 17.8(B) (Adjustments to the Unit Price).

**“Utilities”** means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping,

wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

**“Variable Compensable Costs”** has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

**“Variable Compensable Costs Unit Price”** has the meaning set forth in Section 17.3(E) (Budgeted Variable Compensable Costs Unit Price).

**“Wastewater”** means (1) any process wastewater produced at the Project, and (2) any Product Water produced at the Well Field that requires discharge from the Transmission Pipeline before reaching the Product Water Delivery Point for any reason, including flushing requirements or any failure to meet disinfection standards under the Product Water Quality Guarantee.

**“Water Supply Corporation”** means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and authorized to exercise the power of eminent domain under Section 49.222(a) of the Texas Water Code, and its permitted successors and assigns.

**“Water Transmission and Purchase Agreement”** means this Water Transmission and Purchase Agreement, and includes the Transaction Forms and Appendices.

**“Water Transmission and Purchase Agreement Amendment”** has the meaning set forth in Section 26.7 (Water Transmission and Purchase Agreement Amendments).

**“Water Transportation Agreement”** means the Water Transportation Agreement, to be effective on or before the Financial Closing Date, required to be executed between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

**“Well Field Facilities”** means the facilities and roads to be constructed on the Well Field Facilities Site for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Wells and the Collection Pipelines.

**“Well Field Facilities Site”** means the land upon which the Well Field Facilities are to be constructed, including approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project).

**“Well Field Facilities Site Real Property Interests”** means (1) a fee simple absolute interest in the Well Sites, and (2) permanent easements for the Collection Pipelines Rights-of-Way.

**“Well Field Meters”** has the meaning set forth in Section 10.10(C) (Well Field Meters).

**“Wells”** means wells, casings, related pumping equipment and appurtenant facilities to be constructed in the Well Field for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project).

**“Well Sites”** means each of the sites of approximately two-acres upon which the Wells are to be constructed.

SECTION 1.2. INTERPRETATION.

This Water Transmission and Purchase Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Water Transmission and Purchase Agreement otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Water Transmission and Purchase Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Water Transmission and Purchase Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(F) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to SAWS, Governmental Bodies and Private Persons. Each reference to SAWS or a Governmental Body is deemed to include a reference to any successor to SAWS or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of SAWS or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) References to Treatment. The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Groundwater, shall mean and refer to the operation of the Project by the Project Company to clarify, filter, disinfect and treat Raw Groundwater and make available Product Water to SAWS, all in accordance with this Water Transmission and Purchase Agreement.

(M) References to “Making Available Product Water”. The expressions “making available,” “make available,” “made available” and any similar expressions, when used with respect to Product Water, shall mean and refer to conditions in which (1) there is Product Water in the Project Company Storage Tank at a level that is higher than the level of the opening of the pipe connecting the Project Company Storage Tank to the SAWS Storage Tank, and (2) there is Product Water in the Transmission Pipeline System that is free to flow without obstruction into the Project Company Storage Tank to replenish continuously (with further replenishment of the Product Water in the Transmission Pipeline System) any Product Water in the Project Company Storage Tank to such higher level as Product Water moves from the Project Company Storage Tank to the SAWS Storage Tank. In the event both of the conditions described in items (1) and (2) above are satisfied and in effect, Product Water shall be deemed to have been made available hereunder. In the event either or both of the conditions described in items (1) and (2) are not satisfied and in effect, Product Water shall be deemed not to have been made available hereunder. Protocols or conventions for measuring the number of Units of Product Water that has not been made available in such circumstances shall be developed and agreed to by the parties before the Financial Closing Date when the design of the Project Improvements is sufficiently advanced for such protocols or conventions to be established. The resulting agreement shall be documented in a Contract Administration Memorandum.

(N) References to “Take Delivery Of”. The expression “take delivery of”, and any similar expressions, when used with respect to Product Water, shall mean and refer to the operation by SAWS of the gravity feed system at the SAWS Interconnection Improvements to move Product Water from the Project Company Storage Tank through the Product Water Delivery Point into the SAWS Storage Tanks. The number of Units that SAWS takes delivery of on any day shall be measured by the totalizer attached to the Project Flow Meter.

(O) References to “Mortgage”. The term “mortgage” shall mean and include “deed of trust”, and the granting of a deed of trust.

(P) Entire Agreement. This Water Transmission and Purchase Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, this Water Transmission and Purchase Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(Q) Counterparts. This Water Transmission and Purchase Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Water Transmission and Purchase Agreement.

(R) Governing Law. This Water Transmission and Purchase Agreement shall be governed by and construed in accordance with the applicable laws of the State.

(S) Severability. Each provision of this Water Transmission and Purchase Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Water Transmission and Purchase Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Water Transmission and Purchase Agreement as nearly as possible to its original intent and effect.

(T) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Water Transmission and Purchase Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(U) Rounding of Acre Foot Calculations. All calculations hereunder involving Acre Feet shall be rounded to the nearest one-tenth of an Acre-Foot.

(V) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(W) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(X) Applicability, Stringency and Consistency of Contract Standards. The parties understand that one or more of the Contract Standards applicable to a performance obligation of the Project Company may include a range of applicable criteria; in such circumstances, performance by the Project Company shall be deemed to have satisfied such Contract Standard so long as it is within such range. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Water Transmission and Purchase Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Water Transmission and Purchase Agreement.

(Y) Delivery of Documents in Digital Format. In this Water Transmission and Purchase Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS' request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and

Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(Z) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(AA) Third-Party Rights. This Water Transmission and Purchase Agreement is exclusively for the benefit of SAWS and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party SAWS Indemnitees as provided in Section 25.1 (Project Company's Obligation to Indemnify) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(BB) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its "discretion" by the express terms hereof. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Water Transmission and Purchase Agreement. When a party does not have "discretion" it means that the party shall act reasonably. A party may exercise any termination right hereunder in its discretion.

(CC) Convenience Termination. The exercise by SAWS or the Project Company of its right of convenience termination under any provision of this Water Transmission and Purchase Agreement shall not be deemed a breach of any implied duty of good faith dealing or a SAWS Event of Default or a Project Company Event of Default, nor shall any damages be payable by SAWS or the Project Company on account thereof. The only compensation payable by SAWS or the Project Company upon the exercise of their respective convenience termination options shall be the amounts specified herein in connection therewith.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF SAWS.

SAWS represents and warrants, as of the Contract Date, that:

(A) Existence and Powers. SAWS is an agency of the City created by City Ordinance 75686 as a public utility, validly existing and in good standing under the laws of the State, and has the authority to do business in the State and in any other state in which it conducts its activities with full legal right, power and authority to execute, deliver and perform its obligations under this Water Transmission and Purchase Agreement.

(B) Validity and Enforceability. This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by SAWS, and constitutes a legal, valid and binding special obligation of SAWS, enforceable against SAWS in accordance with its terms, except to the extent that its enforceability may be limited by the law of sovereign or governmental immunity (except as provided in Section 17.19 (Goods and Services)), bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect, and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by SAWS of this Water Transmission and Purchase Agreement nor the performance by SAWS of its obligations in connection with the transactions contemplated hereby or the fulfillment by SAWS of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to SAWS; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which SAWS is a party or by which SAWS or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) All Required Approvals Obtained. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or prior approval of voters is required for the valid execution and delivery by SAWS of this Water Transmission and Purchase Agreement or the performance by SAWS of its payment or other obligations hereunder other than those which have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Project Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against SAWS, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by SAWS or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against SAWS, or any other agreement or instrument entered into by SAWS in connection with the transactions contemplated hereby or on the ability of SAWS to perform its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Contract Date, that:

(A) Existence and Powers and Ownership. The Project Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Water Transmission and Purchase Agreement. Abengoa owns indirectly 100% of the Shares of the Project Company.

(B) Validity and Enforceability. This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Project Company of this Water Transmission and Purchase Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) All Required Approvals Obtained. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Water Transmission and Purchase Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. To the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by the Project Company or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. To the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending, overtly threatened or publicly announced against a Project

Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of a Project Contractor to perform its obligations under its respective Project Contract.

(G) Groundwater Leases. Groundwater leases listed in Reference Document 2 are in force and effect sufficient to provide groundwater, in aggregate, in a volume at least equal to the Baseline Annual Volume, subject to the authority for such groundwater to be pumped, withdrawn, and transported under the terms of the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit.

(H) Sufficiency of Groundwater Permitting Arrangements. The existing Groundwater Drilling and Operating Permit and the existing Groundwater Transportation Permit constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual Volume, subject only to the terms and conditions of such permits.

(I) Intellectual Property. The Project Company owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(J) Plan of Development and Financing and Abengoa Letter of Support. The statements made by Abengoa in the Plan of Development and Financing and the Abengoa Letter of Support, are an expression of Abengoa's good faith intention as to the manner in which Abengoa intends to proceed to develop and finance the Project in order to reach the Financial Closing Date.

(K) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services.

(L) No Public Utility Regulation. The Project Company is not and will not by reason of this Water Transmission and Purchase Agreement or otherwise be a "retail public utility" within the meaning of Chapter 13 of the Texas Water Code, and is not and will not be subject to the jurisdiction over utility rates of the TCEQ or Public Utility Commission of Texas.

(M) Practicability of Performance. Subject to, and in accordance with, the terms of this Water Transmission and Purchase Agreement, the Project Company assumes the risk of the practicability and possibility of performance of the Project and the Contract Obligations on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Monthly Water Purchase Payments.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Water Transmission and Purchase Agreement shall become effective, and the term hereof (the "**Term**") shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Water Transmission and Purchase Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Water Transmission and Purchase Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. ASSIGNMENT AND CONVEYANCE OF THE PROJECT ASSETS EFFECTIVE ON THE EXPIRATION DATE.

(A) Obligation to Assign and Convey. Not later than 60 days prior to the Expiration Date, unless this Water Transmission and Purchase Agreement has been terminated earlier, the Project Company, at its sole cost and expense, shall assign and convey, or cause to be assigned and conveyed, to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance. Such assignment, conveyance, acceptance and assumption shall be effective on the Expiration Date.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 3.2(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other person. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall, effective on the Expiration Date, (1) convey to SAWS Project Real Property which is owned by the Project Company and (2) cause the Water Supply Corporation to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS all other Project Real Property. Such conveyance shall convey good and indefeasible title and interest in the Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real

property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including particularly those set forth in Article 4) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for in Section 3.2(A) (Obligation to Assign and Convey), including executing and delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Applicability of Related Provisions. The provisions of Sections 23.4 (Conveyance), 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) shall apply to a conveyance and assignment made pursuant to Section 3.2(A) (Obligation to Assign and Convey), as if written to apply to such a conveyance rather than to a conveyance made pursuant to a purchase option occurring upon the termination of this Water Purchase and Transmission Agreement prior to the Expiration Date.

SECTION 3.3. SURVIVAL.

Notwithstanding any other provision of this Water Transmission and Purchase Agreement, this Section and the following provisions hereof will survive the expiration or any earlier termination of this Water Transmission and Purchase Agreement:

- (1) Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date);
- (2) Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period);
- (3) Section 5.11 (Financial Books and Records);
- (4) Section 11.7 (Project Assets Transfer Condition);
- (5) Article 18 (Dispute Resolution);
- (6) Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;
- (7) Article 23 (SAWS Project Assets Purchase Options);
- (8) Article 25 (Indemnification), including all of the indemnities referred to therein;
- (9) Section 26.10 (Intellectual Property Rights);
- (10) Section 26.12 (Project Company's Confidentiality Obligations);
- (11) Section 26.13 (SAWS' Confidentiality Obligations);
- (12) Section 26.14 (Personal Information);

(13) All provisions of this Water Transmission and Purchase Agreement with respect to payment obligations of the Project Company or SAWS accrued prior to the Termination Date; and

(14) Any other provision of this Water Transmission and Purchase Agreement providing for survival by its express terms;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

DEVELOPMENT AND FINANCING PERIOD

SECTION 4.1. FINANCIAL CLOSING DATE CONDITIONS.

(A) Documents Delivered Prior to the Contract Date. The parties acknowledge that, on or before the Contract Date, the following documents were executed and delivered in connection with the execution and delivery of this Water Transmission and Purchase Agreement:

- (1) The Abengoa Letter of Support, attached hereto in Appendix 16 (Plan of Development and Financing and Abengoa Letter of Support);
- (2) The Guaranty Agreement;
- (3) The Groundwater Lease Conveyance Agreement; and
- (4) The Groundwater Supply Agreement.

(B) Financial Closing Date Conditions Defined. The obligations of the Project Company and SAWS to proceed with their respective obligations hereunder during the Construction Period and the Operating Period shall not commence unless and until all of the following conditions (the "**Financial Closing Date Conditions**") are satisfied or have been waived by SAWS:

(1) Transmission Pipeline System Real Property Interests. The Water Supply Corporation shall have acquired the Transmission Pipeline System Real Property Interests (or binding and enforceable options to acquire such Transmission Pipeline System Real Property Interests) sufficient to commence construction of substantially all of the Transmission Pipeline System. In acquiring easements, the Project Company shall comply with Section 26.1(A) (Right-of-Way Easements). For any other parcels, the Project Company shall (except as SAWS may otherwise approve, acting reasonably) have acquired a valid right-of-way entry to construct, shall have initiated or caused to be initiated an eminent domain proceeding or a right of entry if the acquisition of such parcel is not material to the completion of the Transmission Pipeline System within the Project Schedule.

(2) Well Field Facilities Site Real Property Interests. The Project Company, acting in cooperation with the Water Supply Corporation, as appropriate, shall have acquired all of the Well Field Facilities Site Real Property Interests. In acquiring easements, the Project Company shall comply with Section 26.1(A) (Right-of-Way Easements).

(3) Groundwater Leases and Permits. Groundwater Leases sufficient for the production of the Baseline Annual Volume shall be in full force and effect, and there shall be no material breach or event of default existing under such Groundwater Leases sufficient for the production of the Baseline Annual Volume by any party thereto. The Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual

Volume and to continue such pumping, withdrawal and transportation for a term of not less than 30 years commencing not earlier than September 1, 2014, subject only to the terms and conditions of such permits. No other legal authority is required for such pumping, withdrawal and transportation from the POSGCD or any other Governmental Body.

(4) Groundwater Lease Conveyance Agreement. The Groundwater Lease Conveyance Agreement shall be in full force and effect, and there shall be no material breach or event of default existing thereunder by either party thereto.

(5) Raw Groundwater Parameters. The Project Company shall have drilled additional test wells and tested all additional samples of Raw Groundwater in the Well Field to the extent reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(6) Project Site Conditions. The Project Company shall have made all soil test borings in the Project Sites and made all Project Site inspections and reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(7) Land Use Proceedings and Government Approvals. The Project Company shall have conducted and completed all zoning, planning and land use proceedings, and shall have submitted applications for and obtained all Governmental Approvals required to be obtained, for the commencement of construction of the Project.

(8) Transmission Pipeline Terminus Site Plan. The Project Company shall have delivered to SAWS a site plan of the Transmission Pipeline Terminus Site showing:

(a) that the proposed location of the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tanks and related portion of the SAWS Interconnection Improvements, as set forth in Appendix 1 (Description of the Project), on the Transmission Pipeline Terminus Site is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground in any material matter); and

(b) no encroachments from the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tanks and related portion of the SAWS Interconnection Improvements, extending to adjacent property or from adjacent property onto the Project, nor any gaps, gores, projections, protrusions or other survey defects which will have a material adverse impact on the use of the Transmission Pipeline Terminus Site.

(9) Other Due Diligence Documents for the Transmission Pipeline Terminus Site. The Project Company shall provide SAWS, with respect to that portion of the Transmission Pipeline Terminus Site being conveyed to SAWS (the

**“SAWS Portion of the Transmission Pipeline Terminus Site”**) pursuant to Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site), a survey prepared by a registered professional land surveyor licensed in the State satisfying the requirements of a Category 1A, Condition II Survey, sufficient for a title company to issue all requested survey endorsements, certified to SAWS, the title company and the Project Company; a Phase I Environmental Site Assessment (i) dated no more than 180 days prior to the conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site, (ii) made in accordance with then-current ASTM standards, (iii) naming SAWS as a “user”, (iv) unless recommending further action, sufficient to satisfy the “all appropriate inquiries” necessary for SAWS to be an “innocent landowner” or “bona fide prospective purchaser”, together with any other follow-up reports obtained by the Project Company or Water Supply Corporation; and a title commitment from Chicago Title Insurance Company or such other reputable title company to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Project Company’s purchase price (on a per square foot allocation), subject only to those exceptions to title of record in the Official Public Records of Real Property of Bexar County, Texas that do not materially affect the ability of SAWS to use the SAWS Portion of the Transmission Pipeline Terminus Site for the purposes of this Water Transmission and Purchase Agreement. The Project Company shall, prior to and as a condition of conveyance described in Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site), cure any defects to title, and cause to be removed from the title commitment, that materially affect the ability of SAWS to use the SAWS Portion of the Transmission Pipeline Terminus Site for the purposes of this Water Transmission and Purchase Agreement. The SAWS Portion of the Transmission Pipeline Terminus Site must be separately platted as its own lot, at Project Company’s sole expense, prior to conveyance pursuant to Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site). If the Phase I Environmental Site Assessment recommends further action, the Project Company shall, as a condition precedent to Financial Close, cause all necessary remediation to be performed to the satisfaction of the Senior Debt Creditors and SAWS such that SAWS can qualify as an “innocent landowner” and “bona fide prospective purchaser.”

(10) Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site. The Project Company shall have conveyed to SAWS, without compensation, good and indefeasible title to and interest in SAWS Portion of the Transmission Pipeline Terminus Site, on a deed form subject to SAWS approval, acting reasonably, subject only to those recorded exceptions to title that are permissible under Section 4.1(B)(9) (Other Due Diligence Documents for the Transmission Pipeline Terminus Site). At the closing of the conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site, SAWS and the Project Company shall execute such reasonable and customary documents required by the title company to close such transaction and issue to SAWS the owner policy of title insurance subject to no exceptions or exclusions that have not been approved by SAWS, and shall each pay such reasonable and customary expenses as are typically allocated to a buyer and seller for a closing of a real estate transaction in San Antonio, Texas. The remaining portion of the Transmission Pipeline Terminus Site is the **“Project Company Portion of the Transmission Pipeline Terminus Site.”**

(11) EPC Agreement. The Project Company shall have caused the definitive EPC Agreement to be negotiated and executed with the EPC

Contractor. The EPC Contractor shall be a licensed contractor in the State. The EPC Agreement shall provide for the engineering, procurement, construction and completion of the Project Improvements on a fixed price, turnkey basis.

(12) Operating Service Agreement. The Project Company shall have negotiated and executed the definitive Operating Service Agreement between the Project Company and the Operating Service Provider. The Operating Services Agreement shall provide for the operation, maintenance, repair and replacement of the Project for the Term.

(13) Construction Management Agreement. The Project Company shall have negotiated and executed the definitive Construction Management Agreement with the Water Supply Corporation. The Construction Management Agreement shall provide for the management of the construction of the Project Improvements under the EPC Agreement by the Water Supply Corporation.

(14) Water Transportation Agreement. The Project Company shall have negotiated and executed the definitive Water Transportation Agreement with the Water Supply Corporation. The Water Transportation Agreement shall provide for the transportation of Product Water to the Project Company Water Storage Tank through the Transmission Pipeline by the Water Supply Corporation.

(15) Project Construction Loan Agreement. The Project Company shall have negotiated and executed the definitive Project Construction Loan Agreement with the Water Supply Corporation. The Project Construction Loan Agreement shall provide for a loan from the Project Company to the Water Supply Corporation to finance the design and construction of the portions of the Project to be owned by the Water Supply Corporation.

(16) Required Construction Period Insurance. The Project Company shall have submitted to SAWS certificates of insurance for all Required Construction Period Insurance.

(17) Representations. The Project Company shall have delivered to SAWS a certificate of an authorized officer to the effect that the representations of the Project Company set forth in Section 2.2 (Representations and Warranties of the Project Company) hereof are true and correct in all material respects as of the Financial Closing Date as if made on and as of the Financial Closing Date (except to the extent such representations expressly refer to an earlier or other date, in which case they shall be true and correct as of such earlier or other date).

(18) Legal Proceedings. There shall be no Legal Proceeding, at law or in equity, pending before or by any court or Governmental Body, which seeks to enjoin or restrict the construction or operation of the Project in the manner or for the purposes contemplated by this Water Transmission and Purchase Agreement that would substantially impair the Project Company's ability to perform the Contract Obligations.

(19) Financial Condition. The Project Company shall provide financial statements of the Project Company and Abengoa, audited if available, for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Project Company or Abengoa that would materially and

adversely affect the ability of the Project Company or Abengoa to perform their respective obligations under this Water Transmission and Purchase Agreement, the Guaranty Agreement, the Groundwater Lease Conveyance Agreement or any other Transaction Agreement.

(20) Project Company Counsel Opinion. The Project Company shall deliver to SAWS such favorable opinions of counsel for the Project Company, in customary form for project financing transactions, as to this Water Transmission and Purchase Agreement, any agreements made pursuant hereto, matters of law covered by the representations of the Project Company set forth in Section 2.2(A), (B), (C), (D) and (E) (Representations and Warranties of the Project Company), and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates. Such opinions shall further state in substance that the Project Company owns the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and has the right under the leasehold estate granted by the Groundwater Lease Conveyance Agreement to produce Raw Groundwater from the Well Field Facilities Site and transport such Raw Groundwater through the Transmission Pipeline to the Project Company Storage Tank.

(21) Blue Water Vista Ridge, LLC Counsel Opinion. The Project Company shall deliver to SAWS such favorable opinions of counsel for Blue Water Vista Ridge, LLC, in customary form for project financing transactions, as to the Groundwater Lease Conveyance Agreement and the Groundwater Supply Agreement, any agreements made pursuant thereto, matters of law covered by the legal representations of Blue Water Vista Ridge, LLC set forth therein, and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates.

(22) Water Supply Corporation Counsel Opinion. The Project Company shall deliver to SAWS a letter from counsel for the Water Supply Corporation confirming that the opinion of such counsel delivered pursuant to Section 13.2(E) (Water Supply Corporation Counsel Opinion) remains in effect on and as of the Financial Closing Date.

(23) Completion of Appendices 3, 5 and 9. Appendices 3 (Technical Specifications), 5 (Performance Test Procedures and Standards) and 9 (Guaranteed Maximum Electricity Utilization and Demand) shall be completed as provided therein.

(24) Project Real Property Ownership. The Project Company shall have delivered a certificate to SAWS, as of the Financial Closing Date, as to which elements of the Project Real Property are owned by the Project Company and which elements are owned by the Water Supply Corporation, together with appropriate evidence thereof.

(25) Financial Close. Financial Close shall have occurred. In connection therewith:

(a) Financial Close Defined. Financial Close shall be deemed to have occurred when (1) Initial Senior Debt has been issued under the definitive Senior Debt Financing Agreements on a permanent basis, and equity has been definitively committed under the Equity Contribution Agreement for the financing in full of amounts sufficient to pay the costs of achieving Acceptance

as projected in the Financial Model, and (2) the other requirements of this Section 4.1(B) (Financial Closing Date Conditions Defined) have been met. Financial Close shall not include (1) elective payments by or on behalf of Abengoa or its Affiliates for early construction costs (or financing arrangements made to pay such costs), (2) any transaction in which the Initial Senior Debt is issued to or purchased by Abengoa or any Affiliate of Abengoa, or (3) any transaction in which any such Project Costs are not financed on a permanent basis in a bona fide third-party transaction. Financing on a permanent basis includes construction financing in which the lender does not require committed take-out financing as a condition to making the construction loan.

(b) Initial Senior Debt Requirements. The Initial Senior Debt shall comply with Section 7.1 (Project Financing) and the Project shall be financed substantially in compliance with Appendix 16 (Plan of Development and Financing and Abengoa Letter of Support), subject to such exceptions as SAWS, acting reasonably, may approve. The Project Company shall use commercially reasonable efforts to issue Initial Senior Debt using tax-exempt private activity bonds that are assigned an investment grade rating by at least two Rating Services, to the extent private activity bond volume cap is reasonably available for such purposes and taking into account the overall impact on the Project and the costs and equity returns associated with such a financing in relation to alternative financing methods. Any Initial Senior Debt not issued by the Project Company as tax-exempt private activity bonds is not required to be rated by any Rating Service and, if rated, is not required to carry an investment grade credit rating by any Rating Service. To the extent required by State law, any Initial Senior Debt issued by or on behalf of the State or any local government shall be approved by the Texas Attorney General and registered with the Texas Comptroller of Public Accounts and issued under and pursuant to Chapter 1371, as amended, Texas Government Code and other Applicable Law providing a legal basis for such issuance of debt.

(c) SAWS Review. The Project Company shall provide to SAWS (1) for its review, reasonably in advance of any proposed bond or securities offering or bank loan commitment, copies of the draft Senior Debt Financing Agreements and, if applicable, the draft preliminary official statement or preliminary offering memorandum, and (2) reasonable advance notice of the commencement of any bond offering or loan commitment.

(d) Financial Model. The Project Company shall have submitted to SAWS a financial model (the "**Financial Model**") meeting the requirements of this Section 4.1(B)(25)(d) (Financial Model). The Financial Model:

(1) Shall be prepared by or on behalf of the Project Company in good faith and in accordance with generally accepted standards prevailing for the preparation of similar models in connection with the project financing of major public works projects of a similar size;

(2) Shall be audited and verified by an independent recognized model auditor;

(3) Shall fairly disclose all material cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Water Transmission and Purchase Agreement and by shareholders in purchasing Shares;

(4) Shall be the financial model that was used as the basis for the decision by the Senior Debt Creditors to enter into the Senior Debt Financing Agreements (either directly or indirectly in the preparation of the disclosure documents that were provided in a bond or securities offering or placement) and, if applicable, by the Rating Services in rating or shadow rating the Initial Senior Debt; and

(5) Shall be prepared in a format and using a methodology consistent with the financial model delivered to SAWS in connection with the authorization of the execution of this Water Transmission and Purchase Agreement so as to enable the proper determination of the Target Equity Return Amount.

The Project Company shall bear the entire risk of any errors in or omissions from the Financial Model, and shall not be entitled to any compensation from or other redress against SAWS in relation to any loss or damage that it suffers in consequence of such error or omission. In no event shall the agreement of the parties to establish the Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(e) Creditors' Remedies Agreement. The Senior Debt Creditors and the Project Company shall have negotiated and executed the definitive Creditors' Remedies Agreement with SAWS. The Creditors' Remedies Agreement shall provide for step-in and cure rights by the Senior Debt Creditors, and be in a form consistent with the form of similar agreements customarily executed in project financings similar to the Initial Senior Debt financing.

(f) All Conditions. The parties acknowledge and agree that the conditions itemized in Section 4.1(B) (Financial Closing Date Conditions Defined), other than Section 4.1(B)(25) (Financial Close), are independent of the Financial Close, and must be satisfied in order for the Financial Closing Date to be established, irrespective of whether such conditions are or are not prerequisites of Financial Close.

(26) Acceptability and Effectiveness of Documents. Each of the agreements, documents and instruments identified in Section 4.1(B) (Financial Closing Date Conditions Defined) shall have terms and conditions that are materially consistent with this Water Transmission and Purchase Agreement; shall not materially and adversely affect the rights and obligations of SAWS hereunder; and shall be valid, in full force and effect and enforceable against each party thereto on the Financial Closing Date. No such agreement, document or instrument shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Financial Closing Date, no party to any such document, instrument or agreement shall be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(C) Official Certificate as to Certain Matters. The conditions specified in subsections (1), (2), (3), (5), (6), (7), (17), (18) and (19) of this Section 4.1(B) (Financial Closing Date Conditions Defined) shall be deemed to have been satisfied upon the delivery of a certificate of a duly authorized officer of the Project Company confirming the matters set forth in such certificates, absent manifest error or credible evidence of fraud.

(D) Expenses. All costs and expenses incurred by the Project Company in performing the Development and Financing Work shall be for the account of the Project Company and shall not be reimbursable by SAWS, except as and to the extent provided in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) in the event SAWS exercises its right to terminate this Water Transmission and Purchase Agreement during the Development and Financing Period.

SECTION 4.2. SAWS DEVELOPMENT AND FINANCING PERIOD RESPONSIBILITIES AND RIGHTS.

(A) Initial Senior Debt. In connection with the Initial Senior Debt, SAWS at its own cost and expense shall:

(1) SAWS Information. Cooperate with and assist the Project Company in connection with the issuance of the Initial Senior Debt by (a) providing any information, certifications or documents that are in SAWS possession and that are reasonably required in connection with the issuance by the Project Company of the Initial Senior Debt, and (b) if the Initial Senior Debt Financing involves an offering or placement of bonds, providing a letter to the Project Company and to the lead investment business or placement agent, prior to the issuance of any preliminary official statement or preliminary offering memorandum, as to whether the Financial Closing Date Conditions have or have not been satisfied as of the date of the letter.

(2) Representations. Deliver to the Project Company a certificate of an authorized officer to the effect that the representations of SAWS set forth in Section 2.1 (Representations and Warranties of SAWS) hereof are true and correct in all material respects as if made on and as of the Financial Closing Date.

(3) SAWS Counsel Opinion. Deliver to the Project Company and to the Senior Debt Creditors such favorable opinions of counsel for SAWS, in customary form for project financing transactions, as to this Water Transmission and Purchase Agreement, any agreements made pursuant hereto, matters of law covered by the representations of SAWS set forth in Section 2.1 (Representations and Warranties of SAWS), and as to such other matters of law as to the Project Company may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates.

(4) Modifications to this Water Transmission and Purchase Agreement. Make such modifications, corrections and clarifications to this Water Transmission and Purchase Agreement, the Project Real Property Conveyance Agreement, the Groundwater Supply Agreement or any other agreement directly related thereto to which SAWS is a party as may reasonably be requested by the Project Company to facilitate the issuance of the Initial Senior Debt, except that no such modification, correction or clarification shall increase or potentially increase the cost of Product Water to SAWS, reduce the economic benefit of the Project to SAWS, or materially and adversely affect the rights and obligations of SAWS hereunder.

(B) Failure of Compliance by SAWS. No failure by SAWS for any reason to comply with its obligations under Section 4.2(A) (Initial Senior Debt) shall constitute a breach by SAWS of this Water Transmission and Purchase Agreement or an Event of Default by SAWS hereunder. If, however, (1) SAWS fails for any reason to comply with such obligations within 30 days following receipt of a written request for the items specified in Section 4.2(A) (Initial

Senior Debt), and (2) the Project Company shall have satisfied the Financial Closing Date Conditions (other than Section 4.1(B)(25) (Financial Close)), SAWS shall be deemed to have exercised its right to terminate this Water Transmission and Purchase Agreement for convenience as provided in Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period), and shall pay the Project Company the termination payment specified in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) (as applicable to the date of termination) within 60 days following receipt of such written request.

SECTION 4.3. CLOSING THE DEVELOPMENT AND FINANCING PERIOD.

(A) Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date. The Project Company shall provide SAWS with periodic reports regarding the satisfaction of the Financial Closing Date Conditions, and shall give SAWS prompt written notice when all of the Financial Closing Date Conditions have been achieved. Upon the satisfaction or waiver by SAWS of the Financial Closing Date Conditions, the parties shall hold a formal closing at a location reasonably determined by SAWS acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Financial Closing Date has occurred. The Construction Period shall thereupon commence. The date of such closing shall be the “**Financial Closing Date**” hereunder. On or promptly following the Financial Closing Date, the Project Company shall deliver to SAWS copies of the executed Senior Debt Financing Agreements and all related closing documents provided in connection with Financial Close.

(B) Financial Closing Longstop Date Defined. The “**Financial Closing Longstop Date**” shall mean the date that is 910 days following the Contract Date. The Financial Closing Longstop Date is not subject to extension for any reason.

(C) Failure by the Project Company to Satisfy the Financial Closing Date Conditions. If, by the Financial Closing Longstop Date, the Project Company fails to satisfy all of the Financial Closing Date Conditions, and any such failure has not been waived by SAWS, SAWS may terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4(D) (SAWS Termination After the Financial Closing Longstop Date). No such failure shall constitute a breach by the Project Company of this Water Transmission and Purchase Agreement or a Project Company Event of Default. SAWS shall not have any payment, compensation, reimbursement or other obligation to the Project Company on account of any such failure.

SECTION 4.4. SAWS CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.

(A) SAWS Convenience Termination Option Generally. At any time from the Contract Date until the Financial Closing Date, SAWS shall have the right, exercisable in its discretion for any reason by written notice to the Project Company, to terminate this Water Transmission and Purchase Agreement; provided, however, that, SAWS shall not exercise such termination option during the period between the issuance of any preliminary official statement or offering or placement memorandum relating to the Initial Senior Debt through the Financial Closing Date. The date of delivery of any such written termination notice shall be the Termination Date hereunder.

(B) SAWS Termination On or Before the Financial Closing Longstop Date. If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally) on or before the Financial Closing Longstop Date, SAWS shall pay the Project Company, within 60 days following the Termination Date, an amount equal to Project Company Reimbursable Costs.

Concurrently with payment by SAWS to the Project Company of the termination payment due upon any convenience termination of this Water Transmission and Purchase Agreement under this Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) and subject to Section 26.13 (SAWS' Confidentiality Obligations), the Project Company shall deliver to SAWS copies of, and transfer title to, all of the property developed or acquired during the period commencing on the Contract Date and ending on the Termination Date that was funded by the Project Company Reimbursable Costs, including designs, studies, surveys, professional work product, contract rights, and interests of any kind in real property. Such property may be used by SAWS thereafter for any purpose, but without liability of the Project Company with respect thereto. All such property (1) shall be delivered without any representation or warranty as to its content or conclusions, including title or the practicability or feasibility of the completion or operation of the Project, and (2) shall exclude any property or contract rights to Raw Groundwater that was not funded by the Project Company Reimbursable Costs.

(C) Project Assumption Fee. If, at any time within five years following termination of this Water Transmission and Purchase Agreement pursuant to Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date), SAWS undertakes a project substantially similar to the Project, SAWS shall give prompt notice thereof to Abengoa and shall promptly pay the Project Company a project assumption fee of \$10,000,000. SAWS shall be deemed to have undertaken a project substantially similar to the Project only if (1) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement with Blue Water Vista Ridge, LLC or any Affiliate (or an intermediary acting on behalf of Blue Water Vista Ridge, LLC or any Affiliate, or a successor to all or substantially all of the business or assets of Blue Water Vista Ridge, LLC) for the purchase of Raw Groundwater and an assignment of permits under an arrangement similar in substance to that contemplated by the Groundwater Lease Conveyance Agreement, and (2) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement for the construction of a transmission pipeline system similar to the Transmission Pipeline System to transport such Raw Groundwater (treated or untreated) to the SAWS Distribution System.

(D) SAWS Termination After the Financial Closing Longstop Date. If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally) after the Financial Closing Longstop Date, (1) SAWS shall have no payment, compensation, reimbursement or other obligation to the Project Company, and (2) the Project Company shall pay SAWS an amount equal to SAWS Reimbursable Costs.

**SECTION 4.5. PROJECT COMPANY CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.**

At any time from the Contract Date until the Financial Closing Date, the Project Company shall have the right, exercisable in its discretion for any reason by written notice to SAWS, to terminate this Water Transmission and Purchase Agreement. The date of delivery of any such written notice shall be the Termination Date hereunder. In the event the Project Company exercises its termination option pursuant to this Section, the Project Company shall pay the SAWS, within 60 days following the Termination Date, an amount equal to SAWS Reimbursable Costs.

**SECTION 4.6. PROJECT COMPANY REIMBURSABLE COSTS.**

(A) Project Company Reimbursable Costs Defined. "**Project Company Reimbursable Costs**" shall mean reasonable costs and expenses paid or incurred by the Project Company directly and solely in connection with the performance of the Development and Financing Work from the Contract Date through the Termination Date or the Financial Closing Longstop Date (whichever is earlier), as more particularly described in Appendix 18

(Reimbursable Costs Payable on Convenience Termination During the Development and Financing Period). The maximum amount of Project Company Reimbursable Costs is \$40,100,000.

(B) Cost Records and Reporting. During the Development and Financing Period, the Project Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the Development and Financing Work which the Project Company has performed since the Contract Date, the costs of which would constitute Project Company Reimbursable Costs if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period). All such financial records of the Project Company shall be maintained in accordance with generally accepted accounting principles and auditing standards. In addition, on or before the fifteenth day of each month following the end of each quarter after the Contract Date, the Project Company shall provide to SAWS a general summary of the Development and Financing Work undertaken in the prior quarter and a reasonable estimate of its costs, a summary of the Development and Financing Work expected to be undertaken in the current quarter and the immediately following quarter, and an estimate of the percentage of the Development and Financing Work that has been completed.

SECTION 4.7. SAWS REIMBURSABLE COSTS.

(A) SAWS Reimbursable Costs Defined. “SAWS Reimbursable Costs” shall mean reasonable costs and expenses paid or incurred by SAWS directly and solely in connection with this Water Transmission and Purchase Agreement from the Contract Date through the Termination Date, as more particularly described in Appendix 18 (Reimbursable Costs Development and Payable on Convenience Termination During the Development and Financing Period). The maximum amount of SAWS Reimbursable Costs is \$2,000,000.

(B) Cost Records and Reporting. During the Development and Financing Period, SAWS shall prepare and maintain proper, accurate and complete books and records of the cost and description of the work which SAWS has performed since the Contract Date, the costs of which would constitute SAWS Reimbursable Costs (1) if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4(D) (SAWS Termination After the Financial Closing Longstop Date), or (2) the Project Company were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period). All such financial records of SAWS shall be maintained in accordance with the accounting principles and auditing standards under which SAWS financial records are generally kept. In addition, on or before the fifteenth day of each month following the end of each quarter after the Contract Date, SAWS shall provide to the Project Company a general summary of all such work undertaken in the prior quarter, and a reasonable estimate of its costs, and a summary of all such work expected to be undertaken in the current and immediately following quarter.

SECTION 4.8. EARLY CONSTRUCTION.

Nothing in this Water Transmission and Purchase Agreement shall be construed to prohibit (1) the Project Company, at its risk, cost and expense, from beginning construction of the Project Improvements before the Financial Closing Date, or (2) SAWS, at its risk, cost and expense, from beginning construction of the SAWS Interconnection Improvements before the Financial Closing Date, but no such costs or expenses shall constitute Project Company Reimbursable Costs or SAWS Reimbursable Costs.

ARTICLE 5

CONTRACT OBLIGATIONS GENERALLY

SECTION 5.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Project Real Property Ownership. The Project Real Property shall be owned by the Project Company or the Water Supply Corporation, as the Project Company may determine.

(B) Project Company. The Project Company shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, (1) obtain and maintain the rights to all groundwater and Governmental Approvals relating thereto required to meet the Performance Guarantees, (2) permit, design, construct, finance, operate, maintain, repair, replace and manage the Project, and (3) produce, supply, make available and sell Product Water to SAWS. The parties acknowledge that Project Company is not obligated under this Water Transmission and Purchase Agreement to construct the SAWS Interconnection Improvements.

(C) SAWS. SAWS shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, (1) construct the SAWS Interconnection Improvements, and (2) purchase and take delivery of Product Water.

(D) Product Water Ownership. SAWS shall become the owner of all Product Water at the Product Water Delivery Point. The Project Company shall have no rights with respect to any effluent resulting from the use of Product Water by SAWS' customers.

(E) Risk of Loss of Product Water. The Project Company shall bear the risk of loss of Product Water at all locations up to the Product Water Delivery Point, beyond which SAWS shall bear the risk of loss.

(F) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Unit Price or otherwise.

(G) Grants and Subsidies Benefit SAWS. All grants, subsidies or other payments in aid of construction or operation made by any Governmental Body with respect to the Project shall be for the exclusive account of SAWS, whether paid or made to the Project Company, SAWS or any other person. The Project Company shall cooperate with SAWS in obtaining all such grants, subsidies or other payments that are available during the Term. This Section does not apply to the proceeds of a Refinancing.

(H) Public Communications. Public communications concerning the Project shall be handled by the parties in accordance with the principles set forth in Appendix 15 (Public Communications).

SECTION 5.2. PROJECT COMPANY ASSUMPTION OF RISK.

(A) General Risk Assumption. Except as provided in Section 5.3 (Exceptions to Project Company Assumption of Risk), Article 16 (Uncontrollable Circumstances), and any provision of this Water Transmission and Purchase Agreement specifically relating to Uncontrollable Circumstances, all risks, costs and expenses in relation to the performance by

the Project Company of its obligations under this Water Transmission and Purchase Agreement wherever occurring (whether in or outside the United States) are allocated to, and accepted by, the Project Company as its entire and exclusive responsibility. Without limiting the generality of the foregoing, the risks allocated to and accepted by the Project Company include all of the risks described or referred to in Sections 5.2(B), (C), (D), (E), (F) and (G), except as provided in the immediately preceding sentence.

including: (B) Change in Law Events. The occurrence of any change in Applicable Law,

(1) The coming into effect of any Applicable Law, whether enacted before or after the Contract Date;

(2) Any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date;

(3) Any non-issuance or delay of the TCEQ or any other Governmental Body in the issuance of any Governmental Approval required for or relating to the Project or the Contract Obligations;

(4) The imposition of any term, condition or requirement by any Governmental Body in connection with any Governmental Approval required for or relating to the Project or the Contract Obligations;

(5) The enactment or adoption of any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;

(6) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law;

(7) Changes in or denials of Governmental Approvals in consequence of the enforcement, lapse or invalidation of an existing Governmental Approval resulting from any action or inaction of the Project Company;

(8) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date;

(9) Any change in Tax Law (except as provided in Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law).

(C) Raw Groundwater Events. Any act, event or circumstance pertaining to Raw Groundwater or the quantity or quality thereof available for pumping, treatment and conveyance to SAWS as Product Water hereunder, including:

(1) Quantity Events:

(a) The unavailability of Raw Groundwater in the quantities required to meet the Performance Guarantees due to any cause, including the absence of legal authority as described in item (3) of this subsection or the pumping and withdrawal of groundwater by any person from any aquifer in volumes that reduce the volume available to the Project Company; or

(b) The cost or difficulty of drilling for, pumping or withdrawing Raw Groundwater in the quantities required to meet the Performance Guarantees; or

(c) The capacity of, or the insufficiency of the number of, Wells initially built with the proceeds of the Initial Senior Debt; or

(d) The quantity of Raw Groundwater available at each Well when the Well is actually drilled; or

(e) Mistakes, errors or inaccuracies for any reason in any pilot testing or other investigations performed by the Project Company to determine the quantity of Raw Groundwater available for pumping and withdrawal at the Well Field.

(2) Quality Events:

(a) The contamination of Raw Groundwater due to any cause; or

(b) Any parameters or characteristics of Raw Groundwater, whether known or unknown or anticipated or unanticipated on the Contract Date.

(3) Regulatory Events. In connection with the Groundwater Drilling and Operating Permit, the Groundwater Transportation Permit, or any other permit, license or other Governmental Approval required to perform the Contract Services or meet the Performance Guarantees:

(a) Loss of Authority. The non-issuance, revocation, suspension, withdrawal or expiration for any reason of legal authority to act;

(b) Reduction in Capacity. The reduction for any reason in permitted water drilling, operating or transportation capacity by the POSGCD or any other Governmental Body;

(c) Stringency of Water Quality Standards. The establishment of new or more stringent standards for public drinking water;

(d) New Terms. The establishment of new or changed terms in permitted authority to act;

(e) Taxes. The imposition of new or changed Taxes; or

(f) Procedures. The establishment of new or more burdensome procedural requirements, such as testing, reporting and inspections.

(D) Force Majeure Events. Any force majeure event ("**Force Majeure Event**"), including the following:

(1) naturally occurring events, including any weather or climate event or circumstance, underground movement, earthquakes or earth movement, lightning, fires, tornados, hurricanes, floods, epidemics and other acts of God;

(2) explosion, sabotage, acts of a declared public enemy, extortion, insurrection, riot or civil disturbance;

- (3) war, civil war or armed conflict and related causes;
- (4) terrorism arising from nuclear, biological or chemical materials;
- (5) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)); or
- (6) nuclear explosion or nuclear, radioactive, chemical or biological contamination.

(E) Project Site and Project Site Lessor Risks. Any act, event or circumstance relating to any Project Site, Project Site Lease or Project Site Lessor, including:

- (1) The failure or impairment of title to or any other interest in any Project Site, or the foreclosure of any mortgage on or security interest in any Project Site;
- (2) The sale, bankruptcy, reorganization, merger or insolvency of any Project Site Lessor;
- (3) A breach or default by any party under any Project Site Lease or under any other agreement between any Project Site Lessor and the Project Company or any Project Company Affiliate; or
- (4) The denial, modification or change in a term or condition of any Applicable Law, Governmental Approval or any other law, regulation license, permit or approval affecting any of the Project Sites or any Raw Groundwater.

(F) Other Circumstances. Any other act, event or circumstance that is or may be within the control or management of the Project Company or that is or may be outside the control or management of the Project Company, including:

- (1) A third party Legal Proceeding, or an injunction or similar order issued by a Governmental Body;
- (2) the failure of any appropriate Governmental Body or utility having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project which are required for the performance of this Water Transmission and Purchase Agreement;
- (3) the failure of a Project Contractor or Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to;
- (4) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;
- (5) a violation of Applicable Law by a person other than SAWS, the Project Company or a Project Company Person;
- (6) the existence of a Regulated Site Condition affecting the Project or the Project Sites;

- (7) the existence of a Differing Site Condition affecting the Project or the Project Sites;
- (8) contamination of the Project Sites from groundwater, soil or airborne Regulated Substances migrating from any source in or outside of the Project Sites;
- (9) any act, event or circumstance that would not have occurred but for the Project Company's failure to comply with its obligations hereunder;
- (10) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions;
- (11) any changes in the financial condition of the Project Company, its Affiliates or Subcontractors affecting the ability to perform their respective obligations;
- (12) the consequences of error, willful misconduct, neglect or omissions by the Project Company, a Project Contractor, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;
- (13) strikes, work stoppages or labor disputes;
- (14) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Project Company of performing the Contract Services;
- (15) mechanical failure of equipment; and
- (16) failure of the Project Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Contract Services.

Nothing in this Section 5.2(F) (Other Circumstances) shall be construed to limit the Project Company's right (1) to an adjustment of the Unit Price on account of a change in reference interest rates prior to the Financial Closing Date, as and to the extent provided in Section 17.2(B) (Adjustment at Financial Closing Date) and Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), and (2) compensation for operating, maintenance, repair and replacement costs as and to the extent provided in Section 17.3 (Operating and Maintenance Costs) and Appendix 19 (Compensable Costs and O & M Budget Panel).

(G) Risks Expressly Allocated to the Project Company Hereunder. Any act, event or circumstance as to which the Project Company assumes and is expressly allocated the risk under any other provision of this Water Transmission and Purchase Agreement, including (subject to Section 5.2(A) (General Assumption of Risk)) those risks expressly allocated to the Project Company under:

- (1) Section 2.2(M) (Practicability of Performance)
- (2) Section 5.1(E) (Risk of Loss of Product Water)

- (3) Section 5.4(M) (Hazardous Substances Management)
- (4) Section 5.5(F) (Project Company Assumption of Permitting Risk for Construction Work Generally)
- (5) Section 5.6(B) (Sampling, Testing and Laboratory Work)
- (6) Section 7.1(A) (Project Company Financing)
- (7) Section 8.2(C) (Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation)
- (8) Section 9.14 (Hazardous Substance Management During the Operating Period)
- (9) Section 14.1(A) (Required Insurance)
- (10) Section 15.4 (Unavailability of Required Insurance)
- (11) Section 17.13 (Risk of Adverse Tax or Accounting Treatment)

SECTION 5.3. EXCEPTIONS TO PROJECT COMPANY ASSUMPTION OF RISK.

(A) SAWS Fault. The Project Company does not assume the risk of any SAWS Fault. If a SAWS Fault occurs, the Project Company shall be entitled to relief as and to the extent provided in Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Uncontrollable Circumstances Affecting Performance and Schedule. The Project Company does not assume the risk of Uncontrollable Circumstances as they may affect its performance and schedule obligations hereunder, and shall be entitled to relief upon the occurrence of an Uncontrollable Circumstance as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances), Section 10.3(A)(8) (Excused Supply Shortfall Units), Section 16.4(A) (Performance and Schedule Relief), and Section 17.3 (Operating and Maintenance Costs). Without limiting the Project Company's rights under Section 10.7 (Extension of Term), no Uncontrollable Circumstance shall entitle the Project Company to any compensation relief, except to the extent Compensable Costs payable under Appendix 19 (Compensable Costs and O & M Budget Panel) may include compensation for costs resulting from Uncontrollable Circumstances.

SECTION 5.4. CONSTRUCTION OF THE PROJECT.

(A) Commencement and Prosecution of Construction Work Generally. On the Financial Closing Date, the Project Company shall promptly proceed to undertake, perform and complete the Construction Work in accordance with the requirements of the Design Requirements and the Contract Standards.

(B) Payment of Costs. Except as otherwise specifically provided in this Water Transmission and Purchase Agreement, the Project Company shall pay directly, and SAWS shall have no responsibility for, all costs and expenses of the Construction Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Project Company; obtaining and maintaining the Required Insurance; Utility costs, financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial,

engineering, architectural and other professional services of the Project Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Project Company of all Construction Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Substantial Completion, Acceptance and Final Completion.

(C) Protection of the Project Against Any Effect of SAWS Distribution System Operations; No SAWS Liability. As between SAWS and the Project Company, the Project Company shall design, construct, operate and maintain the Project in a manner such that the Project cannot be damaged or destroyed by any actions that SAWS may take, whether intentionally or unintentionally, or not take with respect to the operation or maintenance of the SAWS Distribution System, including the operation and maintenance of the SAWS Interconnection Improvements, the SAWS Interface Cabinet, or any other electrical, digital or mechanical operating interface between the SAWS Distribution System and the Project. SAWS shall have no liability to the Project Company for any damage to or destruction of the Project or otherwise resulting from or alleged to result from any SAWS actions or inactions with respect to the SAWS Distribution System.

(D) Project Company Control of the Construction Work; No SAWS Responsibility. The Project Company shall have total control of the Construction Work and shall effectively direct and supervise the Construction Work so that it is undertaken safely and in compliance with the terms of this Water Transmission and Purchase Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the Contract Standards or the fact that in negotiating this Water Transmission and Purchase Agreement SAWS participated in certain design review activities. Nothing in this Water Transmission and Purchase Agreement shall be interpreted as giving any responsibility for the Construction Work to SAWS, any SAWS Indemnitee, or the SAWS Engineer. Any SAWS rights of review and comment provided in this Water Transmission and Purchase Agreement with respect to any aspect of the Construction Work shall be for SAWS' benefit only, and no review or comment by the SAWS Representative shall in any way relieve the Project Company of its obligation for all aspects of the Project. The Project Company shall have no obligation to accept any SAWS comments or to propose any changes to the SAWS Representative.

(E) Electrical Power Required During Construction. The Project Company acknowledges that as of the Contract Date, there may be insufficient utility facilities available to supply the electrical power required for the construction of the Project. Accordingly, the Project Company shall be responsible for assuring the availability of all utilities (including on-site power generators) required for the performance of the Construction Work. All costs related to the supply of electrical power incurred in the performance of the Construction Work prior to the Commercial Operation Date shall be borne by the Project Company; provided, however, that SAWS will be responsible for ensuring that electrical service is constructed and adequate to allow the Performance Tests to be performed in accordance with the Performance Test Protocol.

(F) Construction Work Reviews. During the Construction Period, SAWS shall have the right, but not the obligation, to: (1) attend design progress meetings; (2) attend preconstruction conferences; (3) attend construction progress meetings described in Section 4.6 (Construction Meetings and Reports) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (4) review the Construction Work for compliance with Appendix 3 (Technical Specifications). The Project Company shall consider and address in good faith any comments or concerns raised by SAWS in connection with such matters in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(G) Project Schedule. The Project Company shall deliver and update the Project Schedule in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion). Any failure to do so shall constitute a Project Company Remediable Breach.

(H) Construction of Tie-Ins and Connection to SAWS Interconnection Improvements. In performing the Construction Work and in preparing and updating the Project Schedule, the Project Company shall take into account the time and work necessary for both parties relating to connections and tie-ins with the SAWS Interconnection Improvements required to achieve Substantial Completion of the Project, and required to conduct the Performance Test.

(I) SAWS Engineer. SAWS may employ or engage the services of an independent engineering firm (the employee or firm being referred to herein as the “**SAWS Engineer**”) to act as its agent and to assist SAWS and its staff in connection with this Water Transmission and Purchase Agreement. Subject to the SAWS Engineer entering into a confidentiality agreement reasonably acceptable to the Project Company for the protection of Confidential Project Company Information, the Project Company shall cooperate with the SAWS Engineer in performing its duties, and provide the SAWS Engineer all information required hereunder or otherwise reasonably requested in such connection. The obligation of the Project Company to cooperate with the SAWS Engineer as provided in this Section shall not (a) be construed to create any SAWS rights or obligation in addition to those specifically provided herein, or (b) obligate the Project Company to accept any comments from or propose any changes to the SAWS Engineer. The services of the SAWS Engineer may include:

- (1) reviewing and monitoring the progress of design and construction;
- (2) reviewing a proposed Design Requirements Change;
- (3) reviewing plans, drawings and specifications for compliance with the Design Requirements;
- (4) reviewing the Performance Test Protocol, the performance of the Performance Tests, and the reports prepared with respect thereto;
- (5) reviewing Uncontrollable Circumstance claims and relief requests by the Project Company; and
- (6) reviewing matters related to proposed Capital Modifications.

(J) Fees. The fees and expenses of the SAWS Engineer shall be borne by SAWS.

(K) Operating Protocol. The Project Company shall deliver an initial draft of the Operating Protocol to SAWS at least 30 days prior to Substantial Completion.

(L) SAWS Administrative Space During the Construction Period. The Project Company shall provide construction office space adjacent to the principal construction offices of the Project Company for the exclusive use of SAWS’ compliance personnel and advisors and the SAWS Engineer. The cost related to SAWS’ use of such office space (including janitorial services to be provided by the Project Company) has been priced into the Monthly Water Purchase Payments.

(M) Hazardous Substances Management. As between the parties, the Project Company shall be responsible for, and bear the risk, cost and expense of, managing and disposing of Hazardous Substances arising in connection with the Project after the Contract Date; provided, however that nothing herein shall excuse SAWS from responsibility for any Hazardous Substances released by, or attributable to, actions of SAWS. The Project Company shall develop and maintain (1) a Hazardous Substance Management Program; and (2) a Response Plan.

SECTION 5.5. CONSTRUCTION GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Construction Governmental Approvals, and shall pay all fees, costs and charges due in connection therewith.

(B) Copies. The Project Company shall make available for review and copying by SAWS, upon request, copies of all the Construction Governmental Approvals and related applications.

(C) Review and Comment. The Project Company shall manage the process of obtaining the Construction Governmental Approvals in a manner which affords SAWS a reasonable opportunity, in advance of submittal, to review and comment upon all material documentation submitted to and issued by the Governmental Body in connection therewith.

(D) SAWS Interests. The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Construction Governmental Approvals or the terms and conditions thereof that would impose any cost or material burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. The Project Company shall notify SAWS of any action which would have the effect described in the preceding sentence promptly upon having knowledge thereof, and SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have any such effect.

(E) Limited Construction Governmental Approval Assistance by SAWS. SAWS shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Construction Governmental Approvals required under this Section, including attending public hearings and meetings of the Governmental Bodies charged with issuing the Construction Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within SAWS' custody or control or are reasonably obtainable by SAWS and which are reasonably required for such purpose; provided, however, that SAWS' obligation to provide such reasonable assistance shall be limited, in light of the Project Company's role as the exclusive developer of the Project, only to those actions which are legally required to be taken by SAWS as permittee or which involve providing information which is in the possession of or reasonably obtainable by SAWS. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to SAWS, and SAWS shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate SAWS to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Construction Governmental Approvals. SAWS shall not take any action, however, which seeks to cause the denial or delay of any application for any Construction Governmental Approval.

(F) Project Company Assumption of Permitting Risk for Construction Work Generally. The Project Company explicitly assumes the risk of obtaining and maintaining the Construction Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body. In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Construction Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Obligations, all of which costs or risks shall be for the account of and borne by the Project Company.

(G) Permits and Approvals Required Upon Completion. Section 8.2 (Interim Operations Approval and Project Company Public Water Supplier Designation) shall apply with respect to Construction Governmental Approvals required upon Substantial Completion and as conditions to the introduction of Product Water into the SAWS Distribution System.

SECTION 5.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Obligations in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including all registration, licensing and certification requirements imposed by any Governmental Body. The Project Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Project, Raw Groundwater, Product Water, Project By-Products, air emissions, noise, light, emissions and odor. The Project Company shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. At the request of SAWS, the Project Company shall participate in general regional facility evaluation and water quality surveys conducted by the TCEQ or the EPA.

(B) Sampling, Testing and Laboratory Work. The Project Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be TCEQ, State and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Management Practice. All sampling and test data shall be available for review by, and reported to, SAWS in accordance with Section 9.8(D) (Reports to Governmental Bodies). The Project Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Project Company shall permit SAWS, at SAWS' expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Project, laboratory services available to the Project Company, or otherwise.

(C) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Obligations, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Obligations, the Project Company shall, in addition to any other duties which Applicable Law may impose:

- (1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

- (2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;
- (3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to SAWS; and
- (4) Promptly upon receipt thereof, provide SAWS with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish SAWS with a prompt written notice describing the occurrence of any event or the existence of any circumstance which results, or could reasonably be expected to result, in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. The Project Company shall provide SAWS a reasonable opportunity to review and comment on any proposed Project Company response to any material non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. In the event that the Project Company, Project Contractor or any Subcontractor fails at any time to materially comply with Applicable Law with respect to the Contract Obligations, the Project Company shall:

- (1) Correct such failure and resume compliance with Applicable Law as soon as practicable;
- (2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) Indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) Make all commercially reasonable changes in performing the Contract Obligations which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
- (5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, Project Contractor or any Subcontractor to comply with Applicable Law.

(F) No Nuisance Covenant. The Project Company shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur, the Project Company shall, as soon as practicable remedy the condition, pay any fines or penalties relating thereto, make all commercially reasonable capital investments, improvements or modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless SAWS and SAWS Indemnitees from any Loss-and-Expense relating thereto in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify).

**SECTION 5.7. PROJECT COMPANY-REQUESTED DESIGN REQUIREMENTS CHANGES.**

The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Design Requirements Changes proposed to be made at the Project Company's request. The notice shall contain sufficient information for SAWS to determine that the Project Company-Requested Design Requirement Change: (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Project; (3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Water Transmission and Purchase Agreement; and (4) is feasible. SAWS shall have the right in its discretion to accept, reject or modify any Design Requirement Change to the Design Requirements set forth in Appendix 3 (Technical Specifications) proposed by the Project Company. Any such Design Requirement Change accepted or modified by SAWS, and any related change in the terms and conditions of this Water Transmission and Purchase Agreement, shall be reflected in a Water Transmission and Purchase Agreement Amendment.

**SECTION 5.8. SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES.**

SAWS shall have the right to direct the Project Company to make Design Requirements Changes at any time prior to the Commercial Operation Date in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Water Transmission and Purchase Agreement ("**SAWS-Requested Design Requirement Change**"), subject to the terms of Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs resulting from any such SAWS-Requested Design Requirement Change under this Section, shall at the discretion of SAWS be financed by the Project Company as and to the extent provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications) or shall be paid by SAWS as a Direct Payment. Any such Design Requirement Change and any related change in the terms and conditions of this Water Transmission and Purchase Agreement shall be reflected in a Water Transmission and Purchase Agreement Amendment. SAWS shall have no obligation to initiate any SAWS-Requested Design Requirement Change under this Section.

**SECTION 5.9. RESTRICTIONS ON SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES AND SAWS-REQUESTED CAPITAL MODIFICATIONS.**

SAWS shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and the Project Company may refuse to implement, a SAWS-Requested Design Requirements Change or a SAWS-Requested Capital Modification which:

- (1) Would be contrary to Applicable Law, Good Engineering and Construction Practice, or Good Management Practice;
- (2) Would render any policy of Required Insurance void or voidable unless SAWS agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;
- (4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Water Transmission and

Purchase Agreement which Governmental Approval would not, using reasonable efforts, be obtainable; or

(5) Would materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Water Transmission and Purchase Agreement with respect to the Contract Obligations, unless the material and adverse effects of such requirement are remedied by SAWS to the Project Company's reasonable satisfaction.

SAWS shall enter into any agreement reasonably requested by the Project Company to protect its rights under this Section in connection with a proposed SAWS-Requested Design Requirement Change or SAWS-Requested Capital Modification.

**SECTION 5.10. GOOD MANAGEMENT PRACTICE AND GOOD ENGINEERING AND CONSTRUCTION PRACTICE.**

Good Management Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Management Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Management Practice and Good Engineering and Construction Practice (but not Good Management Practice and Good Engineering and Construction Practice as of the Contract Date) unless SAWS agrees to adjust the Unit Price (subject to Cost Substantiation) to account for such additional costs.

**SECTION 5.11. FINANCIAL BOOKS AND RECORDS.**

(A) **Recordkeeping Requirements.** The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Obligations, including, to the extent available to the Project Company, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Obligations, this Water Transmission and Purchase Agreement, the Project Contracts, any Subcontract or any transactions in which SAWS has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirements Changes, SAWS Fault costs, or other adjustments to the Unit Price or other payments based on costs for which SAWS is responsible under this Water Transmission and Purchase Agreement. The Project Company shall produce such financial books and records for examination and copying for all such purposes promptly upon request by SAWS. All such information upon delivery to SAWS shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP, to the extent applicable. The Project Company shall not be required to provide SAWS any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the tenth anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending for which such financial books and records are relevant. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure

prevented verification or Cost Substantiation as required by this Water Transmission and Purchase Agreement.

(B) Inspection, Audit and Adjustment. SAWS shall have the right, at its cost and expense, to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, and shall provide the results of such inspection or audit to the Project Company. If an inspection or audit reveals that the Project Company has overstated any component of the Monthly Water Purchase Payments, then the Project Company shall, at the election of SAWS, either immediately reimburse SAWS or adjust the Monthly Water Purchase Payments based on the overstated amount, plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to SAWS. If the overpayment exceeds 1% of the total amount that should have been properly paid by SAWS during the period audited, then the Project Company shall, in addition, reimburse SAWS for any and all fees and costs reasonably incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies SAWS may have hereunder, including remedies for a Project Company Event of Default. If an inspection or audit reveals that the Project Company has understated any component of the Monthly Water Purchase Payments, then the Project Company shall include the amount of the understated payment in the next Billing Period invoice for payment in the regular course under Section 17.9 (Billing and Payment).

#### SECTION 5.12. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Water Transmission and Purchase Agreement, the Project Company is obligated, subject to the terms and conditions hereof, to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. Except for document submittal governed by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), the Project Company agrees that all such documents shall be submitted to SAWS in digital form, unless copies are specifically required to be delivered under this Water Transmission and Purchase Agreement. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) SAWS. SAWS shall provide to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

#### SECTION 5.13. COMPLIANCE WITH SAWS POLICIES.

(A) Non-Discrimination. The Project Company, the Project Contractors and the Subcontractors (1) understand and agree to comply with the "Non-Discrimination Policy" of the City contained in Chapter 2, Article X of the City Code, and (2) agree not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this paragraph occurs, the Project Company, upon written notification by SAWS, shall commence compliance procedures within 30 days.

(B) Small, Minority and Women-Owned Business Opportunities. The Project Company acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman-owned Businesses (“**SMWB**”) to afford greater opportunity for such groups to obtain and participate in SAWS contracts. The Project Company agrees to establish SMWB outreach and goals for the Project similar to those employed by the SAWS SMWB Program. Facilitation of reasonable outreach to SMWB firms shall be accomplished by the following:

(1) Diversity Coordinator. Appointment by the Project Company of a diversity coordinator, who, along with his or her other duties at the Project Company, will work with the SAWS SMWB program manager to monitor and facilitate the Project Company’s progress in meeting its SMWB goals and compliance reporting requirements. The name, telephone number, and email address of the diversity coordinator shall be provided to SAWS. In the event that the diversity coordinator is no longer able to fulfill his or her duties, the Project Company shall appoint a new diversity coordinator as soon as possible, and supply the new diversity coordinator’s contact information to SAWS. This procedure shall remain in effect for the duration of the Term.

(2) Database and Sponsorship. Obtaining direct access to the South Central Texas Regional Certification Agency’s database, for the purposes of conducting reasonable means of outreach to SMWB firms, shall be accomplished through a corporate sponsorship agreement between Project Company and the South Central Texas Regional Certification Agency. The Project Company’s membership shall be renewed annually for the duration of the Term, until further notice, and proof of corporate membership shall be reported on an annual basis to the SAWS SMWB program manager.

(3) SMWB Participation Goals. The Project Company shall take reasonable steps to achieve 15% SMWB participation on the design component of the Construction Work; 15% SMWB participation on the construction phase of the Construction Work; and 15% SMWB participation in the Operating Work for the duration of the Term. The SMWB goal is expressed as a percentage of the total dollar amount involved in each of the three such categories of work.

(4) Compliance. SMWB firms must be certified through the South Central Texas Regional Certification Agency. Actual SMWB participation is the percent of SMWB participation that is actually awarded to the Project Contractors and Subcontractors that are awarded contracts in the three work categories. Within five days of a contract award, the Project Company shall report relevant SMWB information to SAWS.

(5) Reporting. On a bi-annual basis, the Project Company will provide SAWS with a SMWB plan showing how the SMWB goals are intended to be achieved for the appropriate ongoing phase of the project (design, construction, operating). Each bi-annual report will document how the SMWB plan goals were achieved through certification, contracts and actual payment evidence.

(6) Information. Electronic submittal of payment information will be accessed through a link on SAWS’ “Business Center” web page. The Project Company and all Project Contractors and Subcontractors will be provided a unique log-in credential and password to access the SAWS S.P.U.R. System. The link may also be accessed through the following internet address: <https://saws.smwbe.com>. The Project Company and its Project Contractors and

Subcontractors may contact the SMWB program manager at 210-233-3420 for assistance or clarification with issues specifically related to the SMWB Program and S.P.U.R. System reporting.

(C) Ethics. The Project Company shall comply with the following ethics obligations:

(1) Project Company's Warranty. Except to the extent permitted by Applicable Law, the Project Company warrants that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has employed or retained any company or person other than a bona fide employee working solely for the Project Company, to solicit or secure this Water Transmission and Purchase Agreement, and that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has for the purpose of soliciting or securing this Water Transmission and Purchase Agreement, paid or agreed to pay any company or person, other than a bona fide employee working solely for the Project Company or any of its Affiliates, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Water Transmission and Purchase Agreement.

(2) Interest in SAWS Agreements Prohibited. No member of the Board of Trustees of SAWS, nor any officer, agent or employee of the Board of Trustees of SAWS, nor any officer or employee of the City, shall have a financial interest, direct or indirect, in any contract or agreement with SAWS, or shall be financially interested, directly or indirectly, in the sale to SAWS of any land, materials, supplies or service, except on behalf of the City or SAWS as an officer or employee. The Project Company shall cause any of its Affiliates that enter into a contract in connection with the Project to include a similar provision in each such contract.

(3) Gift Policy. SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of SAWS' Policy 2-17 "Procedures for Gift and Meal Policy" is available upon request.

(4) Ethics Hotline. SAWS Ethic Hotline for reporting suspected ethics violations is 1-800-687-1918.

ARTICLE 6

SAWS OBLIGATIONS GENERALLY

SECTION 6.1. SAWS OBLIGATIONS GENERALLY.

SAWS, subject to and in accordance with the terms and conditions hereof and in addition to the obligations it has accepted elsewhere in this Water Transmission and Purchase Agreement, shall:

(1) Except with respect to the mitigation measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements), construct the SAWS Interconnection Improvements, as provided in Section 6.2 (SAWS Interconnection Improvements), including obtaining all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained for such construction;

(2) Take delivery of and purchase the Product Water pursuant to Section 10.5 (SAWS Obligation to Take Delivery of and Purchase Product Water) in the applicable Billing Period if and to the extent Product Water is produced and available for delivery by the Project Company in such volume;

(3) Maintain and repair in good working order SAWS Interconnection Improvements that are material to the Project Company's performance of the Operating Work;

(4) In accordance with Section 9.4 (Utilities), secure and maintain throughout the Operating Period all electricity needed for the operation of the Project, it being understood that a failure in the supply of electricity provided to the Project shall constitute for all purposes under this Water Transmission and Purchase Agreement an Uncontrollable Circumstance;

(5) Pay the Monthly Water Purchase Payments and any other amounts due the Project Company; and

(6) Make available to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder.

SECTION 6.2. SAWS INTERCONNECTION IMPROVEMENTS.

(A) Design and Construction. In order to allow for Product Water to be taken delivery of by SAWS and introduced in the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement, SAWS, at its cost and expense, shall design and construct the SAWS Interconnection Improvements. Appendix 13 (SAWS Interconnection Improvements) sets forth the general nature, capacity and functionality of SAWS Interconnection Improvements intended as of the Contract Date to be constructed by SAWS. SAWS shall have complete discretion to design and construct the SAWS Interconnection Improvements in any manner it chooses, whether consistent or inconsistent with Appendix 13, so long as the SAWS Interconnection Improvements have the capacity to take delivery of Product Water in volumes and in a manner consistent with SAWS' Product Water purchase obligations under this Water Transmission and Purchase Agreement.

(B) Scheduled SAWS Interconnection Improvements Completion Date. SAWS should cause construction of the SAWS Interconnection Improvements to be substantially complete, and capable of taking delivery of Product Water for purposes of commencing the Performance Test as described in Appendix 5 (Performance Test Procedures and Standards), by the date that is 1,170 days following the Financial Closing Date (the "**Scheduled SAWS Interconnection Improvements Date**"). SAWS shall regularly apprise the Project Company as to the progress of construction.

(C) Completion Delay. A delay or failure by SAWS for any reason to complete construction of the SAWS Interconnection Improvements, to any extent or by any date, shall not be a breach of this Water Transmission and Purchase Agreement or a SAWS Event of Default. The parties acknowledge and agree, however, that a delay or failure by SAWS to complete the SAWS Interconnection Improvements may impede the ability of the Project Company on a timely basis to commence and complete the Performance Test or to achieve the Commercial Operation Date. Accordingly, subject to Section 26.4(A)(Mitigation by the Project Company)

(1) For each day during the period (a) commencing on the Scheduled SAWS Interconnection Improvements Date and (b) ending on the day that the SAWS Interconnection Improvements are completed to the level required to allow the Project Company to begin, continue and complete the Performance Test, and on which the Project Company has achieved Substantial Completion and is prepared to commence the Performance Test, SAWS shall pay the Project Company, as a Direct Payment, an amount equal to the daily general conditions costs reasonably incurred by the EPC Contractor attributable to the delay in beginning, continuing and completing the Performance Test; and

(2) For each day during the period (a) commencing on the day that the Project Company would have achieved the Commercial Operation Date and been able to make available Product Water in daily volumes at least equal to the Baseline Daily Volume but for the failure of SAWS for any reason to have completed construction of the SAWS Interconnection Improvements by the Scheduled SAWS Interconnection Improvements Date to the level required to allow the Project Company to begin, continue and complete the Performance Test (but not earlier than 1,260 days following the Financial Closing Date), and (b) ending on the Commercial Operation Date, Product Water in a volume up to the Baseline Daily Volume shall be deemed to have been made available, and SAWS shall pay the Project Company (1) the Capital and Raw Groundwater Unit Price, multiplied by (2) the Daily Baseline Volume.

(D) Operation, Maintenance, Repair and Replacement. SAWS shall use reasonable efforts to operate, maintain, repair and replace the SAWS Interconnection Improvements during the Term so as to permit the delivery of Product Water to the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement.

SECTION 6.3. SAWS INTERFACE CABINET.

The parties shall cooperate to assure the timely installation and testing by SAWS of the SAWS Interface Cabinet at the Project.

SECTION 6.4. NOTICE OF SHUTDOWNS AND CLOSURES.

(A) Notice. SAWS shall give notice as soon as practicable of any shutdown or closure of the SAWS Distribution System that may prevent or limit SAWS from receiving Product Water. SAWS' notice shall include a written report:

- (1) Describing the shutdown or closure;
- (2) Stating the date on which the shutdown or closure began and its estimated duration, to the extent known; and
- (3) Summarizing the likely consequences of the shutdown or closure of SAWS' ability to take delivery of Product Water under this Water Transmission and Purchase Agreement.

(B) Updates. SAWS shall provide the Project Company with weekly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the shutdown or closure. In particular, SAWS shall notify the Project Company as soon as the shutdown or closure has ceased and of the time when it reasonably expects to be again capable of receiving Product Water.

ARTICLE 7

PROJECT FINANCING AND REFINANCING

SECTION 7.1. PROJECT FINANCING.

(A) Project Company Financing. The Project Company is solely responsible, subject to SAWS obligations under Article 4 (Development and Financing Period), for obtaining and repaying all financing necessary for the design, permitting and construction of the Project at its own cost and risk and without recourse to SAWS, both initially, as may be required to complete the Project and for any Project purpose during the Term. The Project Company, subject to SAWS obligations under Article 4 (Development and Financing Period), exclusively bears the risk of (1) the availability or unavailability at any time and for any reason of tax-exempt private activity bond financing for the Project, and (2) any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings (except as provided in Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), pertaining to interest rate changes occurring between the Contract Date and the Financial Closing Date). SAWS shall have no obligation to provide financing for the Project or for any Project Company-Requested Capital Modifications (other than Project Company-Requested Capital Modifications pursuant to Section 12.3(B) (Inability of Project Company to Obtain Financing), or for any other purpose; provided, however, that this provision is not intended to relieve SAWS of its obligations related to SAWS Fault, including under Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Adequacy of Initial Senior Debt Proceeds to Pay Project Costs. The proceeds of the Initial Senior Debt shall be applied to the payment of Project Costs in the manner provided by the Senior Debt Financing Agreements. In the event the proceeds of the Equity Contribution Agreement and the Initial Senior Debt are insufficient to pay all Project Costs necessary to achieve Substantial Completion and Acceptance, the Project Company shall provide any additional financing required to pay the balance of such Project Costs.

(C) Limitations on Project-Secured Debt. The Project Company shall not issue any debt secured by the Project or its revenues other than the following (any such debt constituting “Permitted Debt” hereunder): (1) Senior Debt; (2) debt for Project Costs; (3) debt for Final Completion; (4) debt issued for Refinancing purposes; (5) debt to finance short-term Project cash flow requirements; (6) debt to finance Capital Modifications; (7) debt to finance letters of credit to secure the Project Company’s obligations under agreements and Governmental Approvals with respect to the Project; (8) debt to finance the costs of compliance with Governmental Approvals; (9) debt in connection with interest rate or other hedging arrangements related to the financing of the Project; and (10) subordinated debt issued for Project purposes. The term of any Permitted Debt issued by the Project Company shall not extend beyond the Expiration Date then in effect, except as provided in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(D) Permitted Debt Other than Senior Debt. SAWS, notwithstanding any other provision of this Water Transmission and Purchase Agreement, shall have no obligation under this Water Transmission and Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt, nor shall the issuance of any Permitted Debt result in an adjustment of the Unit Price except as provided in Section 17.2(B) (Adjustment at Financial Closing Date) and Section 7.6 (Refinancing Gain).

(E) Permitted Debt Non-Recourse to SAWS. All Permitted Debt or other obligations issued or incurred by the Project Company in connection with this Water Transmission and Purchase Agreement or the Project shall be issued or incurred only in the

name of the Project Company (or, in the case of tax-exempt private activity bonds, in the name of the conduit bond issuer, secured by a loan, lease or installment sale agreement in the name of the Project Company). SAWS shall have no obligation to pay debt service on any Permitted Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company.

(F) Project Company Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Debt Financing Agreement, the Project Company shall remain liable to SAWS for the payment of all sums owing to SAWS under this Water Transmission and Purchase Agreement and the performance and observance of all of the Project Company's covenants and obligations under this Water Transmission and Purchase Agreement.

(G) SAWS Interconnection Improvements. The Project Company shall have no obligation to finance the SAWS Interconnection Improvements.

(H) SAWS' Option to Purchase Senior Debt at Issuance. As an option reserved exclusively thereto, and in no way to be determined or deemed an obligation to do the same, SAWS hereby reserves to itself, and the Project Company hereby grants to SAWS, the right (but not the duty or obligation) to purchase, in whole or in part and prior to all other potential initial purchasers, the Initial Senior Debt and any additional Senior Debt (including any additional Senior Debt issued as provided in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) from time to time thereafter issued, upon the terms and conditions at such time determined by such parties. Not later than 90 days prior to the anticipated date of sale of the Initial Senior Debt, as well as with respect to any subsequent issuance of Senior Debt (or, with respect to any subsequent issuance of Senior Debt that must be issued on an expedited basis in extraordinary circumstances, no less than 30 days prior to such anticipated date of sale), the Project Company shall provide written notice of its intention to issue such Initial Senior Debt or Senior Debt, from which date SAWS shall, within 30 days, deliver to the Project Company written notice of its intention to exercise or not exercise its right to purchase any such indebtedness. SAWS intends that any purchased debt, if issued on a tax-exempt private activity bond basis, will have and maintain any and all commercially-reasonable features inherent in a publicly marketed and sold, project-finance debt offering (including, but not limited to, an investment-grade credit rating, qualification for tax-exempt treatment under federal income tax law (except as such tax-exemption may be affected by SAWS' purchase), receipt of any and all necessary approval from governmental authorities whose approval serves as a prerequisite to delivery of such indebtedness, and ability to negotiate the Senior Debt Financing Agreement, along with evidence of the foregoing and delivery of usual and customary legal opinions). SAWS has reserved this right to purchase the Initial Senior Debt and any additional Senior Debt for the purpose of lowering the Capital and Raw Groundwater Unit Price through its ability to deliver costs of capital at levels lower than may be attainable by the Project Company in a given financial market. The adjustment to the Capital and Raw Groundwater Unit Price resulting from any such purchase shall be made in the manner provided in Section 17.2(B) (Adjustment at Financial Closing Date).

**SECTION 7.2. FINANCING THE CAPITAL COSTS OF SAWS-REQUESTED CAPITAL MODIFICATIONS.**

(A) Financing SAWS-Requested Capital Modification Capital Costs. In the event SAWS requests the Project Company to make Capital Modifications pursuant to Section 12.3 (Capital Modifications at SAWS Request), the Project Company shall use all reasonable efforts to finance the design and construction costs of such SAWS-Requested Capital Modifications to the extent permitted under the Senior Debt Financing Agreements. The parties acknowledge that (1) the resulting increase in the Capital and Raw Groundwater Unit

Price will be based on the actual debt service payable by the Project Company on the Permitted Debt issued for such purposes (and any other reasonable costs and expenses incurred by the Project Company in connection with such Permitted Debt), and an equitable adjustment to the Project Company's equity return to reflect the terms of any SAWS-Requested Capital Modification Financing, and (2) such Permitted Debt shall have a final maturity concurrent with the Expiration Date; provided, however, that in no event shall any such Permitted Debt adversely affect any credit rating of any Senior Debt.

(B) SAWS Rights With Respect to SAWS-Requested Capital Modification Financings. The Project Company acknowledges that SAWS has a direct interest in the terms under which the Permitted Debt is issued and new equity is raised for a SAWS-Requested Capital Modification Financing. Accordingly, the Project Company shall assure that SAWS and its financial advisors are substantially involved in all matters pertaining to the development and execution of the plan of financing for any such Permitted Debt, including direct participation in and review of the structuring, maturities, interest rates and pricing of any such Permitted Debt. Permitted Debt issued for such purposes shall not be sold or issued without the approval of SAWS, acting reasonably.

(C) SAWS Right to Finance SAWS-Requested Capital Modification Capital Costs. SAWS shall have the right but not the obligation, in its discretion and in lieu of any Project Company-Requested Capital Modification Financing by the Project Company, to finance any SAWS-Requested Capital Modification Capital Costs itself. In such event, SAWS shall pay the Project Company for such costs from the proceeds of a SAWS direct recourse financing or from SAWS internally-generated funds, and there shall be no adjustment to the Unit Price on account of such SAWS-Requested Capital Modification Capital Costs.

(D) Financing Unavailability for SAWS-Requested Capital Modifications. If the Project Company is unable to obtain financing for any SAWS-Requested Capital Modification or SAWS does not approve the proposed financing therefor pursuant to this Section, the Project Company shall have no further obligations with respect to the financing of the SAWS-Requested Capital Modification, and Section 12.3 (Capital Modifications at SAWS Request) shall apply to the implementation of the SAWS-Requested Capital Modification.

SECTION 7.3. FINANCING THE CAPITAL COSTS OF PROJECT COMPANY-REQUESTED CAPITAL MODIFICATIONS.

The Project Company shall finance the cost of Capital Modifications requested by the Project Company pursuant to Section 12.2 (Capital Modifications at Project Company Request). There shall be no adjustment to the Unit Price or any other compensation payable to the Project Company on account of any such Capital Modifications.

SECTION 7.4. COMPLIANCE WITH SENIOR DEBT FINANCING AGREEMENTS; DELIVERY OF REPORTS TO SAWS.

(A) Compliance. The Project Company shall comply with the Senior Debt Financing Agreements to the extent necessary to perform its obligations under this Water Transmission and Purchase Agreement. If at any time the Project Company receives a notice that an "event of default", any event entitling the Senior Debt Creditors to enforce any security or any other similar event has occurred under the Senior Debt Financing Agreement, the Project Company shall forthwith deliver to SAWS a copy of such notice.

(B) Delivery of Financing-Related Reports to SAWS. The Project Company shall deliver to SAWS subsequent to the Financial Closing Date and throughout the Term copies of all material reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Senior Debt

Creditors under or in connection with the Senior Debt Financing Agreements, including reports prepared by the consulting engineer in connection with the Senior Debt and any continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Project Company's possession.

SECTION 7.5. CHANGES TO SENIOR DEBT FINANCING AGREEMENTS.

(A) SAWS Consent Required. The Project Company shall not without the written consent of SAWS (which shall not be unreasonably withheld or delayed) terminate, amend or otherwise modify the Senior Debt Financing Agreements, or waive or exercise any of its rights under the Senior Debt Financing Agreements, if such action would materially and adversely affect the Project Company's ability to perform its obligations under this Water Transmission and Purchase Agreement or have the effect of materially increasing any liability or potential liability of SAWS. In the event the Project Company delivers to SAWS a request for its consent to any such proposed termination action, amendment, modification, waiver or exercise of rights, together with the definitive text pertaining to such action or document, and SAWS has not responded to the Project Company's request within 45 days of receipt (whether through rejecting the request or seeking clarification or information), SAWS' consent shall be deemed to have been given. If at any time any material amendment is made to any Senior Debt Financing Agreement or the Project Company enters into any replacement Senior Debt Financing Agreement (or any agreement which affects the interpretation or application of any Senior Debt Financing Agreement), the Project Company shall deliver to SAWS a copy of each such material amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

(B) SAWS' Expenses. The Project Company shall pay SAWS' reasonable and properly incurred third party professional services costs in connection with any significant proposed changes to the Senior Debt Financing Agreements referred to in (A) (SAWS Consent Required), such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount.

SECTION 7.6. REFINANCING GAIN.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing without the prior written consent of SAWS. Such consent will not be unreasonably withheld or delayed if the Refinancing occurs after the Commercial Operation Date, has no material and adverse effect on the Project Company's ability to perform its obligations under this Water Transmission and Purchase Agreement, and does not increase any liability or potential liability of SAWS (unless SAWS is specifically compensated for such liability or potential liability).

(B) SAWS' Share of Refinancing Gain. SAWS shall be entitled to receive a 25 percent share of any Refinancing Gain arising from a Refinancing.

(C) Project Company Proposal to Refinance. The Project Company shall promptly provide SAWS with full details of any proposed Refinancing, including:

(1) All proposed revisions to the Senior Debt Financing Agreements;  
and

(2) SAWS' estimated share of the Refinancing Gain, expressed in terms of the reduction of the Capital and Raw Groundwater Unit Price described in (D) (Reduction in the Capital and Raw Groundwater Unit Price).

SAWS shall (before, during and within two years after any Refinancing) have unrestricted rights of audit over any books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing; provided, however, that the Project Company shall not be required to provide SAWS any income statement showing profit or loss (provided that the Project Company recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof.

(D) Reduction in the Capital and Raw Groundwater Unit Price. SAWS shall receive its share of any Refinancing Gain as a reduction in the Capital and Raw Groundwater Unit Price, in accordance with Section 17.8(B) (Adjustments to the Unit Price), over the period ending on the Expiration Date. Any such reduction in the Capital and Raw Groundwater Unit Price shall reflect the savings in actual debt service payable with respect to the Senior Debt.

(E) Calculation of Refinancing Gain. SAWS and the Project Company shall negotiate in good faith the basis and method of calculation of the Refinancing Gain and the reduction in the Capital and Raw Groundwater Unit Price resulting from SAWS' share of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that the Project Company directly incurs in relation to the Refinancing and SAWS' costs that the Project Company pays pursuant to Section 7.6(F) (SAWS' Expenses). If SAWS and the Project Company are unable to agree on the basis and method of calculation of the Refinancing Gain or the reduction in the Capital and Raw Groundwater Unit Price, the dispute may be referred to Non-Binding Mediation.

(F) SAWS' Expenses. The Project Company shall pay SAWS' reasonable and properly incurred third party professional services costs in connection with a Refinancing, such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount following the close of the Refinancing.

ARTICLE 8

COMPLETION AND ACCEPTANCE OF THE PROJECT

SECTION 8.1. SUBSTANTIAL COMPLETION.

(A) Substantial Completion Procedures. Substantial Completion shall be determined on the basis of the Substantial Completion Procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(B) Commissioning Plan. The Project Company shall prepare and submit to SAWS for its approval (the "**Commissioning Plan**") no later than 60 days prior to the anticipated commencement of commissioning of the Project for review and comment by SAWS. Within 30 days after SAWS' receipt of the Commissioning Plan, SAWS shall provide written notice to the Project Company either acknowledging that the Commissioning Plan is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Commissioning Plan to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld). The Commissioning Plan shall also provide for the coordination of any necessary testing of: (1) the Project with SAWS' SCADA system in order to confirm the operability of the communications system prior to the Performance Test; (2) any tuning and calibration of the chemical feed systems of the SAWS Interconnection Improvements, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (3) calibration and tuning of the instrumentation and control signals from the flow control facility which constitutes a portion of the SAWS Interconnection Improvements to SAWS, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(C) Substantial Completion Procedures Report. The Project Company shall prepare and submit to SAWS for its approval a Substantial Completion Procedures Report for review and comment by SAWS. Within 15 days after SAWS' receipt of the Substantial Completion Procedures Report, SAWS shall provide written notice to the Project Company either acknowledging that the Substantial Completion Procedures Report is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Substantial Completion Procedures Report to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(D) Conditions to Substantial Completion. "**Substantial Completion**" shall occur only when the Project Company has satisfied, except for Punch List items that do not affect the performance, safety or operation of the Project and except to the extent waived in writing by SAWS, the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures, including:

(1) Physical Completion. All pipelines, facilities, materials and equipment for the Project have been installed in accordance with the requirements of this Water Transmission and Purchase Agreement and inspected and approved for alignment, lubrication, rotation, vibration, leakage, noise, and hydrostatic and pneumatic pressure integrity; all systems required to be installed by the Project Company have been installed and tested; and the Project has been flushed and cleaned out as necessary and required by the TCEQ;

(2) Project Equipment. The Project Equipment is installed in a manner that does not void any Subcontractor or vendor warranties and such that the Project Equipment can be operated in a safe and prudent manner;

(3) Pre-Commissioning and Certificates of Proper Installation. The Project Company has properly installed, tested and calibrated each specific Project system and subsystem in accordance with the manufacturers' recommendations and requirements, and delivered to SAWS certificates of proper installation for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(4) Design and Process Verification. The Project Company has completed the Construction Work in accordance with the Design Requirements, and delivered to SAWS design and process verification checklists for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(5) Dry Commissioning. The Project Company has performed all the dry commissioning activities identified in the Commissioning Plan, and necessary for the Project Equipment to be ready to conduct wet commissioning set forth in Section 8.1(D)(6);

(6) Wet Commissioning. The Project Company has performed all the wet commissioning activities identified in the Commissioning Plan, and necessary for the verification of operational preparedness set forth in Section 8.1(D)(8);

(7) Equipment, Instrumentation and Controls Readiness Verification. The Project Company has delivered to SAWS certificates of system readiness that certify that all the identified Project systems, subsystems, equipment, instrument, or control systems have been reviewed by the Project Company and are ready and able to undergo sustained continuous operation as required for its intended purpose in the Project;

(8) Verification of Operational Preparedness. The Project is ready to physically commence Performance Testing and operations in accordance with the Contract Standards;

(9) Verification of Governmental Approval Compliance. The Project Company shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals;

(10) Commissioning Plan. The requirements of Section 8.1(B) (Commissioning Plan) have been met;

(11) Instrument Calibration. The Project Company has demonstrated that all instrument calibration activities that are required to assure all Project instrumentation provide reading accurate within manufacturer's tolerance;

(12) SCADA. The Project SCADA system is operational and provides the input and output to and from SAWS' SCADA system, permitting SAWS read-only access to all Project operations data and information;

(13) Operating and Maintenance Staff Training. The Project Company has completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers

sufficient to start-up the Project in accordance with Good Management Practices;

(14) Electronic Operation and Maintenance Manual. The Project Company has delivered to SAWS a draft copy of the Electronic Operation and Maintenance Manual as required under Section 9.5 (Electronic Operation and Maintenance Manual);

(15) Operating Protocol. The Project Company has delivered to SAWS a final copy of the Operating Protocol and obtained SAWS' approval for the Operating Protocol, which approval shall not unreasonably be withheld or delayed;

(16) Governmental Approvals. The Project Company has obtained all necessary Governmental Approvals required to commence Performance Testing;

(17) Sanitary Control Easements. The Project Company has obtained all sanitary control easements required by TCEQ for the Project, and such easements have been executed and recorded in appropriate land records;

(18) Substantial Completion Procedures Report. The Project Company has prepared and submitted in Adobe Acrobat electronic format, indexed and fully-searchable (with five copies, if provided on compact disc), of the Substantial Completion Procedures Report prepared in accordance with the requirements set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(19) Certificate of Occupancy. A temporary or final certificate of occupancy, if required, has been issued for any occupied portion of the Project; and

(20) Punch List. The Project Company has delivered a Punch List to SAWS.

(E) Notice of Substantial Completion. The Project Company shall give SAWS Representative at least 10 days' prior written notice of the expected date of Substantial Completion.

(F) Achievement of Substantial Completion. In order to accomplish Substantial Completion, the Project Company (1) shall satisfy the conditions to Substantial Completion set forth in Section 8.1(D) (Conditions to Substantial Completion), (2) shall comply with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), including those relating to Project commissioning, and (3) shall satisfy the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures. The Project Company shall submit the deliverables defined in the Substantial Completion Procedures (documents and other items) for review and SAWS shall review such deliverables within the times required under the Substantial Completion Protocol. If, pursuant to the Substantial Completion Protocol, SAWS does not approve an item, such item shall be added to a list prepared by the Project Company of items which remain to be performed in order to achieve Substantial Completion (the "**Substantial Completion List**"). The Project Company shall complete the items on the Substantial Completion List in accordance with the Substantial Completion Protocol and the other requirements of this Water Transmission and Purchase Agreement related to Substantial Completion prior to achieving Substantial Completion. Within five Business Days after receipt by SAWS of notice that Substantial

Completion has been achieved, SAWS shall (a) deliver its written acknowledgment that Substantial Completion has been achieved, or (b) notify the Project Company that Substantial Completion has not been achieved, stating in detail the reasons therefor. If SAWS notifies the Project Company that Substantial Completion has not been achieved, the Project Company shall take such steps as are necessary to achieve Substantial Completion, and shall resubmit to SAWS notice that Substantial Completion has been achieved. If SAWS does not provide timely notice of objection within 10 Business Days, Substantial Completion shall be conclusively deemed to have been achieved. The foregoing procedure shall be repeated until SAWS acknowledges that Substantial Completion has been achieved. Notwithstanding anything in this Section to the contrary, SAWS' approval of the individual items identified in the Substantial Completion Protocol shall not relieve the Project Company of its obligation to meet the requirements of Substantial Completion at the time that it provides SAWS notice that it has achieved Substantial Completion.

**SECTION 8.2. INTERIM OPERATIONS APPROVAL AND PROJECT COMPANY PUBLIC WATER SUPPLIER DESIGNATION.**

(A) **Authorization of Operation and Water Introduction.** The Project Company acknowledges that the operation of the Project and the introduction of Product Water into the SAWS Distribution System are prohibited by Applicable Law until an Interim Operations Approval, as defined below, and the Project Company Public Water Supplier Designation are issued by TCEQ. TCEQ may, but is not legally obligated to, issue a letter, permit with provisions, or other instrument authorizing temporary operation of the Project and introduction of Product Water into the SAWS Distribution System until such time as the conditions of such letter, permit with provisions, or other instrument have been satisfied and the Project Company Public Water Supplier Designation is issued (an "**Interim Operations Approval**"). The Project Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of TCEQ.

(B) **Project Company Obligations Generally.** The Project Company shall cooperate with TCEQ throughout the Construction Period; shall make all applications and take all other action necessary to obtain and maintain the Project Company Public Water Supplier Designation and any Interim Operations Approval; and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of SAWS, subject to SAWS' rights hereunder. The Project Company shall manage the process of obtaining the Project Company Public Water Supplier Designation and any Interim Operations Approval and shall provide SAWS at least 10 Business Days to review such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Governmental Approvals). The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Project Company Public Water Supplier Designation and any Interim Operations Approval or the terms and conditions thereof that would impose any material cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence. The Project Company also shall assist SAWS and provide any information concerning the Project in its possession that may reasonably be required to be furnished by SAWS to any Governmental Body relating to the effect of the delivery of Product Water to SAWS and the use of Product Water in the SAWS Distribution System.

(C) Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation. Except to the extent the Project Company is entitled to relief under Section 16.4 (Project Company Relief Due to Uncontrollable Circumstances), the Project Company explicitly assumes the risk of obtaining and maintaining the Project Company Public Water Supplier Designation and any Interim Operations Approval from TCEQ as contemplated in (B) (Project Company Obligations Generally), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith. In assuming this risk, the Project Company acknowledges in particular that (1) the delay or non-issuance of the Project Company Public Water Supplier Designation or an Interim Operations Approval may delay or prevent the delivery of Product Water to the SAWS Distribution System, the commencement of the Performance Test, or the occurrence of Acceptance, and thereby give SAWS the right to terminate this Water Transmission and Purchase Agreement, and (2) TCEQ may impose or enforce terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company. In particular, the exercise by TCEQ of any of its rights with respect to the Project Company Public Water Supplier Designation or an Interim Operations Approval shall constitute a Project Company risk. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Project Company assumes the risk.

SECTION 8.3. PERFORMANCE TESTING.

(A) Performance Test Protocol. At least 145 days prior to the commencement of the Performance Test, the Project Company shall submit a detailed plan to SAWS setting forth the Performance Test activities, monitoring, calculation methodologies, specific test instruments or equipment, and applicable calibration procedures proposed for demonstration of achievement of the Minimum Performance Criteria as set forth in Appendix 5 (Performance Test Procedures and Standards) (the "**Performance Test Protocol**"). The Performance Test Protocol shall also include a delivered Product Water schedule, which projects the proposed daily volume of Product Water the Project Company intends to make available during the Performance Test. Within 30 days after SAWS' receipt of the Performance Test Protocol, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test Protocol is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Performance Test Protocol to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(B) Performance Test. The Performance Test is to be conducted, and the results calculated, in accordance with the Contract Standards. The Project Company shall keep SAWS continuously apprised of the specific schedule, and changes therein, for the commencement and re-performance of the Performance Test.

(C) Notice of Commencement of the Performance Test. The Project Company shall notify SAWS and the SAWS Engineer that it wishes to perform a Performance Test complying with this Section 8.3. The Project Company shall provide the SAWS Engineer and SAWS with at least three Business Days' prior written notice of the expected initiation of the Performance Test. The Project Company shall not attempt to perform the Performance Test if SAWS gives notice to the Project Company of uncompleted Construction Work, the completion of which is required for the safe operation of all or any part of the Project during the Performance Test.

(D) Conditions to Commencement of the Performance Test. The Project Company shall not commence the Performance Test until the following events have occurred:

(1) The requirements of Section 8.3(C) (Notice of Commencement of the Performance Test) have been met;

(2) If required by Applicable Law, TCEQ has approved the Performance Test plan proposed by the Project Company;

(3) Substantial Completion has occurred;

(4) The Project Company Public Water Supplier Designation or an Interim Operations Approval has been issued by TCEQ, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith;

(5) All Utilities specified or required under this Water Transmission and Purchase Agreement to be arranged for by the Project Company are connected and functioning properly;

(6) The Project Company has met with SAWS at least 60 days prior to the scheduled Performance Test to provide a forecast of expected Product Water production and availability, described the intended management of Product Water and Off-Specification Product Water, and reviewed such forecast and intended management with SAWS staff responsible for the introduction of water into the SAWS Distribution System; and

(7) The requirements of Section 5.2 (Performance Testing Prerequisites) of Appendix 5 (Performance Test Procedures and Standards) have been met.

(E) Conduct of the Performance Test. The Performance Test shall consist of the operation of the Project as a whole, as described in Appendix 5 (Performance Test Procedures and Standards), for the time period mentioned therein, in compliance with the Contract Standards. Achievement of Acceptance will be determined in accordance with the criteria set forth in Appendix 5 (Performance Test Procedures and Standards) and this Water Transmission and Purchase Agreement. SAWS shall designate and make available qualified and authorized representatives to observe the Performance Test and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with this Water Transmission and Purchase Agreement. The SAWS Engineer shall have the right to observe the Performance Test and the taking of measurements discussed in the preceding sentence. Neither SAWS nor the SAWS Engineer shall interfere with the conduct of the Performance Test. The Project Company's election and report of Performance Test results shall be made in accordance with the requirements defined in Appendix 5 (Performance Test Procedures and Standards).

(F) Test Report. Within 45 days following the last day of any Performance Test, the Project Company shall furnish the SAWS Engineer and SAWS with five copies of a written Performance Test report consistent with the requirements specified in Appendix 5 (Performance Test Procedures and Standards). The Performance Test results will be calculated in accordance with the Contract Standards. Within 20 days after SAWS' and SAWS Engineer's receipt of the Performance Test results, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test report is complete and correct or specifying the deficiencies of the Performance Test. In the latter instance the foregoing procedure will be repeated or the report withdrawn; provided, that if such notice specifying

deficiencies is provided more than 10 Business Days after receipt of the Performance Test results, the Commercial Operation Longstop Date shall be extended for each day from the 10th Business Day from receipt of the Performance Test results until the day such notice is provided to the Project Company.

SECTION 8.4. PRODUCT WATER DELIVERIES PRIOR TO THE COMMERCIAL OPERATION DATE.

(A) Performance Tests. During any Performance Test, the Project Company shall notify SAWS of the volumes of Product Water to be made available to the Project Flow Meter at least one day in advance of such availability. The cost of all Performance Test activities, including any repetition of the Performance Tests, has been priced in the Monthly Water Purchase Payments. If repeated Performance Tests are required due to the failure of the Project Company to achieve Acceptance, the Project Company shall reimburse SAWS for reasonable costs and expenses incurred in monitoring and reviewing the results of any such repeated Performance Tests.

(B) Interim Operations. If TCEQ issues the Project Company Public Water Supplier Designation, or an Interim Operations Approval, prior to the Commercial Operation Date, SAWS shall take delivery of Product Water made available by the Project Company, subject to the following:

(1) SAWS shall have completed the SAWS Interconnection Improvements;

(2) SAWS and the Project Company, acting reasonably, shall have agreed on a schedule of Flow Rates for the delivery and receipt of such Product Water;

(3) The Product Water meets the Product Water Quality Guarantee;

(4) SAWS may, on reasonable notice to the Project Company, terminate its obligation to take delivery of such Product Water if the Project Company fails to make available Product Water substantially in accordance with the agreed-upon delivery schedule;

(5) SAWS' obligation to take delivery of Product Water under this Section shall terminate upon earlier of (a) the expiration or termination of any authority to operate the Project under an Interim Operations Approval, or (b) the termination of this Water Transmission and Purchase Agreement, whether under Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date) or otherwise hereunder.

SAWS shall have no obligation to compensate the Project Company for any Product Water delivered during interim operations or otherwise prior to the Commercial Operation Date.

(C) Other Obligations of the Parties During Interim Operations. During interim operations, the Operating Period shall not have commenced. The parties shall, however, comply with all of their respective obligations hereunder during interim operations as if the Operating Period had commenced, except that: (1) the Project Company's right to make available Product Water shall be as described in Section 8.4(B) (Interim Operations); (2) SAWS shall have no obligation to pay the Monthly Water Purchase Payments; and (3) Product Water shall comply at all times with the requirements of Applicable Law. Nothing in this Section shall be construed to limit SAWS obligations under Section 6.2(C) (Completion Delay).

(D) Water Disposal and Disinfection Required by Curtailments. The Project Company shall be responsible for SAWS' actual costs of any required disposal of stagnant water in and disinfection of water at the SAWS Interconnection Improvements, resulting from the Project Company's curtailment of Performance Testing or interim operations for any reason other than SAWS Fault or at the direction of SAWS.

SECTION 8.5. ACCEPTANCE.

(A) Conditions. The following conditions shall constitute the "**Acceptance Conditions**," each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Acceptance and establish the Commercial Operation Date:

(1) Substantial Completion. Substantial Completion has been achieved (and all conditions of Substantial Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Project have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted;

(2) Achievement of the Minimum Performance Criteria. A Performance Test shall have been conducted demonstrating that the Project has achieved the Minimum Performance Criteria and complied with the Contract Standards, and a Performance Test report shall have been delivered to SAWS and the SAWS Engineer validating such achievement, certified as correct and complete by the Project Company;

(3) EPC Contractor Letter of Confirmation. The EPC Contractor shall have delivered a letter to SAWS and the SAWS Engineer confirming the matters stated in (2) (Achievement of Minimum Performance Criteria);

(4) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Project Company Public Water Supplier Designation, which are required to be obtained by the Project Company as of the Commercial Operation Date for the performance of the Operating Work shall have been duly obtained by the Project Company and shall be in full force and effect. True and correct copies of all such Governmental Approvals, to the extent not in SAWS' possession, shall have been delivered to SAWS to the extent required by Section 5.5(B)(Copies) and Section 9.8(E) (Copies of Operating Governmental Approvals);

(5) No Encumbrances. There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

(6) Governmental Body Readiness Confirmations. To the extent required under Applicable Law, all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures comprising the Project on the Project Sites are ready for use and occupancy;

(7) Required Operating Period Insurance. The Project Company has obtained and submitted to SAWS endorsements and certificates of insurance for all Required Insurance specified in Section 7.2 (Insurance During the Operating Period) of Appendix 7 (Insurance Requirements); and

(8) Final Electronic Operation and Maintenance Manuals. The Project Company has delivered to SAWS the final Electronic Operation and Maintenance Manual.

(B) Notice and Report of Acceptance. When the Project Company believes that it has achieved Acceptance, it shall deliver to SAWS and the SAWS Engineer a notice thereof (the “**Notice of Acceptance**”). The Notice of Acceptance shall contain a report in a form acceptable to SAWS, and with sufficient detail to enable SAWS to determine that Acceptance has been achieved.

(C) Achievement of Acceptance. SAWS and the SAWS Engineer shall, within 30 days following receipt of the Notice of Acceptance, inspect the Project and all Construction Work and either (a) deliver a certificate to the Project Company certifying that the requirements under clauses (1) through (8) of Section 8.5(A) (Conditions) have been satisfied, or (b) notify the Project Company in writing that Acceptance has not been achieved, stating in detail the reasons therefor. In the event that Acceptance has not been achieved, the Project Company shall promptly take such action or perform such Construction Work to effect compliance with Acceptance, and shall issue to SAWS and the SAWS Engineer another Notice of Acceptance pursuant to (B) (Notice and Report of Acceptance). Such procedure shall be repeated as necessary until Acceptance has been achieved. Any expense incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as a Direct Payment.

SECTION 8.6. ACHIEVEMENT OF ACCEPTANCE AND COMMERCIAL OPERATION DATE.

(A) Acceptance. The Project Company shall achieve Acceptance by the Commercial Operation Longstop Date.

(B) Commercial Operation Longstop Date Defined. The “**Commercial Operation Longstop Date**” is the date that is 1,620 days following the Financial Closing Date, as such Commercial Operation Longstop Date may be extended as provided in (C) (Extension for Uncontrollable Circumstances).

(C) Extension for Uncontrollable Circumstances. If an Uncontrollable Circumstance occurs between the Financial Closing Date and the Commercial Operation Longstop Date, the Commercial Operation Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the Uncontrollable Circumstance on any matter in the Project Schedule affected by the Uncontrollable Circumstance, but in no event longer than the date that is 2,160 days following the Financial Closing Date (except that if the Uncontrollable Circumstance is a SAWS Fault, the Commercial Operation Longstop Date shall be so extended without limit).

(D) Commercial Operation Date. The “**Commercial Operation Date**” shall be the date by which the Notice of Acceptance is delivered to SAWS, if, subsequent to such delivery, SAWS delivers a certificate to the Project Company certifying, in response to such Notice of Acceptance, that the Acceptance Conditions have been satisfied.

SECTION 8.7. FAILURE TO ACHIEVE THE COMMERCIAL OPERATION DATE BY THE COMMERCIAL OPERATION LONGSTOP DATE.

In the event the Project Company fails to achieve the Commercial Operation Date by the Commercial Operation Longstop Date (as extended pursuant to Section 8.6(C) (Extension for Uncontrollable Circumstances), a Project Company Event of Default shall be deemed to have occurred and SAWS, subject to the terms of the Creditors’ Remedies

Agreement, may pursue all remedies available under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default) and Article 22 (Termination).

SECTION 8.8. FINAL COMPLETION.

(A) Requirements. “**Final Completion**” shall occur when all of the following conditions have been satisfied:

(1) Acceptance. The Project Company has achieved Acceptance in accordance with Section 8.5 (Acceptance);

(2) Construction Work Completed. All Construction Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Water Transmission and Purchase Agreement;

(3) Equipment Warranties and Manuals. The Project Company shall have delivered to SAWS, copies of the warranties of equipment and fixtures constituting a part of the Project received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers;

(4) Record Drawings. The Project Company has delivered to SAWS a final and complete set of as-built construction record drawings, prepared in accordance with Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and signed and sealed by a Texas registered professional engineer;

(5) Acquisition of All Project Real Property. The Project Company has acquired all Project Real Property required for the Project and has delivered to SAWS copies of all easements and Project Site Conveyance Instruments acquired by the Water Supply Corporation or the Project Company or otherwise necessary in connection with the Project, together with copies of all title insurance policies with respect thereto; and

(6) Claims Statement. The Project Company has delivered to SAWS a claims statement setting forth in detail all claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Construction Work, and arising out of or based on events prior to the date when the Project Company gives such statement to SAWS.

(B) Notice and Report of Final Completion. When the Project Company believes that it has achieved Final Completion, it shall deliver to SAWS and the SAWS Engineer a written notice thereof (the “**Notice of Final Completion**”). The Notice of Final Completion shall contain a report in a form acceptable to SAWS and the SAWS Engineer, and with sufficient detail to enable SAWS and the SAWS Engineer to determine the achievement by the Project Company of all Construction Work to be performed under this Water Transmission and Purchase Agreement, including completed Punch List items, and such other information that SAWS may require to determine whether Final Completion has been achieved.

(C) Achievement of Final Completion. SAWS and the SAWS Engineer, shall, within 20 days following receipt of the Notice of Final Completion, inspect the Project, review the report submitted by the Project Company and either (a) deliver a certificate to the Project Company stating that clauses (1) through (6) of Section 8.8(A) (Requirements) have been

satisfied, or (b) notify the Project Company in writing that Final Completion has not been achieved, stating in detail the reasons therefor. In the event that SAWS or the SAWS Engineer determines that Final Completion has not been achieved, the Project Company shall promptly take such action or perform such Construction Work as will achieve Final Completion and shall issue to SAWS another Notice of Final Completion pursuant to Section 8.8(B) (Notice and Report of Final Completion). Such procedure shall be repeated as necessary until Final Completion is achieved. Any expenses incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as Direct Payment.

(D) Obligation to Achieve Final Completion; Punch List Items. The Project Company shall achieve Final Completion within 365 days after the Commercial Operation Date.

ARTICLE 9

OPERATION AND MANAGEMENT OF THE PROJECT

SECTION 9.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Operation and Management Responsibility for the Project. Commencing on the Commercial Operation Date, the Project Company shall operate and manage the Project; treat Raw Groundwater; produce, supply, make available and sell Product Water to SAWS; transport and dispose of Project By-Products; provide all information necessary to secure and maintain Governmental Approvals to the extent required under this Water Transmission and Purchase Agreement; and otherwise operate and manage the Project so as to comply with the Contract Standards applicable to such activities.

(B) Application of Industry Experience. The Project Company shall use all reasonable efforts to apply at the Project the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Project Company, the Operating Service Provider and their Affiliates through the operation of their water businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Project Company for carrying out the Operating Work in a manner which improves upon the Contract Standards.

(C) SAWS Administrative Space. The Project Company shall provide office space at or adjacent to the permanent offices of the Operating Service Provider (if located outside Bexar County) for the exclusive use of SAWS' compliance personnel and advisors in accordance with Appendix 6 (Operating and Maintenance Standards). The cost related to SAWS' use of such office space (including janitorial services to be provided by the Project Company) shall constitute a Compensable Cost.

SECTION 9.2. SERVICE COORDINATION.

(A) Project Company's Chief Operator. The Project Company shall appoint a full-time manager of the Project (the "**Chief Operator**"). The Chief Operator shall have a TCEQ Grade A operator's certification as of the date of the commencement of start-up and commissioning of the Project and shall be otherwise appropriately certified under Applicable Law. The sole employment responsibility of the Chief Operator shall be managing the operation of the Project. In the event SAWS determines that (1) the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, or (2) an unworkable relationship (as defined below) has developed between the Chief Operator and SAWS, SAWS shall provide the Project Company with written notice, describing such failure or development of an unworkable relationship (as defined below) and its duration in reasonable detail. An unworkable relationship shall be deemed to have developed if the Chief Operator, by his or her persistent conduct, is non-responsive or non-communicative with Governmental Bodies, Project Site Lessors, SAWS or the Project Company; makes misrepresentations; provides false or incomplete information; dishonors commitments; fails to make timely decisions; or fails to manage or control the employees under his or her managerial control. The parties shall thereupon schedule a meeting to discuss and seek to resolve SAWS' concerns, to be held not more than 30 days following delivery of such notice, which meeting shall be attended by senior executives of SAWS, the Project Company and the Operating Service Provider with authority to resolve the dispute. If, following such meeting, based on the persistent conduct that prompted SAWS' concern or conduct occurring following the meeting, SAWS, acting reasonably, still determines that an unworkable relationship exists or that the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, SAWS shall so notify the Project Company and the Project Company

shall remove such Chief Operator as soon as reasonably practicable, but in no event later than 60 days.

(B) Communications and Meetings. On or before the Commercial Operation Date, the Project Company shall provide SAWS with contact information for the Chief Operator and senior management representatives of the Project Company. SAWS shall furnish to the Project Company comparable communications information with respect to the Contract Administrator. The Project Company shall meet with SAWS each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 9.11 (Periodic Reports). The Chief Operator (or other senior representative of the Operating Services Provider acceptable to SAWS) and, if requested by SAWS, a senior management representative of the Project Company each shall personally attend the monthly operations meetings with SAWS, and all special meetings which SAWS may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Project and this Water Transmission and Purchase Agreement. The Project Company shall have the right to have a representative present at all such meetings. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation in accordance with Section 18.2 (Non-Binding Mediation), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable.

(C) Complaints and Communications. The Project Company shall respond in a timely and effective manner to all complaints and communications received by the Project Company or received by SAWS and forwarded to the Project Company regarding the treatment and distribution of water, odor and air emissions, noise, light emissions, construction or any other matter related to the Operating Work as to which there is a Contract Standard, to the extent required by the following sentence. The Project Company shall investigate each such complaint and communication and, if it has a valid basis, the Project Company shall promptly respond to or rectify the matter, as applicable; provided, however, that the Project Company shall have no obligation to respond to or rectify a matter raised in a complaint or communication if the Project Company is in compliance with the Contract Standards with respect to the matter. The Project Company shall respond to complaints and communications concerning (1) emergencies related to the Project within one hour; (2) material spillages, leaks, breaks, noise, light, and emissions relating to the Project as soon as reasonably possible; and (3) other material communications within two Business Days. All such complaints and communications shall be immediately logged and responded to in writing, faxed to SAWS on a daily basis, and reported to SAWS as part of the monthly operations reports delivered pursuant to Section 9.11 (Periodic Reports). The Project Company shall establish, maintain and make publicly known a telephone number, e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

### SECTION 9.3. STAFFING AND PERSONNEL.

(A) Staffing Generally. The Project Company shall staff (or cause the Operating Service Provider to staff) the Project during the Term in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of the State. The Project staff, taken as a whole, shall be trained, experienced and proficient in the management and operation of water treatment systems using treatment processes similar to the Project. The Project Company shall (or shall cause the applicable Project Contractor to) appropriately discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Project Company shall notify SAWS of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would

adversely materially and adversely affect the ability of the Project Company to provide the Operating Work in accordance with the Contract Standards.

(B) Key Operations Staff. Collectively, the Chief Operator and those reporting directly to the Chief Operator shall have experience with all of the technologies and practices utilized in the Project sufficient to operate and maintain the Project and perform the Contract Services in accordance with the Contract Standards.

(C) Training. The Project Company shall be responsible for training the Chief Operator, operations supervisors and other Project Company personnel. No later than the Commercial Operation Date, the Project Company shall prepare a personnel training program which the Project Company proposes to institute in order to ensure that the Project is managed and operated by qualified personnel throughout the Term and in accordance with this Water Transmission and Purchase Agreement. Such personnel training program shall include the personnel training guidelines, policies and procedures established (1) by the TCEQ and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

#### SECTION 9.4. UTILITIES.

(A) General. The Project Company shall arrange for and establish the supply of gas, water, sewer and other utility service required for the Project in accordance with the Design Requirements, except that electric service during the Operating Period shall be arranged for and established by SAWS as provided in Section 9.4(B).

(B) SAWS Payment of Project Electricity Costs During the Operating Period. SAWS shall have the exclusive right and obligation during the Operating Period to enter into contracts or other arrangements for the supply of electricity to the Project (not later than such time as is necessary to enable the Performance Test to be performed in a timely manner in accordance with the Performance Test Protocol), to determine the electricity supplier, and to negotiate and establish electric rates with the electricity supplier, subject to the approval of the Project Company, acting reasonably, all as set forth in greater detail in Appendix 9 (Guaranteed Maximum Electrical Utilization and Demand); provided, however, that the Project Company shall cause all Well Field electric service easements that may be required by any electric utility that provides electric service to the Well Field Facilities to be provided and conveyed to the electric utility service provider. The Project Company shall cooperate with and assist SAWS in making such arrangements, and SAWS shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity supply. SAWS shall pay all electricity bills during or related to the Operating Period in a timely manner, subject to annual reimbursement by the Project Company as part of the Annual Settlement Statement process set forth in Section 17.11 (Annual Settlement) in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in Section 17.11(B) (Annual Settlement of Electricity Costs). Notwithstanding the preceding sentence, the Project Company shall reimburse SAWS on a monthly basis in an amount equal to all fines and penalties imposed by the electricity provider resulting from the Project Company's failure to operate in accordance with the Contract Standards. The Project Company shall operate the Project in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Operating Work, charges for electricity use, demand, transmission and distribution which are payable by SAWS hereunder.

(C) No SAWS Liability. In no event, notwithstanding SAWS role in the selection of any electricity supply, shall SAWS have any liability or responsibility for the performance or non-performance of any electricity supplier, including any failure to supply electricity in a timely or reliable manner as required for the Project or any additional costs or delays in providing Product Water that may result therefrom.

SECTION 9.5. ELECTRONIC OPERATION AND MAINTENANCE MANUAL.

The Project Company shall deliver a preliminary draft Electronic Operation and Maintenance Manual to SAWS for review and comment at least 45 days prior to Substantial Completion, and a draft final Electronic Operation and Maintenance Manual at least 60 days following Acceptance. SAWS shall have the right to review and comment on such draft final Electronic Operation and Maintenance Manual within a 30-day period following its receipt, and the Project Company shall give reasonable consideration to such comments in finalizing the draft. The Operating Work shall be performed substantially in compliance with the Electronic Operation and Maintenance Manual, the Operating Protocol and the CMMS. The Project Company shall keep the Electronic Operation and Maintenance Manual current in accordance with the Contract Standards, including changes required to reflect updates to record documents made on account of Capital Modifications or made pursuant to Section 9.10(C) (Record Documents).

SECTION 9.6. SAFETY.

The Project Company shall maintain the safety of the Project at a level consistent with all federal, State and local safety and health rules and regulations, and the Contract Standards. Without limiting the foregoing, the Project Company shall:

- (1) take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Project to,
  - (a) all employees performing the Contract Obligations and other persons who may be directly affected thereby,
  - (b) all visitors to the Project,
  - (c) all materials and equipment under the care, custody or control of the Project Company on the Project Sites,
  - (d) other property constituting part of the Project, and
  - (e) SAWS Property affected by Project operations;
- (2) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;
- (3) designate a qualified and responsible employee at the Project whose duty shall be the development and implementation of safety and health requirements at the Project, the prevention of fires and accidents and the coordination of such activities, with federal, State, local and SAWS officials;
- (4) operate all equipment in a manner consistent with the manufacturer's safety requirements; and
- (5) develop and implement a health and safety program that includes a written site-specific health and safety plan designed to implement the requirements of this Section. The Project Company shall make all modifications to the Project which are or may be required under OSHA.

SECTION 9.7. SECURITY.

The Project Company, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project. The Project Company shall prepare and keep current a security plan for the Project and conduct vulnerability assessments in accordance with the requirements of Section 6.5 (Security Plan) of Appendix 6 (Operating and Maintenance Standards) (the "**Security Plan**"), and shall comply with the requirements of the Security Plan. The Project Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Standards.

SECTION 9.8. OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Project Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Project Company under Applicable Law in order to operate the Project, including those set forth in Appendix 2 (Governmental Approvals). All permit and filing fees required in order to obtain and maintain Governmental Approvals that are material to the Operating Work shall be paid by the Project Company, regardless of the identity of the applicant.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Operating Work shall be supplied and taken on a timely basis by the Project Company considering the requirements of Applicable Law. The data and information supplied by the Project Company to SAWS and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Project Company shall provide all material documentation to be submitted to a Governmental Body in connection with the Operating Governmental Approvals for SAWS' review and comment at least 14 days prior to submission to the applicable Governmental Body. The Project Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. Unless required under Applicable Law, the Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence, provided that any such action by SAWS shall not cause the Project Company to fail to comply with Applicable Law.

(C) Non-Compliance and Enforcement. The Project Company shall report to SAWS, immediately upon obtaining knowledge thereof, all notices or communications it receives with respect to violations of the terms and conditions of any Project Site Lease, Governmental Approval or Applicable Law pertaining to the Project. The failure of the Project Company to comply with any Governmental Approval in all material respects shall constitute a breach of this Water Transmission and Purchase Agreement.

(D) Reports to Governmental Bodies. The Project Company shall, in accordance with the Contract Standards, prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Project, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for SAWS, if such are acceptable to the

Governmental Body. The Project Company first shall provide SAWS with copies of such regulatory reports prior to their filing as and to the extent required pursuant to Section 9.8(B) (Data and Information).

(E) Copies of Operating Governmental Approvals. The Project Company shall make available for review and copying by SAWS, upon request, copies of the Operating Governmental Approvals and related applications.

(F) Potential Regulatory Change. The Project Company shall keep SAWS regularly advised as to potential material changes in regulatory requirements affecting the Project or the Raw Groundwater of which the Project Company becomes aware, together with anticipated responses to such potential changes (including potential Capital Modifications and the acquisition of additional water rights).

#### SECTION 9.9. SAWS ACCESS TO PROJECT.

(A) General Access. Subject to (1) reasonable safety precautions and execution of waivers of liability on the part of SAWS visitors, (2) reasonable prior notice requirements required by the Project Company, and (3) reasonable limitations imposed by the Project Company for purposes of assuring minimum disruption to operations of the Project (in all cases to be established in the Operating Protocol), SAWS shall have the right at any time to visit and inspect the Project and related records and observe the Project Company's performance of the Operating Work in order to determine compliance with the Contract Standards, including the Project Company's obligations under Article 11 (Maintenance, Repair and Replacement); provided that unless a Project Company Event of Default shall have occurred and be continuing arising directly from an alleged failure of the Project Company to act within Contract Standards, or other exigent circumstances exist which, in SAWS reasonable opinion, creates an imminent risk to the health and safety of its customers, any such visitation rights shall be limited to normal business hours, except for visits in and around the Product Water Delivery Point. SAWS shall give reasonable prior notice to the Project Company of any visit outside the immediate vicinity of the Product Water Delivery Point and afford the Project Company a reasonable opportunity to enable a Project Company representative to accompany any visit by SAWS personnel. To the extent SAWS personnel visit or inspect the Project unaccompanied, such SAWS personnel (including agents and contractors) shall announce themselves to the staff and Project Company employees that may be present at or near each location visited. The Project Company shall permit and facilitate access to the Project for such purposes by SAWS personnel and by agents and contractors designated by SAWS. All visitors and on-site SAWS personnel shall comply with the Project Sites-specific health and safety plan and rules, and shall not interfere with the Project Company's operation of the Project.

(B) Tours. The Project Company shall conduct public tours of the Project during normal business hours, and take visitors through such portions of the Project as are suitable for public visitation, all during normal business hours and in a pre-arranged and mutually agreed upon manner that does not interfere with the Project Company's performance of the Contract Obligations.

#### SECTION 9.10. ASSET RECORDS.

(A) Information Systems. The Project Company, on and after the Commercial Operation Date, shall establish and maintain computerized information systems with respect to the Project for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Water Transmission and Purchase Agreement and demonstrate compliance with the Contract Standards. The Project

Company shall grant SAWS real time, continuous access to such computerized information systems through the SAWS Interface Cabinet.

(B) Availability of Project Records to SAWS. The Project Company shall make available for inspection and copying by SAWS, upon request, copies of all operations, maintenance, performance, Project By-Products management, process control and similar records and data kept by the Project Company in its performance of the Operating Work.

(C) Record Documents. The Project Company shall maintain at the Project and make available to SAWS upon request for review and copying: (1) all material Design Documents and record drawings and documents pertaining to the Project copies of which were delivered to SAWS by the Project Company pursuant to Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (2) similar documents relating to any Capital Modifications. The Project Company shall: (1) update annually all such records to show any material changes to the Project made by the Project Company in the performance of the Operating Work (which shall include any change that alters the functionality, performance or usability of any Project Equipment and Project Structures, or which could impact Product Water quality or SAWS aqueduct operations); and (2) provide advice and assistance to SAWS, based on such records, in establishing and maintaining any SAWS geographic mapping and information systems.

(D) Annual Update of Record Drawings and Documents. The Project Company, within 60 days following the end of each Contract Year, shall deliver to SAWS an electronic copy of an updated set of as-built drawings reflecting any material changes to the Project during such Contract Year, of any updates to record drawings and documents that were made during the previous Contract Year. The annual record drawings and documents update shall be prepared in accordance with the requirements of Section 9.12(D) (Drawing Requirements) and delivered separately from the annual operation and maintenance reports delivered pursuant to Section 9.11(B) (Annual Operation and Maintenance Reports).

SECTION 9.11. PERIODIC REPORTS.

(A) Monthly Operations. The Project Company shall provide SAWS with monthly operations reports no later than 15 days after the end of each Billing Period. In addition to the operating data specified in Appendix 6 (Operating and Maintenance Standards), the monthly operations reports shall include a report by the Project Company as to the following:

(1) A table or other information format acceptable to SAWS setting forth all results of operations pertaining to the availability or unavailability of Product Water, presented using each of the categories used for billing and tracking purposes under Article 17 (Monthly Water Purchase Payments);

(2) Summary of the quantities and characteristics of Raw Groundwater and Product Water produced during the prior month, in a manner consistent with the listing of the characteristics set forth in Appendix 8 (Performance Guarantee Requirements);

(3) Summary of all sampling and test data required by this Water Transmission and Purchase Agreement;

(4) Quantities of electricity, natural gas, water and other Utility services used during such month;

- (5) Summary of staffing levels, job positions and workforce turnover;
- (6) Statement of any complaints or communications received by the Project Company in relation to the Operating Work as to which the Project Company is obligated to respond under Section 9.2(C) (Complaints and Communications), and how each such complaint and communication was addressed by the Project Company;
- (7) Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;
- (8) Description of maintenance backlog and status of work orders of preventative and unplanned maintenance;
- (9) List of material machinery and equipment which was unavailable for service during the prior month, and a timetable for repair and replacement;
- (10) Description of any asset abandoned in place pursuant to Section 6.2.14(b) of Appendix 6 (Operating and Maintenance Standards);
- (11) Description of partial or total Project equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;
- (12) Adverse conditions which may be expected to arise during the current month that may affect the ability of the Project Company to pump or treat Raw Groundwater and produce Product Water in accordance with the terms and conditions of this Water Transmission and Purchase Agreement;
- (13) Results of any regulatory or insurance inspections conducted during the prior month;
- (14) Information on any Utility outages occurring during the prior month;
- (15) Descriptions of any failures to meet the Performance Guarantees and data required to determine performance liquidated damages under this Water Transmission and Purchase Agreement, if any;
- (16) Listing and description of any reports or other submittals made to or received from any Governmental Body with respect to any environmental, health or safety tests or monitoring procedures conducted by the Governmental Body during the prior month;
- (17) Notices of material violations of any Governmental Approval received during the prior month;
- (18) Notices of any material breach or default under any Project Site Lease; and
- (19) List of visitors to the Project in the prior month.

The Project Company shall submit for SAWS' review and approval, acting reasonably, in accordance with Section 6.3.1 of Appendix 6 (Operating and Maintenance Standards), the proposed format of the monthly operations report required to be provided by the Project Company pursuant to this Section.

(B) Annual Operations and Maintenance Reports. The Project Company shall furnish SAWS, within 60 days after the end of each Contract Year following the Commercial Operation Date, an annual summary of the information contained in the monthly operations reports, including a report by the Project Company of any administrative fine, penalty or consent order against it or any of its Affiliates with respect to the performance of operation and maintenance services at other water projects located in the State. The Project Company shall also perform and report to SAWS, as part of its annual operations and maintenance report and in accordance with the Contract Standards, a review and analysis of the administrative, operational and maintenance practices employed in the management of the Project. The annual operations and maintenance report shall also include a summary of all replacements or retirement of material Project Equipment and Capital Modifications. The annual record drawing updates required by Section 9.10(D) (Annual Update of Record Drawings and Documents) shall be prepared as a separate submittal to SAWS.

(C) Default Reports. The Project Company shall provide to SAWS, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Project Contract entered into by the Project Company in connection with the Operating Work.

SECTION 9.12. MAINTENANCE OF RECORDS.

(A) Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) referred to in Section 9.12(E) (Records to Be Kept) in accordance with this Section and other applicable terms of this Water Transmission and Purchase Agreement, in chronological order, in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to SAWS for inspection during normal business hours upon reasonable notice.

(B) Maintenance of Records. Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in electronic form and, to the extent legally required, in hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

(1) The Project Company shall retain and maintain all records referred to in Section 9.12(E) (Records to Be Kept) for a period of at least ten years from the Contract Year to which such records relate, or such longer period as may be required by Applicable Law, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Water Transmission and Purchase Agreement.

(2) On the expiration of such period or at the earlier request of SAWS, the Project Company shall deliver all those records (or, if those records are required by statute to remain with the Project Company or Project Contractor, copies thereof to SAWS in the manner and at the location as SAWS specifies, acting reasonably.) SAWS shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section upon reasonable notice.

(C) Disposal of Records. During the Term, the Project Company may dispose of any records referred to in Section 9.12(E) (Records to Be Kept) if any are more than 10 years old or in respect of which the required period for their retention has expired, provided that the Project Company first notifies SAWS in writing and provides SAWS with 60 days to elect to receive delivery of such records.

(D) Drawing Requirements. Any drawings required to be made or supplied pursuant to this Water Transmission and Purchase Agreement shall be prepared in accordance with the requirements of Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where by prior agreement with the Project Company SAWS has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Project Company shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

(E) Records to Be Kept.

The Project Company shall retain the following:

- (1) This Water Transmission and Purchase Agreement and the documents executed based on the Transaction Forms, including all amendments to such agreements;
- (2) Records relating to the appointment and supervision of SAWS Representative and the Project Company Representative;
- (3) Documents relating to Governmental Approvals, including applications, refusals and appeals;
- (4) Documents relating to any amendment, material dispute or litigation under any Project Site Lease;
- (5) Notices, reports, results and certificates relating to completion of the Construction Work, Commissioning, and Capital Modifications;
- (6) All operation and maintenance manuals;
- (7) Record drawings and documents, and periodic updates;
- (8) Documents relating to Uncontrollable Circumstances;
- (9) All notices made to or received from the SAWS Representative;
- (10) Documents relating to a request for the consent of SAWS to any Change in Control by the Project Company;
- (11) Documents relating to a Refinancing of the Project Company;
- (12) Tax invoices and records applicable to the Project (other than any income tax records for the Project Company or records pertaining to other taxes personal to the Project Company);

(13) Records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Project Company with respect to the Construction Work and Operating Work;

(14) Documents relating to the Required Insurance; and

(15) All other records, notices or certificates required to be produced or maintained by the Project Company pursuant to the express terms of this Water Transmission and Purchase Agreement.

SECTION 9.13. EMERGENCIES.

(A) Emergency Plan. Within 90 days prior to the Commercial Operation Longstop Date, the Project Company shall provide SAWS with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety, power outage, and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to SAWS and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by SAWS and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary, in accordance with the Operating Protocol.

(B) Emergency Action. Notwithstanding any requirement of this Water Transmission and Purchase Agreement requiring SAWS approval or consent to reports or submittals, if at any time the Project Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project, or to mitigate the immediate consequences of an emergency event, then the Project Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Project Company shall notify SAWS of the event at an emergency phone number supplied by SAWS, and the Project Company's response thereto.

SECTION 9.14. HAZARDOUS SUBSTANCE MANAGEMENT DURING THE OPERATING PERIOD.

As between the parties, the Project Company shall be responsible for, and shall bear the risk and cost, of managing and disposing of Hazardous Substances (including Hazardous Substances in Unacceptable Water) as may exist at or as may arise from the operation of the Project during the Operating Period; and SAWS shall be responsible for, and shall bear the risk and cost of managing and disposing of, such Hazardous Substances as may exist at, or arise from the operation of, the SAWS Distribution System during the Operating Period. The Project Company shall update as reasonably necessary: (1) the Hazardous Substance Management Program; and (2) the Response Plan.

ARTICLE 10

PERFORMANCE

SECTION 10.1. GENERAL PERFORMANCE RESPONSIBILITIES.

(A) Project Company Acknowledgment. The Project Company acknowledges that the Project will constitute: (1) a significant source of treated drinking water for conveyance to the SAWS Distribution System; and (2) a critical part of SAWS' long term water supply availability program. The parties acknowledge and agree that this Section shall not be construed to expand or otherwise modify the Project Company's obligations under this Water Transmission and Purchase Agreement.

(B) Asset Management. SAWS: (1) has and shall retain full management responsibility for the SAWS Distribution System; and (2) shall be responsible for the operation, maintenance, repair, replacement and management of the SAWS Interconnection Improvements. The Project Company shall be responsible, in accordance with this Water Transmission and Purchase Agreement, for the operation, maintenance, repair, replacement and management of the Project.

(C) Limitations on Project Company Rights. The Project Company shall not treat water other than Raw Groundwater, and shall not use the Project for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than SAWS. Except at the direction and with the permission of SAWS given under Section 26.5 (Opportunities), the Project Company shall not deliver Product Water to any person other than SAWS, and shall not impose a fee or charge on any person other than SAWS for the supply of Product Water. The only compensation to the Project Company for the supply of Product Water and for performing the Operating Work shall be the Monthly Water Purchase Payments and other amounts payable by SAWS hereunder.

(D) Reserved Opportunities and Rights. SAWS shall own the opportunities and have the reserved rights with respect to the Project set forth in Section 26.5 (Opportunities).

SECTION 10.2. PRODUCT WATER QUALITY GUARANTEE.

(A) Applicable Law Limits. The Project Company shall operate the Project so as to produce Product Water from Raw Groundwater in compliance with the quality and other requirements of Applicable Law and this Water Transmission and Purchase Agreement. In no event shall the Project Company make available Product Water that is not in compliance with the requirements of Applicable Law.

(B) Additional Product Water Quality Standards. In addition to its obligation to comply with the Product Water requirements imposed by Applicable Law as provided in Section 10.2(A) (Applicable Law Limits), the Project Company shall make available Product Water in compliance with the quality requirements set forth in Appendix 8 (Performance Guarantee Requirements), including the bacterial testing and rectification requirements set forth therein (the "**Additional Product Water Quality Standards**"). The Additional Product Water Quality Standards and the requirements in Section 10.2(A) (Applicable Law Limits) shall collectively mean the "**Product Water Quality Guarantee**".

(C) Compliance. Compliance with the Product Water Quality Guarantee shall be measured at the Product Water Quality Sampling Location. SAWS shall have no obligation prior to or after taking delivery of any Product Water made available by the Project Company to conduct tests to determine whether such Product Water meets the Product Water

Quality Guarantee or is Off-Specification Product Water or Unacceptable Product Water. SAWS may, however, conduct tests to make such a determination, either by testing Product Water in the Project pursuant to Section 10.10(B) (SAWS Testing Rights) or by testing Product Water in the SAWS Distribution System.

(D) Remedies for Breach of Product Water Quality Guarantee - Off-Specification Product Water. In the event SAWS takes delivery of any Product Water that constitutes Off-Specification Product Water: (1) each Unit of such Off-Specification Water shall be deemed to constitute a Monthly Delivered Water Unit; (2) SAWS shall have the right in its discretion to impose a Deduction in the amounts specified in Table 8-2 of Appendix 8 (Performance Guarantee Requirements); (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon the resumption of deliveries will not constitute Off-Specification Product Water; and (4) SAWS shall further have the additional remedies set forth in Section 10.8 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any Unit of Product Water made available by the Project Company but not taken delivery of by SAWS pursuant to the exercise of its rights under this Section shall not constitute a Monthly Delivered Water Unit.

(E) Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water. In the event SAWS takes delivery of any Product Water that constitutes Unacceptable Product Water: (1) each Unit of Unacceptable Product Water shall be deemed not to constitute a Monthly Delivered Water Unit; (2) SAWS shall have no obligation to compensate the Project Company for such Unit of Unacceptable Product Water; (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon resumption of deliveries will not constitute Unacceptable Product Water; (4) SAWS shall have the right to bring an action for damages; and (5) SAWS shall further have the additional remedies set forth in Section 10.8 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any damages payable by the Project Company as a result of any such judgment or settlement shall be paid as a Direct Payment.

(F) Boil Water and Do Not Drink Notices. In the event the TCEQ requires the issuance of a "boil water" or "do not drink" notice on the basis of the quality of Product Water of which SAWS has taken delivery: (1) the Project Company shall, if reasonably required by SAWS, terminate the Operating Service Agreement and enter into a replacement Operating Service Agreement in accordance with Section 13.4 (Project Contracts), (2) such notice shall constitute a Project Company Remediable Breach pursuant to Section 20.1(B) (Project Company Remediable Breach Defined), and (3) SAWS shall have the further remedies specified herein, including those specified in Section 10.8 (SAWS Remedies for Non-Compliance with Performance Guarantees). If, at any time during the Term following the issuance of a first such notice, the TCEQ subsequently requires the issuance of a second such notice on the basis of the quality of Product Water delivered to SAWS, a Project Company Event of Default shall be deemed to have occurred and SAWS may pursue the remedies available under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default), and Article 22 (Termination).

(G) Reporting Off-Specification Product Water and Unacceptable Product Water. The Project Company shall report to SAWS the making available to SAWS of any Off-Specification Product Water and Unacceptable Product Water immediately upon having actual knowledge of any such circumstance.

(H) Indemnity for Loss and Expense from Non-Complying Product Water. In the event that SAWS takes delivery of any Product Water that fails to comply with the Product Water Quality Guarantee, the Project Company shall indemnify, defend and hold harmless

SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting from the supply of such non-complying Product Water to third parties. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends to and shall include any special, incidental, consequential, punitive and other similar damages awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 19.6 (No Special, Consequential or Punitive Damages).

(I) No Uncontrollable Circumstances Relief. In no event shall an Uncontrollable Circumstance excuse the Project Company from its obligation to comply with the Product Water Quality Guarantee. No Unacceptable Product Water taken delivery of by SAWS shall constitute Daily Delivered Water Units, irrespective of the occurrence of an Uncontrollable Circumstance.

SECTION 10.3. PRODUCT WATER SUPPLY AND DEMAND DEFINITIONS.

(A) Definitions. As used in this Water Transmission and Supply Agreement:

(1) Advance Make-Up Units. "**Advance Project Company Make-Up Units**" has the meaning set forth in Section 10.4(B) (Supply Following Commercial Operation Date).

(2) Baseline Annual Volume. "**Baseline Annual Volume**" means 50,000 Acre Feet.

(3) Baseline Daily Volume. "**Baseline Daily Volume**" means 137.0 Units.

(4) Daily Delivered Water Units. "**Daily Delivered Water Units**" means, for any day, the number of Units actually made available by the Project Company and taken delivery of by SAWS at the Product Water Delivery Point.

(5) Daily Maximum Volume. "**Daily Maximum Volume**" means 149.2 Units.

(6) Demand Shortfall Units. "**Demand Shortfall Units**" means, for any day, the number of Units by which the volume of Product Water that has been taken delivery of by SAWS on such day is less than the number of Units that the Project Company has made available on such day (up to the maximum number of Units specified in Section 10.4(B) (Supply Following Commercial Operation Date)).

(7) Excess Product Water. "**Excess Product Water**" means, for any Contract year, the number of Daily Delivered Water Units for such Contract Year that is in excess of 50,000 Units.

(8) Excused Supply Shortfall Units. "**Excused Supply Shortfall Units**" means the number of Supply Shortfall Units which the Project Company did not make available due to an Uncontrollable Circumstance. The Project Company shall be allowed seven days for scheduled maintenance of the Project

Improvements in each Contract Year, and accordingly on each day on which the Project Improvements are shut down for any such scheduled maintenance, the Project Company shall be credited with 137.0 Excused Supply Shortfall Units.

(9) Make-Up Units. “**Make-Up Units**” means the number of Units made available by the Project Company at the Product Water Delivery Point that exceeds 137.0 Units on any day.

(10) Supply Shortfall Units. “**Supply Shortfall Units**” means the number of Units by which the volume of Product Water made available by the Project Company at the Product Water Delivery Point is less than the Daily Baseline Volume.

(11) Unexcused Supply Shortfall Units. “**Unexcused Supply Shortfall Units**” means the number of Supply Shortfall Units which the Project Company did not make available that was not due to an Uncontrollable Circumstance.

(B) Records and Tracking Accounts. The Project Company shall record the Daily Delivered Water Units, the Excused Supply Shortfall Units, the Unexcused Supply Shortfall Units, the Demand Shortfall Units, the Make-Up Units and the Advance Make-Up Units on a daily basis (rounding the number of Units in each to the nearest one-tenth of one Acre Foot), and keep tracking accounts for all such Units by Category.

SECTION 10.4. PROJECT COMPANY RIGHT TO SUPPLY PRODUCT WATER.

(A) Supply Prior to Commercial Operation Date. The Project Company shall have the right, commencing the date that is 1,170 days following the Financial Closing Date, to deliver Product Water for purposes of conducting the Performance Test. SAWS shall take delivery of such Product Water to the extent that the SAWS Interconnection Improvements are completed and permit Product Water delivery. No compensation shall be payable by SAWS for any Product Water of which it takes delivery prior to the Commercial Operation Date.

(B) Supply Following Commercial Operation Date. The Project Company shall have the right, commencing on the Commercial Operation Date (but not earlier than the date that is 1,260 days following the Financial Closing Date) and throughout the Term, to make available 50,000 Acre Feet of Product Water each Contract Year at the Product Water Delivery Point. Product Water may be delivered (1) in any volume up to 137.0 Units on any day in the months of November, December, January and February, and (2) in any volume up to 149.2 Units in all other months, except that:

(1) In the first and second months of March and the first and second months of April following the Commercial Operation Date, the daily volume limits shall be 137.0 Units; and

(2) Subject to the daily limitations of 137.0 Units and 149.2 Units as provided above, on any day when there are Excused Supply Shortfall Units standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units so long as the maximum volume of Product Water made available in any Contract Year does not exceed 53,000 Acre Feet; and

(3) Subject to daily limitations of 137.0 Units and 149.2 Units as provided above, on any day when there are no Excused Supply Shortfall Units

standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units (“**Advance Project Company Make-Up Units**”) up to a maximum of 3,000 Advance Project Company Make-Up Units at any time outstanding, which Advance Project Company Make-Up Units shall be available for application whenever Excused Supply Shortfall Units subsequently occur.

**SECTION 10.5. SAWS OBLIGATION TO TAKE DELIVERY OF AND PURCHASE PRODUCT WATER.**

(A) SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date. Following the Commercial Operation Date, SAWS shall take delivery of and purchase all Product Water made available by the Project Company, subject to and in accordance with the limits set forth in Section 10.4(B) (Supply Following Commercial Operation Date) and the terms and conditions of this Water Transmission and Purchase Agreement.

(B) SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date. To the extent that in any Billing Period following the Commercial Operation Date there are any Demand Shortfall Units that have not been made up by SAWS Make-Up Units, SAWS shall pay the Unit Price for such Demand Shortfall Units even though SAWS has not taken delivery of the Product Water made available by the Project Company that would have constituted Daily Delivered Water Units. The failure of SAWS to take delivery of any Product Water to any degree or for any reason shall not constitute a breach of this Water Transmission and Purchase Agreement or the basis for a SAWS Event of Default.

(C) Off-Specification Product Water and Unacceptable Product Water. Any SAWS failure to take delivery of Product Water pursuant to the exercise of rights under Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water) and Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water) shall not constitute a breach of Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date), and any Product Water not taken delivery of on account of such exercise of rights shall not constitute Demand Shortfall Units.

(D) Measurement. The volume of Product Water of which SAWS has taken delivery shall be measured by the Product Water Flow Meter.

(E) Excess Product Water. It is the intention of the parties that the Project Company shall not make available, and SAWS shall not take delivery of, Excess Product Water (except as provided in Section 10.4(B)(2) and Section 10.4(B)(3) (Supply Following Commercial Operation Date). In the event that SAWS nonetheless takes delivery of Excess Product Water (except as provided in Section 10.4(B)(2) and Section 10.4(B)(3) (Supply Following Commercial Operation Date), SAWS shall have no obligation to pay the Unit Price to the Project Company on account thereof.

(F) Payments. SAWS shall make the payments required under this Section by making Monthly Water Purchase Payments in accordance with Article 17 (Monthly Water Purchase Payments).

**SECTION 10.6. MAKE-UP UNITS.**

(A) Project Company Make-Up Units. Any Make-Up Units on any day shall first be applied to the credit of the Project Company to make up any Excused Supply Shortfall

Units in the Excused Supply Shortfall Units tracking account (“**Project Company Make-Up Units**”). Project Company Make-Up Units shall be purchased by SAWS as provided in Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date). The Project Company shall not have any opportunity to make up Unexcused Supply Shortfall Units.

(B) SAWS Make-Up Units. Any Make-Up Units on any day that are not credited to the Project Company as Project Company Make-Up Units under Section 10.6(A) (Project Company Make-Up Units) shall constitute “**SAWS Make-Up Units**.” Because SAWS shall have already paid the Unit Price for Demand Shortfall Units as provided in Section 10.5(B) (SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date), SAWS Make-Up Units shall be made available by the Project Company and taken delivery of by SAWS without any additional compensation.

(C) Delivery of Make-Up Water. To the extent that at any time there are Demand Shortfall Units that have not been made up by SAWS Make-Up Units, the Project Company (subject to the daily limits of 137.0 and 149.2 Units as provided in Section 10.4(B) (Supply Following Commercial Operation Date), shall use all reasonable efforts to deliver Product Water so as to create SAWS Make-Up Units.

#### SECTION 10.7. EXTENSION OF TERM.

(A) Shortfall Units. The Term shall be extended as and to the extent required:

(1) Excused Supply Shortfall Units. To allow for any Excused Supply Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS;

(2) Demand Shortfall Units. To allow for any Demand Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS without further compensation.

The Project Company shall provide written notice to SAWS, at least 90 days prior to the Expiration Date, as to whether and to what extent the Expiration Date will need to be extended as of the date thereof to account for the matters described in this Section 10.7(A) (Shortfall Units), together with the basis therefor. On or before the Expiration Date, the parties shall execute a Contract Administration Memorandum confirming the extended Expiration Date. Throughout the extended Term, the Project Company shall provide quarterly updates as to such matters, as well as additional information related to events that occur during the extended Term that may require additional extensions.

(B) Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance. In the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of an Uncontrollable Circumstance, then the Term shall be extended subject to and in accordance with the following:

(1) As soon as practicable after the Project Company becomes aware of the need to issue additional Permitted Debt, the Project Company shall provide to SAWS the following information at least 45 days prior to the date on which the Project Company proposes to issue the Permitted Debt (the “**Permitted Debt Issuance Date**”):

(a) a term sheet and other relevant information on the terms of the proposed Capital Modification;

(b) details concerning any proposed financing of such proposed Capital Modification including the amount of any anticipated equity contribution and the principal amount and anticipated interest rate pertaining to any additional Permitted Debt proposed to be issued (the “**Proposed Financing**”);

(c) the Financial Model as of the Contract Date (which targets a pre-tax internal rate of return of 13.741% (as referenced on the “Quarterly Calculations” tab, row 2256)); and

(d) a pro-forma post-Proposed Financing Financial Model, which modifies the Financial Model as of the Contract Date by making the following adjustments to take into account the Proposed Financing:

(i) Entry of the proposed equity contribution, if any, into the Financial Model as of the proposed Permitted Debt Issuance Date. This equity contribution will be assumed to earn a pre-tax internal rate of return of 13.741%;

(ii) Entry of the proposed Permitted Debt issuance amount into the Financial Model as of the Permitted Debt Issuance Date. This debt issuance will be assumed to bear interest at the rate set forth in subsection (1)(b) above;

(iii) Holding the amount of the Capital and Raw Groundwater Unit Price as established at the Financial Closing Date constant, extend the Term for the necessary number of years to amortize the proposed Permitted Debt issuance to maturity (assuming level debt service payments which begin at the date that is 30 years following the Commercial Operation Date or such later date as may be necessary assuming principal balances of Initial Senior Debt or previously issued Permitted Debt remain outstanding beyond the date that is 30 years following the Commercial Operation Date); and

(iv) To the extent that the cash flows associated with the extension of Term in subsection (1)(d)(iii) above have not been sufficient to generate a pre-tax internal rate of return of 13.741% in accordance with the review of the Financial Model’s “Quarterly Calculations” tab, row 2256, further extend the Term (beyond the extension described in subsection (1)(d)(iii) above) for the additional necessary number of quarters to achieve this target level of return. For purposes of this computation, it is assumed that all cash flows previously being utilized to service Permitted Debt will now be available to provide additional equity returns.

(2) Following receipt of the information from the Project Company set forth in subsection (1) above, SAWS shall within 21 days review and, if in agreement, provide its approval to the Proposed Financing and its requisite extension of the Term, such approval not to be unreasonably withheld. In the event SAWS does not approve such extension, it shall provide the reasons therefor in detail in writing to the Project Company within such 21 day-period and shall make available representatives with decision-making authority at a mutually agreed time and place to meet with equivalent representatives of the

Project Company within 10 days thereafter to discuss and review in detail the information set forth in the submittals of the Project Company and the reasons for the disapproval of SAWS.

(3) SAWS shall cooperate with the Project Company and provide reasonable assistance to the Project Company with respect to each financing pursuant to this Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(4) Upon completion of the Proposed Financing, the steps outlined in subsection (1)(d) above will be completed using the actual interest rates achieved in order to determine the ultimate extension of the Term. A copy of the Financial Model taking into account the actual results of the financing will be forwarded to SAWS within 10 days of the Financial Close, with the actual extension of the Term being as determined in this Financial Model. The parties shall document any extension of the Term by executing a Contract Administration Memorandum.

(5) The parties acknowledge that in the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of any Uncontrollable Circumstances during the extended Term, then the parties shall follow the same procedures set forth in this Section 10.7 (Extension of Term) in order to further extend the Term, subject to the limitations set forth in this Section 10.7 (Extension of Term).

(C) Maximum Term Extension. The maximum Term extension resulting from any or all of the extensions provided for in Sections 10.7(A) (Shortfall Units) and 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) shall be 20 years following the original Expiration Date.

(D) No Increase in Capital and Raw Groundwater Unit Price. During the period of any extension of the original Term occurring under this Section 10.7 (Extension of Term), there shall be no adjustment of the Capital and Raw Groundwater Unit Price for any reason, including the reasons that caused an extension of the original Term.

SECTION 10.8. SAWS REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Project Company fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the Project Company shall, without relief under any other Performance Guarantee, and in addition to the payment of Deductions and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

(1) notify SAWS promptly (and in any event not later than 24 hours) of the Project Company's having knowledge of any such non-compliance;

(2) provide SAWS promptly (and in any event not later than 24 hours) with copies of any notices sent to or received from the EPA, the TCEQ, the POSGCD or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law;

(3) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom;

(4) take any commercially reasonable action necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee; and

(5) assist SAWS with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

The Project Company shall consult with SAWS in a timely manner regarding the appropriate remedy.

(B) Project Performance Testing. In the event that the Project Company fails to meet the Performance Guarantees for four consecutive Billing Periods, SAWS may require a performance test of the Project to be conducted by the Project Company, at the Project Company's cost and expense, to determine the cause of such failure; provided, however, that such test shall not materially and adversely affect the Project or the Project Company's performance of (or cost of the performance of) the Contract Obligations. The Project Company shall use reasonable efforts to make all necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

#### SECTION 10.9. SERVICE COORDINATION.

At least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Project Company shall update, subject to the approval of SAWS, the Operating Protocol consistent with the Contract Standards. The Operating Protocol shall set forth all practices, procedures and protocols which are necessary or useful in coordinating the activities of the parties hereunder, including particularly the establishment and modification from time to time of SAWS' demands for Product Water, all operational and informational communications between SAWS and the Project Company, and all data and information required to demonstrate the extent to which the Project is being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Water Transmission and Purchase Agreement. SAWS' Representative and the Chief Operator shall be responsible for coordinating all matters relating to the Operating Protocol.

#### SECTION 10.10. METERING AND TESTING.

(A) Testing. The Project Company shall conduct all tests of Raw Groundwater and Product Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and, prior to the Commercial Operation Date, shall be conducted at the Project Company's sole cost and expense; thereafter, the cost and expense of such tests shall constitute Compensable Costs. All Raw Groundwater and Product Water sampling and testing for contract performance shall be conducted at the testing locations identified in the testing and sampling standards set forth in Appendix 8 (Performance Guarantee Requirements) and the other Contract Standards. SAWS shall have the right to approve all testing locations, acting reasonably.

(B) SAWS Testing Rights. SAWS, using its own personnel or another designated person, shall have the right from time to time, upon reasonable notice to the Project

Company, to enter the Project for the purpose of conducting tests of the Raw Groundwater and the Product Water at the approved testing locations, and to conduct such tests in accordance with Good Management Practice in a manner that does not materially interfere with the Project Company's performance of the Contract Services. If requested by the Project Company, SAWS shall furnish split samples and copies of all test reports prepared pursuant to this Section to the Project Company.

(C) Well Field Meters. In accordance with Appendix 6 (Operating and Maintenance Standards), the Project Company shall maintain in good working order and repair, and replace when necessary, flow metering devices capable of metering the daily total volume of Raw Groundwater received at the Well Field Facilities (the "**Well Field Meters**").

(D) Project Flow Meter. The Project Company shall design, calibrate, test, and install the Project Flow Meter in accordance with Appendix 3 (Technical Specifications). After Acceptance, the Project Company shall be responsible for the routine servicing and maintenance of the Project Flow Meter and appurtenant field mounted instruments, and for all major maintenance, repairs and replacements with respect thereto.

(E) Meter Inspections. The Project Company shall engage a qualified third-party inspection firm to confirm the accurate calibration and proper functioning of the Well Field Meters and the Project Flow Meter. The inspection firm shall perform quarterly inspections and provide copies to its inspection reports promptly to SAWS and to the Project Company.

(F) Project Company Estimates During Meter Incapacitation or Testing. To the extent any metering device is incapacitated or is being tested, the parties shall estimate as accurately as practicable, based on all available relevant information, the data required by the Project Company to perform the Contract Services and to invoice SAWS. This estimate and methodology shall be used as the basis for determining the operating data required hereunder during the outage.

(G) Extended Project Flow Meter Incapacitation. The Project Company shall repair or replace the Project Flow Meter with the utmost urgency in the event the Project Flow Meter is incapacitated. In the event any period of Project Flow Meter incapacitation extends beyond 24 hours, any water made available to SAWS thereafter shall not constitute Monthly Delivered Water Units and SAWS shall have no obligation to compensate the Project Company for any such water.

#### SECTION 10.11. RELEASES, LEAKS AND SPILLS.

(A) Unauthorized Releases. The Project Company shall operate the Project in such a manner that Raw Groundwater, Product Water, Project By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, to the extent prohibited by Applicable Law other than as permitted by the most stringent of any of the Contract Standards.

(B) Notification and Reporting. The Project Company shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release of Raw Groundwater, Product Water, Project By-Products or chemicals into the environment from or in connection with its operation and management of the Project. The Project Company shall provide to SAWS copies of documents provided to the relevant Governmental Body regarding the release.

(C) Project Site Assessment Upon Termination or Expiration. SAWS may at its own cost and expense conduct an assessment of the Project Sites upon any assignment and

conveyance of the Project Assets pursuant to Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), or any election to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) to determine whether any Raw Groundwater, Product Water, Project By-Products or chemicals have been released, leaked or spilled on or into, or discharged into the environment in violation of Applicable Law. The Project Company shall be responsible for the remediation of any such release caused by the Project Company and discovered by SAWS through any such assessment of the Project Sites in the manner and to the extent provided in Section 10.11(D) (Cleanup and Costs).

(D) Cleanup and Costs. The Project Company shall remediate any unauthorized material release of chemicals by the Project Company but only to the extent required by the least stringent standard provided for under such Applicable Law making use of any restrictions or other use limitations consistent with the then current use of the relevant property.

#### SECTION 10.12. PROJECT COMPANY DISPOSAL OF RESIDUALS.

(A) Residuals Management. The Project Company shall locate an Acceptable Disposal Site and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term in accordance with Applicable Law. The Project Company shall transport all Residuals to an Acceptable Disposal Site in accordance with Applicable Law.

(B) Acceptable Disposal Site. An “**Acceptable Disposal Site**” means any waste disposal, treatment or recycling facility permitted or allowed under Applicable Law to accept the Residuals.

(C) Transportation Operations. In the event of a release, spill, leak or loss of Residuals during transfer or transit within the Project Company’s control or responsibility or under its supervision, the Project Company shall take all remedial or response measures required under Applicable Law.

(D) Acceptable Disposal Site Information. The Project Company shall keep and maintain such logs, records, manifests, bills of lading or other documents as are required to be kept or maintained under Applicable Law pertaining to the Residuals and shall make available for review and copying by SAWS, upon request, copies of all weights and measures data and information relating to Residuals quantities generated and disposed of hereunder.

(E) Indemnity. The Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals by the Project Company.

#### SECTION 10.13. PROJECT COMPANY DISPOSAL OF WASTEWATER.

The Project Company shall manage all Wastewater produced at the Project and the Project Sites during the Term in accordance with Applicable Law. SAWS shall have no obligation to receive, treat or dispose of any Wastewater, and no Wastewater shall be discharged or disposed of on any SAWS property.

SECTION 10.14. ADMINISTRATIVE OBLIGATIONS.

Except to the extent excused by Uncontrollable Circumstances, SAWS shall have the right to require the Project Company to make a Direct Payment to SAWS in the amount provided in this Section for failure to perform the following administrative obligations:

- (1) report any material violation of any Governmental Approval or Applicable Law as required by Section 9.11 (Periodic Reports);
- (2) respond to a written request for information related to this Water Transmission and Purchase Agreement made by the Contract Administrator and designated as a "priority request" within three business days as required by Section 26.6(A) (Authority of SAWS Representative);
- (3) respond to complaints and communications received by the Project Company as required by Section 9.2(C) (Complaints and Communications);
- (4) report complaints or communications to SAWS as required by Section 9.2(C) (Complaints and Communications);
- (5) attend SAWS meetings, as reasonably requested, with advance notice from SAWS;
- (6) provide SAWS with any report, record, logs or other document required hereunder on time;
- (7) respond to alarms at the Project as required hereunder;
- (8) provide any plan, proposal, report or other deliverable required hereunder with respect to an Uncontrollable Circumstance or any regulatory deadline agreed to by the parties thereto;
- (9) properly sample, test or report the results thereof as required by Applicable Law or by this Water Transmission and Purchase Agreement; and
- (10) mitigate noise complaints as required by Section 9.2(C) (Complaints and Communications).

The amount of such Direct Payment shall be \$1,000 (Index Linked) per occurrence for the Project Company's failure to comply with the administrative obligations set forth above (an occurrence being deemed to have taken place where, in any Contract Year, there are three instances of non-compliance for the same obligation or three instances of non-compliance for different obligations). The Project Company shall have the right to discuss with SAWS any such occurrence prior to being obligated to make any such Direct Payment.

ARTICLE 11

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 11.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance, Repair and Replacements. The Project Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Project, shall keep the Project in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Project as originally constructed and in accordance with the Design Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Contract Standards. The Project Company shall keep maintenance logs in accordance with the Maintenance, Repair and Replacement Plan.

(B) Major Maintenance, Repairs and Replacements. The Project Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Term of this Water Transmission and Purchase Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature. The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency.

(C) Repair and Maintenance of Project Sites. The Project Company, in accordance with the Contract Standards, shall keep the grounds of the Project Sites in a neat and orderly condition. The Project Company shall also maintain and repair all Project Sites signage, fencing and other security systems. In addition, the Project Company shall provide all landscaping services for the Project Sites.

SECTION 11.2. MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.

(A) Maintenance, Repair and Replacement Plan. Appendix 6 (Operating and Maintenance Standards) contains requirements for preparing the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan is intended to establish a minimum standard by which to measure the Project Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. Within 90 days following the Commercial Operation Date, the Project Company shall incorporate the Maintenance, Repair and Replacement Plan into the Electronic Operation and Maintenance Manual. The Project Company shall adhere to these plans as incorporated in the Electronic Operation and Maintenance Manual, except where it can demonstrate to SAWS that changes are reasonable under Good Management Practice. The timing and extent of maintenance, repair and replacement activities performed by the Project Company hereunder with respect to the Project, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 6 (Operating and Maintenance Standards), as incorporated in the Electronic Operation and Maintenance Manual, and shall take into account the Transfer Condition Requirements that are applicable at the end of the Term. The Project Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

(B) Maintenance, Repair and Replacement Schedule. Appendix 6 (Operating and Maintenance Standards) sets forth the requirements for major equipment repair and replacement activities which would be required to be performed by the Project Company over the Term hereof in order to achieve the standard of overall Project maintenance and repair for the proper operability, durability and reliability of the Project in accordance with the Contract Standards. Without limiting any of the Project Company's obligations under this Section, the Project Company shall make and complete all major equipment repairs and replacements which are necessary to achieve such standard of repair and replacement by performing maintenance, repair and replacement in accordance with the Maintenance, Repair and Replacement Schedule, as such schedule may be altered or amended pursuant to this Section. Downtime for scheduled maintenance, repair and component replacement shall, to the extent practicable, be scheduled for the months of November, December, January and February. The parties acknowledge that, in light of the long term nature of the Water Transmission and Purchase Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Maintenance, Repair and Replacement Schedule. Accordingly, the Project Company shall have the right to deviate from the Maintenance, Repair and Replacement Schedule at any time during the Term, provided that the Project Company provides SAWS with a reasonable justification in advance for such deviation and that such deviation shall be consistent with the requirements set forth in Appendix 6 (Operating and Maintenance Standards). Any alterations to the Maintenance, Repair and Replacement Schedule shall be reflected in a Contract Administration Memorandum and specifically identified in budget variance reports. The Project Company shall coordinate with SAWS with respect to any unscheduled or unanticipated maintenance or repair which would reasonably lead to failure to comply with the Contract Obligations.

### SECTION 11.3. PROJECT EVALUATIONS.

(A) Asset Registry. The Project Company shall, prior to the Commercial Operation Date, photograph, video (to the extent reasonably accessible) and prepare an itemized inventory of all material property constituting the Project, including records of assets originally installed, manufacturer and model number, identification number and, to the extent available, original cost data (the "**Asset Registry**"). The Asset Registry shall be prepared in accordance with Appendix 6 (Operating and Maintenance Standards) based on information and data collected in achieving Substantial Completion, and shall reflect, based on the construction price and the Design Requirements, the condition, functionality and value of the Project as originally constructed by the Project Company hereunder. The purpose of the Asset Registry shall be to establish an informational baseline for determining compliance by the Project Company with its maintenance, repair and replacement obligations under this Article. The Asset Registry shall be kept in a secure environment at a location other than at the Project Sites. The Project Company shall provide an electronic copy of the Asset Registry to SAWS in a form reasonably acceptable to SAWS. The Asset Registry (except the photographs and video components thereof) shall be annually updated by the Project Company as required by Appendix 6 (Operating and Maintenance Standards), and reflected in a report that is separate from the annual operations and maintenance reports prepared pursuant to Section 9.11(B) (Annual Operations and Maintenance Reports).

(B) Final Evaluation of the Project. Within 15 days after SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option), or no later than three months prior to the Expiration Date, the Independent Evaluator shall conduct a final evaluation of the Project in accordance with the protocol established in Appendix 11 (End of Term Project Condition Requirements) and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Project Company shall furnish SAWS and the Independent Evaluator with the Asset Registry and record documentation

prepared pursuant to Appendix 11 (End of Term Project Condition Requirements) and all database information developed in connection with the implementation of the CMMS.

(C) Disputes. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than \$250,000 (Index Linked) which is in dispute between SAWS and the Project Company shall be final and binding upon the parties. For disputes involving amounts greater than \$250,000 (Index Linked), the Independent Evaluator's determination shall be advisory only, and such dispute shall be handled as provided in Sections 18.1 (Forum for Dispute Resolution) and 18.2 (Non-Binding Mediation).

#### SECTION 11.4. PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform an inspection of the Project and relevant records of the Project Company each Contract Year following the Commercial Operation Date to determine compliance with the Contract Standards. SAWS' annual inspection may include the inspection of: (1) the Project and the Project Sites; (2) all in-house laboratories where tests are conducted for samples from the Project; (3) all areas where chemicals are stored or used; and (4) all operations, maintenance, repair and replacement records kept by the Project Company.

(B) Full-Scale Biennial Inspections. Every full second Contract Year following the Commercial Operation Date, SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Project Equipment and Project Structures, pipelines, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Any such inspection and review shall be performed by or on behalf of SAWS by a SAWS Engineer at SAWS' expense, and shall take place at such time as SAWS shall determine upon three months' written notice to the Project Company. The principal purpose of the inspection and review shall be to permit SAWS to ascertain on a comprehensive and focused basis the extent to which the Project is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports.

(C) Non-Interference. The Project Company shall cooperate fully with all inspections conducted pursuant to this Section, which shall not materially interfere with the Project Company's performance of the Contract Services and shall not impose any material costs on the Project Company.

#### SECTION 11.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.

The Project Company shall develop and maintain a computerized maintenance management system (the "CMMS") as part of the Construction Work that it is capable of providing a record of repair and replacement of the Project on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; and monitoring routine operations within the Project. The CMMS shall be developed consistently with the Asset Registry and the requirements of Appendix 6 (Operating and Maintenance Standards), and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Project. The Project

Company shall utilize the CMMS to provide SAWS with documentation which allows it to efficiently monitor compliance by the Project Company with its maintenance, repair and replacement obligations hereunder. SAWS shall have computer-based real time, read-only access to the Project Company's CMMS. The Project Company shall permit all electronic data to be replicated and provided to SAWS for review by the SAWS Engineer except for information regarding costs incurred by the Operating Service Provider.

SECTION 11.6. END OF TERM PERFORMANCE EVALUATION REQUIREMENTS.

(A) Applicability of End of Term Performance Evaluation Requirements. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company complies with the End of Term Performance Evaluation Requirements, the Project Company shall have no obligation to perform the Exit Performance Test.

(C) Non-Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company has not complied with the End of Term Performance Evaluation Requirements, the Project Company shall, at its cost and expense, conduct an Exit Performance Test of the Project (the "**Exit Performance Test**"). The Exit Performance Test shall be conducted in accordance with Appendix 11 (End of Term Project Condition Requirements) and in the same manner as required hereunder for the Performance Test that established Acceptance. In the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, the Project Company at its own cost and expense shall make all repairs and replacements necessary so that the Project is capable of achieving the Minimum Performance Criteria. Upon completion of the repair and replacement work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until an Exit Performance Test demonstrates that the Minimum Performance Criteria have been achieved.

(D) Applicable End of Term Performance Evaluation Period. The applicable "**End of Term Performance Evaluation Period**" under this Section shall be a period of six full consecutive Billing Periods, designated by the Project Company by written notice to SAWS, commencing no later than (1) 60 days after SAWS has delivered its notice (pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options)) of its intent to exercise its Project Assets Purchase Option during the Term; and (2) six months prior to the Expiration Date.

(E) Condition of Project Structures and Project Equipment. In addition to either complying with the End of Term Performance Evaluation Requirements or the Exit Performance Test, the Project Company shall meet the Transfer Condition Requirements.

SECTION 11.7. PROJECT ASSETS TRANSFER CONDITION.

(A) SAWS Exercise of End-of-Term Purchase Option. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Required Project Condition. On the Termination Date, the Project shall be in a condition:

(1) Which, with respect to buildings, structures and pipelines that as of the Contract Date were expected to have a useful life of more than 20 years and other Project Structures (as set forth in Appendix 11 (End of Term Project Condition Requirements), have functional or structural ratings of at least "4" (as defined in Appendix 11); and

(2) Which, with respect to Project Equipment's maintenance, repair and replacement status, meets the standards set forth in Section 11.7 (Project Transfer Condition Requirements) of Appendix 11 (End of Term Project Condition Requirements).

The requirements of this Section constitute the "**Transfer Condition Requirements**".

(C) Transfer Condition Survey and Work Plan. Within 15 days after SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or no later than 18 months prior to the Expiration Date, the Project Company and SAWS shall jointly cause the Independent Evaluator to conduct an inspection and survey of the Project over a 45-day period for the purpose of determining if the Project has been maintained in accordance with the Transfer Condition Requirements (the "**Joint Inspection and Survey**"). This Joint Inspection and Survey shall be separate from and in addition to all other inspections provided for in this Water Transmission and Purchase Agreement. If these surveys indicate that any element of the Project, on the Termination Date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements upon the Project Company implementing the plans and programs required under Appendix 6 (Operating and Maintenance Standards) over the remainder of the Term, within 60 days of completion of the survey the Project Company shall deliver to SAWS the Project Company's plan to perform the additional work necessary to meet the Transfer Condition Requirements, together with a cost estimate for the work as part of the Transfer Condition Plan (as defined in Appendix 11 (End of Term Project Condition Requirements)).

(D) Determination of Transfer Condition Retainage. Within 30 days of receipt of the Transfer Condition Plan from the Project Company, SAWS shall provide the Project Company written notice which: (i) assesses the adequacy of the Transfer Condition Plan; and (ii) establishes the amount of the Transfer Condition Retainage. If SAWS has determined that the Transfer Condition Plan is inadequate, in its written notice, SAWS shall

direct the Project Company to amend the Transfer Condition Plan to add the corrective work and cost of that work SAWS has reasonably determined is necessary to comply with the Transfer Condition Requirements, in accordance with the costs provided in the Final Project Structure Evaluation Report and the Joint Inspection and Survey Report (both as defined in Appendix 11 (End of Term Project Condition Requirements)). SAWS shall, after giving due consideration to the Project Company's cost estimate and the Independent Evaluator's assessment conducted pursuant to Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement and Section 11.8 (Transfer Condition Joint Inspection and Survey) of Appendix 11 (End of Term Project Condition Requirements), determine in good faith the amount SAWS reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the "**Transfer Condition Retainage**").

(E) Establishment and Use of Transfer Condition Retainage Account. SAWS shall hold back and retain from each Monthly Water Purchase Payment (starting with the monthly payment for the first month after SAWS determines the amount of Termination Condition Retainage pursuant to Section 11.7(D) (Determination of Transfer Condition Retainage) an amount equal to (1) the Transfer Condition Retainage, divided by (2) the number of months between the first monthly payment for which Termination Condition Retainage is withheld and the Termination Date, and shall deposit such amount in an interest bearing account held by a Qualified Commercial Bank. The account shall be the property of SAWS, subject to the Project Company's withdrawal rights under this Section; provided, however, that any Transfer Condition Retainage remaining in the Transfer Condition Retainage Account shall be reimbursed to the Project Company when the Transfer Condition Requirements have been met. The Project Company shall have the right, upon the submittal of certified requisitions to SAWS with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Transfer Condition Requirements. Notwithstanding the foregoing, the Project Company shall be entitled to post a letter of credit with SAWS in an amount equal to the Transfer Condition Retainage in lieu of such holdback from the Monthly Water Purchase Payments.

(F) Performance of the Transfer Condition Work and Further Inspection. The Project Company shall implement the Transfer Condition Plan and take all other steps necessary to assure compliance with the Transfer Condition Requirements, notwithstanding SAWS' participation in the transfer condition survey or review of the Project Company's work plan or the fact that the actual cost of compliance may be higher than the amount of the Transfer Condition Retainage. At least 120 days prior to the Termination Date or a date that is mutually agreed upon, the Project Company and SAWS shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Transfer Condition Plan work. If, 90 days prior to the Termination Date, the Project (1) has failed to demonstrate that it has the capacity to meet the End of Term Performance Evaluation Requirements or, if applicable, the Exit Performance Test; or (2) is not being operated or maintained in compliance with the Contract Standards, then SAWS may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Project that would be necessary to allow the Project to meet the requirements of the Exit Performance Test. If the Project subsequently meets the requirements of the Exit Performance Test prior to the Termination Date, the Transfer Condition Retainage shall be reduced by an appropriate amount, as reasonably determined by SAWS.

(G) Final SAWS Condition Assessment. By the date that is the earlier of five Business Days after the joint inspection set forth in Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) or the Termination Date, SAWS shall either:

(1) Issue to the Project Company a certificate confirming compliance with the Transfer Condition Requirements (the “**Transfer Condition Plan Completion Certificate**”) and return any remaining Transfer Condition Retainage to the Project Company; or

(2) Notify the Project Company of its decision not to issue the Transfer Condition Plan Completion Certificate, setting out each respect in which the Project does not comply with the Transfer Condition Requirements and stating SAWS’ estimate of the cost of completing all remaining work required for the Project to comply with the Transfer Condition Requirements.

(H) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with Section 11.7(G)(2) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company’s proposals in respect of such matters.

(I) Final Compliance. If SAWS delivers to the Project Company a Transfer Condition Plan Completion Certificate, SAWS shall transfer any remaining portion of the Transfer Condition Retainage to the Project Company. If the Project did not, at the Termination Date, comply in all respects with the Transfer Condition Requirements, SAWS will promptly either: (1) use any remaining proceeds of the Transfer Condition Retainage to complete any work necessary to cause such compliance; or (2) if a letter of credit is provided in lieu of the Transfer Condition Retainage pursuant to Section 11.7(E) (Establishment and Use of Transfer Condition Retainage Account), draw upon such letter of credit in an amount equal to the estimated value of completing such work, and use such amount to complete such work; provided, however, that any such proceeds of the Termination Condition Retainage or any amounts drawn upon the letter of credit which are not spent on such work shall be paid to the Project Company upon the completion of such work.

ARTICLE 12

CAPITAL MODIFICATIONS

SECTION 12.1. CAPITAL MODIFICATIONS GENERALLY.

A “**Capital Modification**” means a material change to the physical assets constituting the Project (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Project, or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate with any related changes, exceeds \$2,000,000 (Index Linked) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Project or materially alters the original design of the Project as set forth in the Design Requirements. Repairs or replacements of the Project Equipment or the Project Structures shall not constitute Capital Modifications.

SECTION 12.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

(A) General. The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company’s request. Any such Capital Modification shall be financed and paid for by the Project Company, and there shall be no increase in the Unit Price or other compensation payable by SAWS on account thereof.

(B) SAWS Approval. SAWS shall have the right, acting reasonably, to approve any Capital Modification requested by the Project Company under Section 12.2(A) (General). SAWS may condition the exercise of its approval right in any reasonable manner it chooses. To assist SAWS in the exercise of its approval right under this Section, the notice shall contain sufficient information for SAWS to determine that the Capital Modification:

- (1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not materially impair the quality, integrity, durability and reliability of the Project; and
- (3) Is feasible.

SECTION 12.3. CAPITAL MODIFICATIONS AT SAWS REQUEST.

(A) General. SAWS shall have the right to direct the Project Company to make Capital Modifications (whether above or below the \$2,000,000 cost threshold) at any time and for any reason whatsoever after the Commercial Operation Date (including Capital Modifications to expand the capacity of the Project), whether and however the exercise of such rights affects this Water Transmission and Purchase Agreement (“**SAWS-Requested Capital Modifications**”), so long as the implementation of any such SAWS-Requested Capital Modification does not contravene the limitations referred to in Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs of any such SAWS-Requested Capital Modification, shall be financed by the Project Company as and to the extent as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications).

(B) Inability of Project Company to Obtain Financing. If the Project Company is unable to obtain financing for SAWS-Requested Capital Modifications, or if SAWS does not approve the proposed financing therefor, in either case as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications), SAWS (1) shall withdraw its direction to make the SAWS-Requested Capital Modification, or (2) shall pay the Project Company directly on a milestone basis (separately from the Monthly Water Purchase Payments) an amount equal to the negotiated lump sum price for the design and construction of such SAWS-Requested Capital Modifications, as such lump sum price is negotiated in accordance with Section 17.14 (Cost Substantiation). SAWS shall make any such payments for design and construction work from its own available funds or reserves, or shall finance such payments using its own borrowing capacity.

(C) No Senior Debt Creditor Obligation. SAWS acknowledges that the Senior Debt Creditors have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

**SECTION 12.4. PROCEDURES FOR IMPLEMENTING SAWS-REQUESTED CAPITAL MODIFICATIONS.**

(A) Primary Implementation Procedure. The implementation procedures set forth in this Section shall apply with respect to SAWS-Requested Capital Modifications. The Project Company may implement Capital Modifications under Section 12.2 (Capital Modifications at Project Company Request) by any means of its own choosing in accordance with Applicable Law.

(B) Project Company Conceptual Plan and SAWS Review. At the request of SAWS, the Project Company shall prepare and deliver to SAWS a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and lifecycle capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. SAWS shall review the Project Company's conceptual plan and recommendations, and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of SAWS the Project Company shall submit a formal implementation proposal to SAWS for its consideration. The Capital Modification implementation proposal shall contain (1) a Project Company services element, to be implemented through a Water Transmission and Purchase Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain: (a) the Project Company's offer to perform design, construction management and performance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a performance test and a guaranteed maximum construction price if so requested by SAWS and agreed to by the Project Company; and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and

manage the Capital Modification following construction and commissioning for an Index-Linked fixed fee and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct either qualification-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company.

(D) Preparation Costs. The cost and expense of preparing a conceptual plan and any formal implementation proposed under this Section shall be borne by SAWS as a Direct Payment or through an adjustment to the Unit Price.

(E) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following SAWS' review of the Project Company's submittal and quotation, to negotiate to reach an agreement on the required Unit Price adjustment (based on the fixed prices in the Project Company's implementation proposal) and any related adjustment to the terms and conditions of this Water Transmission and Purchase Agreement. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) Design requirements;
- (2) Construction management services;
- (3) Performance tests, standards and procedures;
- (4) A guarantee of completion;
- (5) Performance guarantees;
- (6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) A payment schedule for the design and construction management-related services;
- (8) Any adjustments to the Unit Price resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) A financing plan; and
- (10) Any other appropriate amendments to this Water Transmission and Purchase Agreement.

The Project Company shall not be obligated to undertake any SAWS-Requested Capital Modification, nor shall the Unit Price be adjusted or any Direct Payment be due the Project Company on account of any such Capital Modification, except following agreement by the parties as to all matters affected thereby.

(F) Implementation Procedures. SAWS shall have the same substantive and procedural rights with respect to the implementation of each Capital Modification that it has with respect to the design, construction, commissioning and performance testing of the Project as originally built (with appropriate changes in light of the nature of the particular Capital Modification), as set forth in this Water Transmission and Purchase Agreement.

ARTICLE 13

CONTRACTING AND LABOR PRACTICES

SECTION 13.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. SAWS acknowledges that the Project Company may carry out the Contract Obligations by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Surety Bonds. The Project Company shall cause the EPC Contractor to provide the performance and payment bonds required under the EPC Agreement, and shall cause the Operating Service Provider to provide the operations performance bond required under the Operating Service Agreement.

(C) Use of Project Contractors, Subcontractors and Key Individuals. The Project Company shall use the Project Contractors, Subcontractors and Key Individuals listed in Appendix 14 (Project Company and Project Contractors Information) or such others as SAWS may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Obligations in the roles indicated in Appendix 14 (Project Company and Project Contractors Information).

(D) Restricted Persons. In performing the Contract Obligations, the Project Company shall not contract with, or allow any of its Project Contractors or any material Subcontractors to contract with, any person that is a Restricted Person. In the event that SAWS determines that the Project Company has contracted with, or allowed Project Contractor to enter into a material contract with, a person that is, in SAWS' reasonable opinion, a Restricted Person, SAWS shall notify the Project Company and the Project Company shall replace (or use commercially reasonable efforts to cause the Project Contractor to replace) such person within 30 days.

(E) SAWS Access to and Communications with Project Contractors and Subcontractors. The Project Company shall provide SAWS with access to the Project Contractors and Subcontractors as follows:

(1) General Communications. The Project Company shall grant SAWS' Director of Engineering and Director of Operations (or management personnel senior to such positions) direct access to the Project Contractors and Subcontractors and their senior management personnel (including the head of security) for meetings and email, telephone and fax communications regarding any material aspect of the work being performed by the Project Contractor or Subcontractor or Blue Water Vista Ridge, LLC. This right of direct access shall apply during normal business hours and at any time during emergencies. Any such meetings on communications shall require 12 hours advance notice to and the approval of the Project Company, acting reasonably, except where SAWS reasonably believes that a material breach of this Water Transmission and Purchase Agreement has occurred or may imminently occur, in which case such notice and approval shall not be required. The Project Company, upon request, shall have the right to be present at any such meetings, and to receive copies of any such communications (including reasonable advance notice of any meetings). In the exercise of its rights under this paragraph, SAWS shall not unreasonably interfere with, and shall have no right to direct, the performance of the Operating Work. The Operating Service Agreement shall expressly obligate the Operating Service Provider to respond promptly to any

communication from SAWS' Director of Engineering and Director of Operations (or management personnel senior to such positions), to attend any meeting reasonably called by such SAWS personnel, and to furnish any material information requested by SAWS personnel, in each case that has a bearing on the performance of the Contract Obligations with respect to which the Project Contractor has responsibility, involvement or knowledge.

(2) Other Communications During the Construction Period. During the Construction Period, the Construction Superintendent or his or her delegate shall be available to be contacted by SAWS' on-site representative: (1) on a 24 hours per day basis for emergency response; and (2) during normal business hours for safety concerns or others issues requiring immediate attention.

(3) Other Communications During the Operating Period. During the Operating Period, the Chief Operator or its designee shall be available to be contacted by SAWS on a 24 hours per-day basis for emergency response and operational coordination.

#### SECTION 13.2. WATER SUPPLY CORPORATION.

(A) Formation and Intended Use. The parties acknowledge that the Project Company has caused the Water Supply Corporation to be formed with the intent of having the Water Supply Corporation facilitate and serve the public purpose of the Project in the manner described herein. To this end, Project Company may request that the Water Supply Corporation and SAWS execute the Project Real Property Conveyance Agreement, and the Project Company further may execute the Construction Management Agreement, the Project Construction Loan Agreement, and the Water Transportation Agreement with the Water Supply Corporation. In addition, the Project Company may execute the Operating Service Agreement directly with the Water Supply Corporation, or request the Water Supply Corporation to execute the Operating Service Agreement with the Operating Service Provider, and may execute the EPC Agreement directly with the EPC Contractor, or request the Water Supply Corporation to execute the EPC Agreement with the EPC Contractor.

(B) Right of Election on Use; Notice. The Project Company shall have the right to contract and conduct business with the Water Supply Corporation as contemplated hereby, or to elect not to contract and conduct business with the Water Supply Corporation as so contemplated. The Project Company shall make its election as soon as practicable following the Contract Date, and shall notify SAWS in writing promptly thereafter. The Project Company shall not contract with or conduct business with the Water Supply Corporation without making such an election, which shall be documented in a Contract Administration Memorandum.

(C) Election Not to Contract With the Water Supply Corporation. If the Project Company elects not to contract and conduct business with the Water Supply Corporation, the Project Company shall retain and assume (1) all of the rights and duties of the Water Supply Corporation under this Water Transmission and Purchase Agreement, and (2) sole and complete responsibility for the performance of all of the obligations that the Project Company intended to be performed by the Water Supply Corporation. The Contract Administration Memorandum executed pursuant to Section 13.2(B) (Right of Election on Use; Notice) shall confirm the Project Company's retention and assumption of each of such responsibilities, including specifically the Project Company's ownership of all of the Project Real Property and obligation to acquire and hold Project Real Property and to assign and convey such Project Real Property to SAWS upon the expiration hereof or upon the termination of this Water Transmission and Purchase Agreement following SAWS exercise of its right to purchase the Project Assets hereunder, all as provided in Articles 3 and 4 and otherwise in the Project Real Property Conveyance Agreement.

(D) Election to Contract With the Water Supply Corporation. If the Project Company elects to contract and conduct business with the Water Supply Corporation in the manner contemplated hereby, the Project Company:

(1) Covenants that neither the Project Company, nor Abengoa or any of their Affiliates shall (a) take or cause to be taken, or (b) to the extent they have legal authority, permit or suffer to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, or entering into or performing their obligations under any agreement with the Water Supply Corporation) the effect of which, individually or as a whole, would cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, the Real Property Conveyance Agreement, or this Water Transmission and Purchase Agreement;

(2) Shall obtain from the Water Supply Corporation a mortgage on the Project Real Property securing the Water Supply Corporation's payment obligations under the Project Construction Loan Agreement and performance obligations with respect to the conveyance of the Project Real Property upon dissolution, which mortgage shall be subordinate to the mortgage securing the Senior Debt;

(3) Shall cause the Water Supply Corporation to perform all of the obligations to be performed by the Water Supply Corporation under any agreement entered into by the Water Supply Corporation with any party; and

(4) Unconditionally and absolutely guarantees to SAWS the performance of all of the obligations of the Water Supply Corporation under its formation documents or under any agreement entered into by the Water Supply Corporation with any party that are material to the Project, the Project Real Property Conveyance Agreement or this Water Transmission and Purchase Agreement.

(E) Water Supply Corporation Counsel Opinion. On or before the date of any election by the Project Company to contract and conduct business with the Water Supply Corporation under Section 13.2(B) (Right of Election on Use; Notice), the Project Company shall deliver to SAWS a favorable opinion of counsel for the Water Supply Corporation, in customary form for project financing transactions, as to the Project Real Property Conveyance Agreement, any agreements made pursuant thereto, matters of law covered by the legal representations of the Water Supply Corporation set forth therein, together with appropriate certified authorizing resolutions and incumbency certificates. Such opinion further shall state in substance that the Water Supply Corporation has been duly formed as a water supply corporation pursuant to Chapter 67 of the Texas Water Code and the applicable provisions of the Texas Business Organizations Code (the "BOC"), and is authorized and has full power and authority under Texas law: (1) to perform the obligations anticipated to be performed by the Water Supply Corporation as described in and provided under this Water Transmission and Purchase Agreement, including entering into the Project Real Property Conveyance Agreement, the Water Transportation Agreement, the EPC Agreement, and the Operating Service Agreement; (2) to acquire, by purchase or other lawful means, and to own the Project Real Property and, as long as it maintains its status as a Water Supply Corporation under Chapter 67 of the Texas Water Code, to acquire property by eminent domain under Section 49.222 of the Texas Water Code; (3) to mortgage and pledge the Project Real Property as security for the Project Construction Loan Agreement and the Senior Debt; and (4) to assign and convey the Project Real Property owned by the Water Supply Corporation on the Expiration Date or upon the Termination Date

of this Water Transmission and Purchase Agreement as a liquidating distribution to SAWS subject to compliance with Section 22.301-22.305 of the BOC. Such opinion shall further state (a) based on the Water Supply Corporation's status as a not-for-profit water supply corporation and owner of Project Real Property, no *ad valorem* property tax will be payable on the Project Improvements, provided that conforming dissolution provisions are included in the Water Supply Corporation's organizational documents in accordance with Texas Tax Code Section 11.30; and (b) subject to (i) obtaining a certification from the Texas Commission on Environmental Quality or SAWS pursuant to Texas Tax Code Section 151.355(5) and 151.355(6), respectively, or (ii) to obtaining a private letter ruling from the Texas Comptroller regarding qualification for exemption under Texas Tax Code Section 151.311, no Texas state sales tax will be payable by or on behalf of the Water Supply Corporation on the cost of constructing the Project Improvements. Nothing in this paragraph shall be construed to obligate SAWS to make any such tax certification.

(F) Certificate of Formation. On or before the date of any election by the Project Company to contract and conduct business with the Water Supply Corporation under Section 13.2(B) (Right of Election), the Project Company or the Water Supply Corporation shall deliver to SAWS for its review, comment and approval (acting reasonably) copies of the amended and restated certificate of formation and the by-laws of the Water Supply Corporation. The certificate of formation shall provide for the transfer and conveyance of Project Real Property to SAWS upon the winding-up of the Water Supply Corporation on terms consistent with the Project Real Property Conveyance Agreement.

(G) Execution of Project Real Property Conveyance Agreement. Promptly following (1) receipt by SAWS of notice from the Project Company of its election to contract and conduct business with the Water Supply Corporation pursuant to Section 13.2(B) (Right of Election on Use; Notice), (2) receipt by SAWS of the opinion of counsel to the Water Supply Corporation pursuant to Section 13.2(E) (Water Supply Corporation Counsel Opinion), and (3) review and approval by SAWS of the amended and restated certificate of formation and by-laws of the Water Supply Corporation pursuant to Section 13.2(F) (Certificate of Formation), and at the written request of the Project Company, SAWS agrees to negotiate and enter into the Project Real Property Conveyance Agreement with the Water Supply Corporation based on the terms described in Section 13.2(H) (Terms of the Project Real Property Conveyance Agreement), provided the Project Company causes a parallel undertaking on the part of the Water Supply Corporation.

(H) Terms of the Project Real Property Conveyance Agreement. The Project Real Property Conveyance Agreement and any related agreements with the Project Company shall assure that the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements, and that the Water Supply Corporation will be the owner for the entire term of the Transmission Pipeline System. The Project Real Property Conveyance Agreement shall effectuate the obligation of the Water Supply Corporation to assign and convey to SAWS, and for SAWS to accept and assume, good and indefeasible title and interest in the Project Real Property (other than Project Real Property which is owned by the Project Company) (1) on any Termination Date resulting from the exercise by SAWS of its rights under Article 23 (SAWS Project Assets Purchase Options), or (2) on the Expiration Date. The Project Real Property Conveyance Agreement shall provide that, until the Termination Date, the Water Supply Corporation shall not engage in any other business or activity other than the businesses or activities conducted for the purposes of the Project, and shall not mortgage or pledge the Transmission Pipeline Easements or such Project Improvements except to secure the Senior Debt. The Project Real Property Conveyance Agreement shall not provide for binding arbitration as a dispute resolution method, and shall not contain any provision relating to governmental immunity or a goods and services characterization of the Agreement. Each instrument of assignment and conveyance shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form

and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. The Project Real Property Conveyance Agreement, or a memorandum thereof, shall be recorded in all appropriate recording offices. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to any other party. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the other party shall indemnify and defend SAWS. The Water Supply Corporation shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(I) Severance and Continued Effect. The Project Company acknowledges and agrees that the use of the Water Supply Corporation is not essential to the ability of the Project Company to perform the Contract Obligations, and that the Project can be accomplished and the Contract Obligations can be performed without the use of the Water Supply Corporation. In the event the Project Company elects under Section 13.2(B) (Right of Election on Use; Notice) to contract and conduct business with the Water Supply Corporation and thereafter, at any time during the Term, the Water Supply Corporation for any reason (including reasons related to its status or powers as a not-for-profit corporation or a water supply corporation) is determined in any Legal Proceeding not to have the authority under Applicable Law to enter into or perform its obligations or exercise its intended powers under any agreement related to the Project:

(1) The provisions of Section 13.2(C) (Election Not to Contract with the Water Supply Corporation) shall, on and after the date of any such determination, be deemed to apply as if the Project Company had elected not to contract and conduct business with the Water Supply Corporation; and

(2) In accordance with Section 1.2(S) (Severability), the parties acknowledge and agree that:

(a) Any term, condition or provision of this Water Transmission and Purchase Agreement relating to the Water Supply Corporation that is determined in any such Legal Proceeding to be invalid, unenforceable or illegal shall be severed from this Water Transmission and Purchase Agreement;

(b) Such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Water Transmission and Purchase Agreement, which shall continue in effect; and

(c) The continued effectiveness of this Water Transmission and Purchase Agreement as modified is not contrary to the basic understandings and intentions of the parties, and there is no need to negotiate any new provisions to restore this Water Transmission and Purchase Agreement to its original intent and effect.

### SECTION 13.3. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to SAWS under this Water Transmission and Purchase Agreement for all matters related to the Contract Obligations. No failure of a Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Obligations shall relieve the Project Company from its obligations hereunder to perform the Contract Obligations. The Project Company shall be responsible for settling and resolving with all Project Contractors and

Subcontractors all claims arising from the actions or inactions of the Project Company or Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the EPC Contractor and the Operating Service Provider all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against SAWS for labor, services, materials or equipment furnished for the Contract Obligations. The Project Company acknowledges that its indemnity obligations under Section 25.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by a Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Obligations to the extent that those claims fall within the scope of the indemnity in Section 25.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts (and any related parent company guaranty) entered into by the Project Company with respect to the Project shall be assignable to SAWS solely at SAWS' election and without cost or penalty, upon the expiration or termination of this Water Transmission and Purchase Agreement.

#### SECTION 13.4. PROJECT CONTRACTS.

(A) SAWS Consents. Unless SAWS has consented to such course of action, such consent not to be unreasonably withheld or delayed, and subject to the terms of the Creditors' Remedies Agreement, the Project Company shall not:

(1) Terminate, or agree to or permit the termination of, all or any material part of any Project Contract; provided, however, that the Project Company may terminate the Operating Service Agreement if it enters into a replacement Operating Service Agreement on terms reasonably acceptable to SAWS with an Operating Service Provider listed on Appendix 14 (Project Company and Project Contractors Information) or who is otherwise reasonably acceptable to SAWS;

(2) Make, or agree to or permit the making of:

(a) any material amendment of any Project Contract (other than material amendments directly resulting from SAWS-Requested Capital Modifications); or

(b) any material departure by any party from any material provision of any Project Contract;

(3) Permit a Project Contractor to assign or transfer to any person any of such Project Contractor rights or obligations under a Project Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Project Contract; or

(4) Enter into, or permit the entering into of, any replacement of a Project Contract entered on or before the Contract Date.

(B) Timeframe for Consents. SAWS shall give or deny such consent within:

(1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Project Contract immediately; and

(2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

The giving or denial of consent by SAWS shall not create any liability of SAWS to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, SAWS' reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of \$25,000 (Index Linked). After SAWS' decision is rendered, SAWS will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section.

SECTION 13.5. REPLACEMENT PROJECT CONTRACTS.

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project, the Project Company:

(1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and

(2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, Project Contractor Substitution Agreement.

SECTION 13.6. DELIVERY OF AMENDED OR REPLACEMENT PROJECT CONTRACTS.

If at any time any amendment is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into, the Project Company shall deliver to SAWS a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 13.7. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. As between SAWS and the Project Company, the Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. SAWS shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any and all Loss-and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that would reasonably be expected to materially and adversely affect any of the Contract Obligations, the Project Company shall promptly:

(1) Give notice thereof to SAWS, including all relevant information related to the dispute of which the Project Company has knowledge; and

(2) Take all reasonable steps to ensure that such labor dispute does not materially and adversely affect the performance of any of the Contract Obligations including, if necessary, by applying for relief to appropriate agencies or courts.

ARTICLE 14

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 14.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable; provided, however, that the Project Company shall not be obligated to carry Required Insurance to the extent and for any period that coverage for any particular risk or event is not available on commercially reasonable terms. SAWS in any such circumstances shall bear no risk or responsibility upon the occurrence of any such uninsured or underinsured risk or event.

(B) Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Project Company shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) Proof of Insurance Coverage. Annually, the Project Company shall furnish, or shall cause Project Contractor to furnish, SAWS with (1) any endorsements to the policies for such insurance obtained for the Project, and (2) certificates of insurance from each insurance carrier showing that the insurance required under such Project Contract is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least 30 days (or 10 days in the case of cancellation due to non-payment of premiums) after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by SAWS). Each policy of insurance (or renewal policy of insurance) furnished hereunder shall: (a) evidence the existence and coverage amounts of the Required Insurance; and (b) show SAWS as an "additional insured" or "named insured", as required by Appendix 7 (Insurance Requirements) for the particular policy of Required Insurance.

(E) Failure to Provide Insurance Coverage. If the Project Company fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, SAWS may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by SAWS the amount thereof shall be immediately reimbursable as a Direct Payment to SAWS by the Project Company. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses, be a satisfaction of any Project Company liability under this Water Transmission and Purchase Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

(F) Use of Property Insurance Proceeds. The Senior Debt Financing Agreements shall provide that property Insurance Proceeds shall be deposited in a designated fund established thereunder, and grant the Project Company the right to direct the use thereof, subject to the terms and conditions set forth therein and in the Creditors' Remedies

Agreement. The Project Company shall exercise such right so as to cause all property Insurance Proceeds to be applied first to the repair or reconstruction of the Project, with any proceeds in excess of those required for such purpose applied to any other purpose permitted under such Section; and in such regard the Project Company shall use all reasonable efforts to satisfy the conditions to the use of property Insurance Proceeds for repair or reconstruction set forth in the Senior Debt Financing Agreements.

**SECTION 14.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.**

(A) **Protection.** The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to SAWS and the applicable insurers providing the Required Insurance, immediately upon obtaining knowledge thereof, any material damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to SAWS. Upon any such occurrence the Project Company also shall comply with the reporting requirements of any insurer providing Required Insurance. The Project Company shall submit to SAWS within five Business Days of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or Governmental Body.

(B) **Repair of Property.** The Project Company shall promptly repair or replace all property owned by SAWS that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Obligations. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to at least its character and condition existing immediately prior to the damage.

**SECTION 14.3. WATER TRANSMISSION AND PURCHASE AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.**

Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Water Transmission and Purchase Agreement or to demand any increase in any amounts payable to the Project Company under this Water Transmission and Purchase Agreement.

ARTICLE 15

FORCE MAJEURE EVENTS

SECTION 15.1. FORCE MAJEURE EVENTS GENERALLY.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of a Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with Applicable Law and in accordance with Section 15.2 (Project Company's Obligations Upon Material Damage or Destruction).

(B) Performance and Schedule Relief. A Force Majeure Event is an Uncontrollable Circumstance, and the Project Company shall be entitled to performance and schedule relief on account thereof as and to the extent provided herein.

(C) No Compensation Relief. If a Force Majeure Event occurs,

(1) The Unit Price shall not be increased, nor (except for operation and maintenance expenses) shall any other compensation be payable, on account of the occurrence of the Force Majeure Event; and

(2) SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee in accordance with Section 10.2(D)(Remedies for Breach of Product Water Quality Guarantee – Off - Specification Product Water).

(D) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. SAWS and the Project Company shall cause an Insurance Proceeds account to be created and held by the Senior Debt Creditors pursuant to the terms of the Senior Debt Financing Agreements. Upon the occurrence of a Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in such Insurance Proceeds account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Water Transmission and Purchase Agreement and following the procedures set forth in the Senior Debt Financing Agreements.

(E) SAWS Remedies and Termination Right. The failure of the Project Company to comply with its obligations under Section 15.1(A) (Project Company Reinstatement) shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle SAWS to exercise all of its remedies, including the right, by notice to the Project Company, to terminate this Water Transmission and Purchase Agreement in accordance with Section 20.4 (SAWS Termination Right).

SECTION 15.2. PROJECT COMPANY'S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than \$5,000,000, Index Linked, to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued operations of other parts of the Project, provide SAWS with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and

restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under Section 15.2(D) (Reinstatement Plan Details).

(B) Comment on Draft Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, SAWS shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan.

(C) Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of SAWS' comments, the Project Company shall deliver to SAWS a revised plan (the "**Reinstatement Plan**") to reasonably take into account the comments received from SAWS and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works;

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Contract Obligations to be fully performed);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Water Transmission and Purchase Agreement and on the payment obligations of the Project Company under the Project Contracts; and

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works.

Thereafter the Project Company shall repair, replace or restore the Project, subject to Applicable Law.

SECTION 15.3. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Section 15.1 (Force Majeure Events Generally) shall be made or done in compliance with the Design Requirements and the requirements set forth in Appendix 3 (Technical Specifications), subject to any agreement made between SAWS and the Project Company to revise the Design Requirements or the requirements set forth in Appendix 3 (Technical Specifications) as they pertain to the replacement, repair or reconstruction work.

SECTION 15.4. UNAVAILABILITY OF REQUIRED INSURANCE.

The Project Company shall bear the risk of the unavailability of Required Insurance with Qualified Insurers; the risk of any event or circumstance that at any time is uninsurable or is uninsured; and the risk that the premiums payable or the terms and conditions for insuring the risks intended to be covered by the Required Insurance are to any degree in excess of or are more burdensome than the premiums, terms and conditions existing on the Contract Date or assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.

ARTICLE 16

UNCONTROLLABLE CIRCUMSTANCES

SECTION 16.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Project Company. If an Uncontrollable Circumstance occurs, the Project Company may be entitled to relief from its performance obligations and extensions of time, but only as and to the extent provided in this Article. Except as provided in Section 17.3 (Operating and Maintenance Costs) and without limiting the Project Company's rights under Section 10.7 (Extension of Term), the Project Company may not claim compensation relief on an account of an Uncontrollable Circumstance.

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 26.4 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Water Transmission and Purchase Agreement in compliance with Applicable Law.

SECTION 16.2. PROCEDURES UPON THE OCCURRENCE OF AN UNCONTROLLABLE CIRCUMSTANCE.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Project Company shall give notice of the occurrence of the Uncontrollable Circumstance to SAWS as soon as practicable, and in any event within ten Business Days of the date the Project Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Water Transmission and Purchase Agreement. The Project Company's notice shall include a written report:

- (1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;
- (2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
- (3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Project Company's obligations under this Water Transmission and Purchase Agreement; and
- (4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide SAWS with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in Section 16.2(A) (Notice and Written Report). In particular, the Project Company

shall notify SAWS as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to SAWS a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in Section 16.2(A) (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such 30-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Project Company to SAWS after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of an Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 26.4 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Water Transmission and Purchase Agreement.

(H) Project Company Information. SAWS shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert an Uncontrollable Circumstance.

(I) SAWS Response. Within 30 days after receipt of a relief request by the Project Company pursuant to Section 16.2(C) (Submittal of Relief Request), SAWS (without waiving any claims) shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable. Either party may refer any dispute for resolution pursuant to Article 18 (Dispute Resolution).

SECTION 16.3. PROJECT COMPANY RELIEF DUE TO A SAWS FAULT.

(A) Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from a SAWS Fault. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by a SAWS Fault. With respect to schedule relief:

(1) The Commercial Operation Longstop Date shall be extended as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances); and

(2) Except as provided in Section 10.7 (Extension of Term), the occurrence of a SAWS Fault shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations or SAWS is obligated to take delivery of and purchase Product Water.

(B) Compensation Relief for SAWS Fault Occurring Prior to the Commercial Operation Date. If a SAWS Fault occurs prior to the Commercial Operation Date:

(1) Except as provided in Section 6.2(C) (Completion Delay), the Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs for any reason; and

(2) If the Commercial Operation Date occurs, the Project Company shall be compensated as provided in Section 16.3(C) (Compensation Relief for Changes On or After the Commercial Operation Date), such compensation to be reflected in the Unit Price.

(C) Compensation Relief for Changes On or After the Commercial Operation Date. If a SAWS Fault occurs on or after the Commercial Operation Date (or, as provided in Section 16.3(B)(2)), occurs prior to the Commercial Operation Date and the Project subsequently achieves the Commercial Operation Date),

(1) The Unit Price shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations in compliance with Applicable Law, to the extent resulting from the SAWS Fault.

SECTION 16.4. PROJECT COMPANY RELIEF DUE TO UNCONTROLLABLE CIRCUMSTANCES.

(A) Performance and Schedule Relief. Except with respect to the Product Water Quality Guarantee, the Project Company shall be relieved from its obligation to perform the Contract Obligations, and from the schedule to perform the Contract Obligations, to the extent that any such failure results from an Uncontrollable Circumstance. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by an Uncontrollable Circumstance. With respect to schedule relief:

(1) The Commercial Operation Longstop Date shall be extended, as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances);

(2) The Project Company shall have the right to deliver Project Company Make-Up Units to replace the Excused Supply Shortfall Units caused by the Uncontrollable Circumstance, as and to the extent provided in Section 10.6(A) (Project Company Make-Up Units); and

(3) The Expiration Date shall be extended, as and to the extent provided in Section 10.7 (Extension of Term).

(B) No Compensation Relief. If an Uncontrollable Circumstance occurs,

(1) The Unit Price shall not be increased, nor shall any other compensation be payable, on account of the occurrence of the Uncontrollable Circumstance;

(2) SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee; and

(3) The Project Company shall bear all costs resulting from the occurrence of the Uncontrollable Circumstance, except as provided in Section 17.3 (Operating and Maintenance Costs) and except, further, that nothing in this Section 16.4(B)(3) (No Compensation Relief) shall limit the Project Company's entitlement to payment in the circumstances described in Section 6.2(C) (Completion Delay).

ARTICLE 17

MONTHLY WATER PURCHASE PAYMENTS

SECTION 17.1. PAYMENTS GENERALLY.

(A) Monthly Water Purchase Payments Following the Commercial Operation Date. From and after the Commercial Operation Date and through the Termination Date, SAWS shall pay the Project Company Monthly Water Purchase Payments in accordance with the terms hereof.

(B) Limitation on Payments. Other than the payments expressly provided for herein, the Project Company shall have no right to any further compensation from SAWS in connection with the delivery of Product Water, the performance of the Contract Obligations, or otherwise in connection with the Project.

(C) Operating Expenses. SAWS and the Project Company represent and covenant that, with respect to payments to be made by SAWS to the Project Company pursuant to Section 17.2 (Capital and Raw Groundwater Unit Price) and Section 17.3 (Operating and Maintenance Costs), such payments shall constitute reasonable and necessary "operating expenses" (as defined in Chapter 1502, as amended, Texas Government Code) of the SAWS Distribution System and that all such payments will be made solely from the revenues of SAWS derived from ownership and operation of the SAWS Distribution System. SAWS represents and has determined that the Product Water is absolutely necessary and essential to SAWS' present and future operation of the SAWS Distribution System and that SAWS' entering into this Water Transmission and Purchase Agreement represents a long-term plan for making available potable water to meet current and projected needs of the present and future customers of the SAWS Distribution System. Accordingly, the payments required by this Water Transmission and Purchase Agreement to be made by SAWS to the Project Company shall constitute reasonable and necessary operating expenses of the SAWS Distribution System as described above, with the effect that under City Ordinance Number 75686 such payments from revenues of the SAWS Distribution System (1) shall be deducted from gross revenues of the SAWS Distribution System in the same manner as other SAWS Distribution System operating expenses for purpose of determining net revenues available to pay bonds or other similar obligations heretofore or hereafter issued by SAWS, which obligations are payable from and secured by a pledge of the revenues of the SAWS Distribution System after deduction of its operating expenses, and (2) shall be taken into account in establishing and maintaining rates and charges for facilities and services afforded by the SAWS Distribution System.

(D) Limited Source of Payment. The sole source of any payment made or to be made by SAWS in satisfaction of any obligations assumed by it or imposed on it under and by virtue of this Water Transmission and Purchase Agreement shall be limited solely and exclusively to the revenues derived by SAWS from the ownership and operation of the SAWS Distribution System. As further provided in Section 17.18 (No Recourse to City's General Fund, General Credit or Ad Valorem Taxes) the Project Company (including its successors in legal interest, assigns, or Affiliates), shall never have the right to demand payment from any other source of revenue or fund of the City, including (but not limited to) funds raised or to be raised by taxes. The obligations of SAWS under this Water Transmission and Purchase Agreement shall never be construed to be a debt of any kind or for any purpose, including for the purpose of requiring that the City levy and collect a tax to discharge any such obligation.

SECTION 17.2. CAPITAL AND RAW GROUNDWATER UNIT PRICE.

(A) Capital and Raw Groundwater Unit Price Defined. The "Capital and Raw Groundwater Unit Price" for each Contract Year shall be \$1,852 per Acre Foot. The Capital

and Raw Groundwater Unit Price shall be adjusted on the Financial Closing Date as provided in Section 17.2(B) (Adjustment at Financial Closing Date), subject to a maximum price of \$1,959 per Acre Foot, and thereafter shall remain fixed for the Term.

(B) Adjustment at Financial Closing Date. The Capital and Raw Groundwater Unit Price shall be adjusted on the Financial Closing Date, if, as and to the extent required under and subject to the limitations set forth in Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), to account for changes in interest rates between the Contract Date and the Financial Closing Date, including changes in interest rates resulting from the exercise by SAWS of its right under Section 7.1(H) (SAWS' Option to Purchase Initial Senior Debt at Issuance). The parties shall execute a Contract Administration Memorandum on the Financial Closing Date to document the adjusted Capital and Raw Groundwater Unit Price.

SECTION 17.3. OPERATING AND MAINTENANCE COSTS.

(A) General Principles. It is the intent of the parties that (1) the Project Company be compensated for the reasonable and necessary costs of operating, maintaining, repairing and replacing the Project Improvements, except insofar as such costs result from any Project Company failure to properly operate, maintain, repair and replace the Project Improvements, and (2) that a standing panel determine on a definitive basis the proper level of compensation for such work. Compensable operating, maintenance repair and repair costs ("**Compensable Costs**") are described in Section 19.1 of Appendix 19 (Compensable Costs). The composition and functioning of the standing panel (the "**O & M Budget Panel**") are described in Section 19.9 of Appendix 19 (O&M Budget Panel Administration). Compensable Costs shall be subject to Cost Substantiation.

(B) Determination of Compensable Costs. The O & M Budget Panel shall determine for each Contract Year throughout the Term following the Commercial Operation Date the amount of Compensable Costs properly payable to the Project Company for operating, maintaining, repairing and replacing the Project Improvements in that Contract Year. Compensable Costs shall be characterized by the O & M Budget Panel as fixed or variable. Fixed Compensable Costs ("**Fixed Compensable Costs**") shall be Compensable Costs that must be paid irrespective of the volume of Product Water made available to SAWS. Variable Compensable Costs ("**Variable Compensable Costs**") are Compensable Costs that vary with the volume of Product Water made available to SAWS. Compensable Costs for major repairs and replacements ("**Major Repair and Replacement Compensable Costs**") shall be determined by the O & M Budget Panel separately from other Compensable Costs.

(C) Budgeted Annual Compensable Costs. Not later than June 1 in the Contract Year preceding each Contract Year, the Project Company shall submit to the O & M Budget Panel and to SAWS a detailed estimate and explanation of estimated Compensable Costs for the upcoming Contract Year. The O & M Budget Panel, not later than July 1 of such preceding Contract Year, shall make its determination as to estimated Compensable Costs for the upcoming Contract Year ("**Budgeted Compensable Costs**"). In making its determination, the O & M Budget Panel shall take into account the Project Company's estimate and the Five Year Capital Plan and annual updates thereto prepared by the Project Company pursuant to Section 6.2.20 of Appendix 6 (Operating and Maintenance Standards). The determination of the O & M Budget Panel as to Budgeted Compensable Costs shall be final and non-appealable.

(D) Payment of Budgeted Fixed Compensable Costs. Budgeted Fixed Compensable Costs shall be payable to the Project Company as part of the Monthly Water Purchase Payments as provided in Section 17.5(3) (Monthly Water Purchase Payments).

(E) Budgeted Variable Compensable Costs Unit Price. Budgeted Variable Compensable Costs shall be used in determining the Variable Compensable Cost Unit Price. The **“Variable Compensable Costs Unit Price”** for each Contract Year shall be an amount equal to (1) Budgeted Variable Compensable Costs for such Contract Year, divided by (2) 50,000 Acre Feet.

(F) Payment of Major Repair and Replacement Compensable Costs. The Project Company shall be compensated for Major Repair and Replacement Compensable Costs as a Direct Payment to be made in the Billing Period following the Billing Period in which the major repair or replacement is actually made. No accruals shall be included in Compensable Costs for any such costs, regardless of their amount. SAWS may reserve for such costs in its discretion.

(G) Actual Compensable Costs. The O & M Budget Panel, in connection with establishing the Annual Settlement Amount, shall determine the Compensable Costs to which the Project Company was entitled to receive in the preceding Contract Year (the **“Actual Compensable Costs”**). In connection therewith the Project Company shall provide Cost Substantiation for Compensable Costs to the O & M Budget Panel. The determination by the O & M Budget Panel as to Actual Compensable Costs shall be final and non-appealable to any forum. In the event that Actual Compensable Costs exceed the Budgeted Compensable Costs for a Contract Year, SAWS shall pay the difference to the Project Company as a Direct Payment. In the event that Budgeted Compensable Costs exceed the Actual Compensable Costs for a Contract Year, the Project Company shall pay the difference to SAWS as a Direct Payment. Payment by the obligated party of such Direct Payment shall be made by May 1 following the end of the Contract Year with respect to which payment is due.

#### SECTION 17.4. UNIT PRICE.

The **“Unit Price”** for Product Water delivered in volumes up to the Baseline Annual Volume shall be an amount equal to the sum of (1) the Capital and Raw Groundwater Unit Price, and (2) the Variable Compensable Costs Unit Price.

#### SECTION 17.5. MONTHLY WATER PURCHASE PAYMENTS.

SAWS shall pay the Project Company a Monthly Water Purchase Payment for each Billing Period during the Term equal to:

- (1) The number of Daily Delivered Water Units delivered during such Billing Period (less any SAWS Make-Up Units, which have been previously paid for as Demand Shortfall Units), multiplied by the Unit Price; plus
- (2) The number of Demand Shortfall Units occurring during such Billing Period that have not been made up during such Billing Period by SAWS Make-Up Units, multiplied by the Unit Price; plus
- (3) One-twelfth of the Budgeted Fixed Compensable Costs for the applicable Contract Year; plus or minus
- (4) Direct Payments,

all subject to the adjustments provided for in this Article.

SECTION 17.6. DEDUCTIONS CREDIT.

The “**Deductions Credit**” component of the Direct Payments shall be the sum of all Deductions imposed with respect to the applicable Billing Period.

SECTION 17.7. DIRECT PAYMENTS.

The Direct Payments component of the Monthly Water Purchase Payments, which may be a charge or a credit, shall be equal to the net amount of the Direct Payments with respect to the applicable Billing Period.

SECTION 17.8. FORM OF COMPENSATION ADJUSTMENTS FOR EVENTS OCCURRING AFTER THE CONTRACT DATE.

(A) General. This Water Transmission and Purchase Agreement provides increased or decreased compensation to the Project Company over the Term based on the occurrence of specified events following the Contract Date (“**Compensation Adjustment Events**”). Such payments and adjustments shall be paid and made either as an adjustment to the Unit Price or a Direct Payment, as provided in this Section. The Project Company shall substantiate its entitlement to additional compensation in the manner required by Section 17.14 (Cost Substantiation).

(B) Adjustments to the Unit Price. Compensation to the Project Company shall be payable as an adjustment to the appropriate Charge component of the Unit Price (“**Unit Price Adjustments**”), and other adjustments to the appropriate Charge component of the applicable Unit Price shall be made, in accordance with and subject to the terms and conditions of this Water Transmission and Purchase Agreement, upon the occurrence of the events described in the following Sections and Sections:

- (1) Section 5.10 (Good Management Practice and Good Engineering and Construction Practice);
- (2) Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs);
- (3) Section 7.6 (Refinancing Gain);
- (4) Section 12.3 (Capital Modifications at SAWS Request);
- (5) Section 16.3 (Project Company Relief Due to a SAWS Fault).

The adjustment to one or more of the Charge components of the Unit Price to be made under this Section shall be established at the time the appropriate compensation relief is agreed upon, and such compensation shall be payable solely to the extent that SAWS is obligated to make Monthly Water Purchase Payments based on the Unit Price with respect to Product Water delivered or available for delivery hereunder. The Project Company acknowledges, accordingly, that any failure by the Project Company to deliver or make available for delivery Product Water for which it would have been entitled to payment based on the Unit Price (including the adjustment to one or more Charge components thereof reflecting such compensation relief) will result in a reduction in the compensation relief to which it would have been entitled upon the occurrence of the compensation relief circumstance had the Project Company delivered or made available for delivery such Product Water.

(C) Direct Payments by the Parties. SAWS shall pay the Project Company as a direct payment (and not as part of an adjustment to the Unit Price under Section 17.8(B), and the Project Company shall pay SAWS as a direct payment, any amounts due under or referred to in the following Sections. The net amount shall constitute the **“Direct Payment”** and applied as a credit or debit in calculating the Monthly Water Purchase Payment:

- (1) Section 4.4(C) (Project Assumption Fee);
- (2) Section 6.2 (SAWS Interconnection Improvements);
- (3) Section 8.5(C) (Achievement of Acceptance);
- (4) Section 8.8(C) (Achievement of Final Completion);
- (5) Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period);
- (6) Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water);
- (7) Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water);
- (8) Section 10.14 (Administrative Obligations);
- (9) Section 12.4(D) (Preparation Costs);
- (10) Section 17.3(F) (Payment of Major Repair and Replacement Compensable Costs);
- (11) Section 14.1(E) (Failure to Provide Insurance Coverage);
- (12) Section 17.6 (Deductions Credit);
- (13) Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law)
- (14) Article 19 (Remedies of the Parties);
- (15) Section 23.8 (Project Company to Cooperate);
- (16) Section 25.1 (Project Company’s Obligation to Indemnify), and any other term or condition hereof, under which indemnification payments are owed by the Project Company;
- (17) Appendix 7 (Insurance Requirements) (Section 7.2.10), with respect to any additional insurance coverage requested by SAWS;
- (18) Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by either party; and
- (19) Any other term or condition hereof, under which payment is owed by one party to the other that has not been accounted for by an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price).

SECTION 17.9. BILLING AND PAYMENT.

(A) Invoicing and Monthly Water Purchase Payment Due Date. The Project Company shall provide SAWS with an invoice for each Billing Period by the tenth Business Day following the end of such Billing Period. The invoice shall set forth the amount of the Monthly Water Purchase Payment due with respect to such Billing Period and, in addition, shall state the accumulated payments to the date of such invoice and such other documentation or information as SAWS may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Water Transmission and Purchase Agreement. SAWS shall pay the invoice within 30 days of receipt, except as provided in Section 17.15 (SAWS' Right of Set Off) and Section 17.16 (Billing Statement Disputes).

(B) Electricity-Related Payments Made Annually. Any amount due SAWS on account of exceedances of the Guaranteed Maximum Annual Electricity Costs shall be paid as part of the Annual Settlement Statement pursuant to Section 17.11 (Annual Settlement).

(C) Late Annual Monthly Water Purchase Payments. In the event SAWS fails to make a Monthly Water Purchase Payment when due under Section 17.9(A), interest shall accrue and be payable thereon, as and to the extent provided in Section 17.17 (Interest on Overdue Amounts).

SECTION 17.10. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Budgeting. For SAWS budgeting purposes, (1) no later than 60 days prior to the Commercial Operation Date, and (2) no later than 90 days preceding each Contract Year, the Project Company shall provide to SAWS a written statement setting forth for such Contract Year its reasonable estimate of the Monthly Water Purchase Payments, each component thereof, the Inflation Index, and the adjustments provided for in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand). The estimate shall not be binding on the Project Company but, in the event that any component of the Monthly Water Purchase Payments for a Billing Period cannot be determined when the invoice for such Billing Period is being submitted, then such estimate shall be used, subject to an appropriate adjustment in a subsequent invoice when the actual value of such component becomes available.

SECTION 17.11. ANNUAL SETTLEMENT.

(A) Annual Settlement Statement. Within 60 days after the end of each Contract Year, the Project Company shall provide to SAWS an annual settlement statement (the "**Annual Settlement Statement**") setting forth the actual aggregate Monthly Water Purchase Payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by SAWS with respect to such Contract Year. SAWS or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with SAWS an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(B) Annual Settlement of Electricity Costs. As part of the annual settlement process, SAWS shall, within 30 days after the end of each Contract Year (or within 30 days of the end of the Term if this Water Transmission and Purchase Agreement is earlier terminated), calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs. The Guaranteed Maximum Annual Electricity Costs for a Contract Year shall be calculated in accordance with Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand) based on the Project Company's Annual Delivered Water Volume. The Project Company acknowledges that the calculation of the Guaranteed Maximum Annual Electricity Costs will include any basic service charges imposed by the electricity provider, and will exclude any fines and penalties imposed by the electricity provider and reimbursed by the Project Company pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period). If the Actual Annual Electricity Costs are greater than the Guaranteed Maximum Annual Electricity Costs, the Project Company shall reimburse SAWS in an amount equal to such excess costs.

SECTION 17.12. TAXES.

(A) General. The Project Company shall pay, without reimbursement from SAWS, all Taxes imposed with respect to the Project or the Contract Obligations, including:

- (1) any property Tax on the Project;
- (2) any Tax on or related to Raw Groundwater or any Project Site Lease;
- (3) any possessory interest or similar Tax imposed with respect to the Project;
- (4) any sales or use Tax imposed on building materials incorporated in the Project; and
- (5) any sales or use Tax imposed on operating or maintenance supplies and services (except to the extent any such Tax constitutes a Compensable Cost),

whether any such Tax exists on the Contract Date or is imposed at any time during the Term. The Project Company acknowledges that all such Taxes have been taken into account in establishing the Monthly Water Purchase Payments.

(B) Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law. All income and other Taxes imposed on the Project Company shall be borne by the Project Company, except as provided in this Section. In the event Taxes are imposed on the Project Company by a Discriminatory Change in Tax Law or a Specified Change in Tax Law, SAWS shall pay the Project Company an amount equal to such Taxes as a Direct Payment. Such payment shall be paid by the last day of the month following the month in which the Project Company paid the Tax, subject to the Project Company's Cost Substantiation obligations under Section 17.14 (Cost Substantiation) and mitigation obligations under Section 26.4(A) (Mitigation by the Project Company).

SECTION 17.13. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

Except with respect to Discriminatory Changes in Tax Law and Specified Changes in Tax Law as provided herein, there shall be no adjustment of the Monthly Water

Purchase Payments or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

(1) Any change in any provision of Income Tax law to take effect after the Contract Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Monthly Water Purchase Payments or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Water Transmission and Purchase Agreement or any Project Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,

(2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

#### SECTION 17.14. COST SUBSTANTIATION.

(A) General. The Project Company shall substantiate all costs for which it claims compensation hereunder other than costs that are part of the Unit Price, including compensation (1) on account of Project Company Reimbursable Costs, (2) on account of Compensable Costs, or (3) for costs related to a SAWS-Requested Design-Requirements Change, a SAWS-Requested Capital Modification or a SAWS Fault ("**Cost Substantiation**"), whether compensation is to be paid as part of adjustment to the Unit Price or as a lump sum, as provided in Section 17.8 (Form of Compensation Adjustments for Events Occurring After the Contract Date). Cost Substantiation shall be provided in advance of incurring or paying the cost, except when emergencies or other immediate needs make advance cost substantiation impracticable. The requirement in this Section for Cost Substantiation for costs that are not related to the Capital and Raw Groundwater Unit Price shall not be construed to mean that the Capital and Raw Groundwater Unit Price is subject to change for any reason other than the adjustment provided in Section 17.2(B) (Adjustment at Financial Closing Date).

(B) Competition Practices. In incurring costs for additional work required due to SAWS-Requested Design Requirements Changes or SAWS-Requested Capital Modifications which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$500,000 (Index Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and SAWS' potential obligation to pay for it; provided, however, that during the Construction Period, the Project Company shall not be required to

utilize competitive practices for additional work self-performed by the EPC Contractor or by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to SAWS that the additional costs in response to a SAWS-Requested Capital Modification hereunder are commercially reasonable.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate expected or incurred cost shall state the amount of such cost and the provisions of this Water Transmission and Purchase Agreement under which compensation is payable by SAWS, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required and reasonably paid or incurred pursuant to this Water Transmission and Purchase Agreement. The Cost Substantiation Certificate shall be accompanied by copies of such documentation as shall be necessary to demonstrate the reasonableness of the cost. Such documentation shall be in a format reasonably acceptable to SAWS and shall include reasonably detailed information concerning all Subcontracts and self-perform work.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm actual incurred costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to SAWS, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed construction work requiring Cost Substantiation, the Project Company shall be entitled to (i) in the case of contracts for work totaling more than \$2,000,000, a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors, and (ii) in the case of contracts for work totaling less than \$2,000,000, a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its owner personnel, and for subcontracted work a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors. There shall be no double mark-up between the Project Company and any contractor relating to the same construction work.

#### SECTION 17.15. SAWS' RIGHT OF SET OFF.

Once SAWS determines that any credits, payments, reimbursements or liquidated damages are owed to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement and have not been reflected in any previously submitted Billing Statement, SAWS shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to SAWS under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to SAWS in accordance with this Section, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to SAWS under this Water Transmission and Purchase Agreement.

#### SECTION 17.16. BILLING STATEMENT DISPUTES.

If SAWS disputes in good faith any amount billed by the Project Company, SAWS shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount

being disputed and the reasons then known to SAWS for the dispute. In the event that the Project Company disputes any amounts offset by SAWS, it shall provide SAWS with a written objection indicating the amount being disputed and the reasons then known to the Project Company. When any billing dispute is finally resolved, if payment by SAWS to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 17.17 (Interest on Overdue Amounts).

**SECTION 17.17. INTEREST ON OVERDUE AMOUNTS.**

If payment of any amount payable under this Water Transmission and Purchase Agreement is not made when due (including the Project Assets Purchase Price), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due (or was determined to have been due, in the case of amounts being disputed by SAWS) under this Water Transmission and Purchase Agreement until paid. The party to whom payment is owed and overdue shall notify the other party at least quarterly of the overdue amount.

**SECTION 17.18. NO RECOURSE TO CITY'S GENERAL FUND, GENERAL CREDIT OR AD VALOREM TAXES.**

As provided in Section 17.1(D) (Limited Source of Payment), the source of payment in satisfaction of any and all obligations of SAWS assumed or imposed by it or arising under this Water Transmission and Purchase Agreement shall be limited to the revenues derived by SAWS from ownership and operation of the SAWS Distribution System, with such payment constituting an "operating expense" (as defined in Chapter 1502, as amended, of the Texas Government Code) of the SAWS Distribution System. As a result, the Project Company (including its successors in legal interest, assigns, or Affiliates) shall have no recourse to the general fund or general credit of the City (including the right to require the levy and collection of any tax, whether ad valorem or otherwise), or any other fund (including other enterprise funds), source of revenue, asset, instrument or property of the City, in satisfaction of the payment of any amount due the Project Company hereunder, whether on account of the Monthly Water Purchase Payment, any termination payment, or for any payment or claim of any nature arising from the performance or non-performance of SAWS' obligations hereunder. The sole recourse of the Project Company for the payment of all such amounts shall be to the revenues of SAWS derived from the ownership and operation of the SAWS Distribution System pursuant to City Ordinance 75686, under which SAWS is established and pursuant to which revenue bonds are issued from time to time to finance SAWS' capital improvements. The payment of all such amounts is subject to the terms and conditions of City Ordinance 75686. No such amount shall be payable from any ad valorem taxes. In furtherance of the foregoing, the Project Company hereby acknowledges and agrees it is not entitled to demand payment of the obligations of SAWS hereunder out of any money raised by taxation.

**SECTION 17.19. GOODS AND SERVICES.**

The parties agree that the mutual commitments stated in this Water Transmission and Purchase Agreement to make available Product Water, to take delivery of and purchase Product Water and to finance, implement and transfer the Project Improvements required therefor constitute an agreement to provide goods and services, and that this Water Transmission and Purchase Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

SECTION 17.20. EFFECT OF CITY APPROVAL.

Notwithstanding the City's approval of this Water Transmission and Purchase Agreement, the City's obligations hereunder shall be limited as and to the extent provided in City Ordinance Number 75686, under which the City has delegated to SAWS sole management and control over the SAWS Distribution System. The City's approval hereof shall not be construed to obligate the City (except by and through SAWS as provided herein) to perform any obligation hereunder, or to create a right of any kind of the Project Company against the City (independent of any right against SAWS under the terms hereof).

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

(A) Court Jurisdiction. It is the express intention of the parties that all Legal Proceedings related to this Water Transmission and Purchase Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas. The Project Company and SAWS each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

(B) Waiver of Jury Trial. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS WATER TRANSMISSION AND PURCHASE AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(C) Disputes as to Acceptance. In the event (1) SAWS and the Project Company become involved in any mediation or judicial proceeding with respect to whether Acceptance has been achieved, and (2) the Project Company determines that it would be appropriate that any corresponding dispute between the Project Company and the EPC Contractor under the EPC Agreement (with respect to issues that are substantially identical under both the Water Transmission and Purchase Agreement and the EPC Agreement) be resolved in that proceeding, SAWS consents to the EPC Contractor's joinder to, and consolidated resolution of such substantially identical issues in, that proceeding.

SECTION 18.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Water Transmission and Purchase Agreement. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between SAWS and the Project Company.

(B) Procedure. The Mediator shall be a professional firm or individual mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Water Transmission and Purchase Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Water Transmission and Purchase Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation. Further, nothing in this Section shall operate to limit or interfere with judicially imposed mediation.

## ARTICLE 19

### REMEDIES OF THE PARTIES

#### SECTION 19.1. REMEDIES FOR BREACH.

The parties agree that in the event that either party breaches this Water Transmission and Purchase Agreement, the other party may exercise any legal rights it may have under this Water Transmission and Purchase Agreement and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Water Transmission and Purchase Agreement except as provided or referred to in Article 22 (Termination). Any such damage payment shall be a Direct Payment.

#### SECTION 19.2. NO EFFECT ON CONTRACT OBLIGATIONS.

The exercise by SAWS of any of its rights under this Article 19 (Remedies of the Parties) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Obligations.

#### SECTION 19.3. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Water Transmission and Purchase Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Water Transmission and Purchase Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

#### SECTION 19.4. EXERCISE OF REMEDIES.

(A) Remedies Cumulative. The rights and remedies of the parties under this Water Transmission and Purchase Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

#### SECTION 19.5. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Water Transmission and Purchase Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Water Transmission and Purchase Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Water Transmission and Purchase Agreement.

SECTION 19.6. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER OR OBLIGATED IN ANY MANNER TO PAY TO THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES BASED UPON CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS OR OTHERWISE UNDER THIS WATER TRANSMISSION AND PURCHASE AGREEMENT, OR ANY REPRESENTATION MADE IN THIS WATER TRANSMISSION AND PURCHASE AGREEMENT BEING MATERIALLY INCORRECT, WHETHER SUCH CLAIMS ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL THEORY. THIS SECTION SHALL NOT LIMIT THE RECOVERY OF ANY SUCH LOSSES OR DAMAGES UNDER Article 25 (INDEMNIFICATION) IN RESPECT OF CLAIMS BY THIRD PARTIES.

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Water Transmission and Purchase Agreement, “**Project Company Event of Default**” means any of the following events or circumstances:

(1) The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program), unless the occurrence of the Project Company Remediable Breach is due to the occurrence of an Uncontrollable Circumstance.

(2) The failure of the Project Company to timely achieve Acceptance by the Commercial Operation Longstop Date, as provided in Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date).

(3) The occurrence of a Project Company Bankruptcy-Related Event.

(4) The Project Company abandons the Project, unless such abandonment is due to the occurrence of an Uncontrollable Circumstance.

(5) The Project Company breaches Section 24.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 24.2 (Limitations on Change in Control).

(6) The issuance by SAWS at the direction of TCEQ or another authorized Governmental Body of a second “boil water” or “do not drink” notice with respect to Product Water, as provided in Section 10.2(F) (Boil Water and Do Not Drink Notices) unless such event is due to the occurrence of an Uncontrollable Circumstance.

(B) Project Company Remediable Breach Defined. For purposes of this Water Transmission and Purchase Agreement, “**Project Company Remediable Breach**” means any of the following breaches, unless the breach is due to the occurrence of an Uncontrollable Circumstance:

(1) A failure by the Project Company to pay any amount due and owing to SAWS under this Water Transmission and Purchase Agreement on the due date (which amount is not being disputed in good faith) and the Project Company has not remedied such failure to pay within any of the following breaches of failures except to the extent such breach, failure or circumstance is caused by an Uncontrollable Circumstance 30 Business Days following notice from SAWS, provided that interest on any such overdue amount shall be paid as provided in Section 17.17 (Interest on Overdue Amounts);

(2) A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement and to comply with its obligation under Appendix 7 (Insurance Requirements) to name SAWS as an insured party;

(3) A failure by the Project Company to comply with its obligation under Section 15.1 (Force Majeure Events Generally) to repair, replace or restore the Project following the occurrence of a Force Majeure Event;

(4) The Project Company fails to immediately take all appropriate action in the event that SAWS notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company's failure to comply with the Contract Standards;

(5) Except as provided for in items (1) through (4) of this Section, a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to SAWS (other than a breach for which SAWS may impose Deductions) or any representation or warranty made by the Project Company to SAWS in this Water Transmission and Purchase Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;

(b) a risk of material liability of SAWS to third persons;

(c) an adverse effect on the performance of the Contract Obligations to the extent that SAWS is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement; or

(d) any material provision of this Water Transmission and Purchase Agreement being unenforceable against the Project Company;

(6) a breach in any rolling period of 36 consecutive Billing Periods, the sum in any 24 or more of such Billing Periods of (i) all Daily Delivered Units in such Billing Periods, and (ii) all Demand Shortfall Units in such Billing Periods, is less than 75,000 Acre Feet;

(7) with respect to Product Water Quality, the exceedance of the same primary drinking water MCL in three consecutive months, four times in any consecutive 12 month period;

(8) a breach, other than a breach described in Section 20.1(A) (Project Company Events of Default Defined) or in items (1) through (7) of this Section 20.1(B) (Project Company Remedial Breach Defined) which, due to the fact that such breach, demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Water Transmission and Purchase Agreement; or

(9) Any other fact or circumstance designated as a "Project Company Remediable Breach" under this Water Transmission and Purchase Agreement; or

(C) Project Company Bankruptcy-Related Event Defined. For purposes of this Water Transmission and Purchase Agreement, "**Project Company Bankruptcy-Related Event**" means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other

process being levied or enforced upon, the whole or any material part of the assets of the Project Company; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify SAWS of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is continuing, SAWS may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 60 days after such notice or within such longer period as is reasonably required for the Project Company to rectify or remedy such Project Company Remediable Breach as long as the Project Company is diligently pursuing such rectification or remedy, but in no event exceeding 270 days after such notice; or

(2) If either SAWS (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 60 days of such notice, the Project Company shall deliver to SAWS within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under Section 20.3(A)(1)).

(B) Remediable Program Limited to Project Company Remediable Breaches. The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

SECTION 20.4. SAWS TERMINATION RIGHT.

(A) Termination Right. If a Project Company Event of Default occurs, then SAWS may (if the Project Company Event of Default continues unwaived and unremedied), subject to Section 22.1(E) (Continued Performance), terminate this Water Transmission and Purchase Agreement by notice to the Project Company. The right of SAWS to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which SAWS may have in connection with the Project Company's non-compliance with this Water Transmission and Purchase Agreement, including SAWS right to purchase the Project Assets as provided in Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) and those rights set forth in Article 19 (Remedies of the Parties).

(B) Creditors' Remedies Agreement. The rights of SAWS under this Section are subject to the terms of the Creditors' Remedies Agreement.

ARTICLE 21

SAWS EVENTS OF DEFAULT

SECTION 21.1. SAWS EVENTS OF DEFAULT.

For the purposes of this Water Transmission and Purchase Agreement, "**SAWS Event of Default**" means any of the following events or circumstances:

(1) A failure by SAWS to pay any amount due and owing to the Project Company under this Water Transmission and Purchase Agreement within 60 days of the due date for such amount;

(2) Except as provided in Section 21.1(1), a breach, or series of breaches, by SAWS of any term, covenant or undertaking to the Project Company or any representation or warranty made by SAWS to the Project Company in this Water Transmission and Purchase Agreement being incorrect when made, the consequence of which is:

(a) a material and adverse effect on the performance of the Contract Obligations; or

(b) any material provision of this Water Transmission and Purchase Agreement being unenforceable against SAWS to the extent that the Project Company is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement;

(3) The authorized filing by SAWS of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for SAWS shall not in and of itself constitute a SAWS Event of Default hereunder; or

(4) SAWS breaches Section 24.4 (Limitation on Assignment by SAWS).

SECTION 21.2. PROJECT COMPANY OPTIONS UPON A SAWS EVENT OF DEFAULT.

(A) Notice. After the occurrence of a SAWS Event of Default and while a SAWS Event of Default is continuing, the Project Company may, at its option, serve notice on SAWS of the occurrence and specifying the details of such a SAWS Event of Default.

(B) Remediable SAWS Event of Default. If the relevant matter or circumstance has not been rectified or remedied by SAWS:

(1) in the case of a SAWS Event of Default under Section 21.1(1) (SAWS Events of Default), within 30 days of such notice; or

(2) in the case of a SAWS Event of Default under Section 21.1(2), within 60 days after the notice provided by the Project Company pursuant to Section 21.2(A) or within such longer period as is reasonably required for SAWS to rectify or remedy such SAWS Event of Default as long as SAWS is diligently pursuing such rectification or remedy,

the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(C) Non-Remediable SAWS Events of Default. In the case of a SAWS Event of Default under Section 21.1(3) or 21.1(4), concurrently with, or at any time after, the delivery of notice under Section 21.2(A), the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(D) Other Rights Upon SAWS Non-Compliance. The right of the Project Company to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which the Project Company may have in connection with SAWS' non-compliance with this Water Transmission and Purchase Agreement.

SECTION 21.3. PROJECT COMPANY RIGHT TO REQUIRE SAWS TO PURCHASE THE PROJECT ASSETS.

In lieu of serving a further notice on SAWS terminating this Water Transmission and Purchase Agreement and bringing an action to enforce payment of the amounts due pursuant to Section 21.2(B) (Remediable SAWS Events of Default) or Section 21.2(C) (Non-Remediable SAWS Events of Default), the Project Company may in its discretion serve a further notice on SAWS requiring SAWS to purchase the Project Assets. SAWS shall purchase the Project Assets for the Project Assets Purchase Price set forth in Section 23.1(B) (Project Assets Purchase Price). SAWS shall determine the closing date for the purchase and sale of the Project Assets, which shall be not later than 180 days following receipt of notice from the Project Company under this Section. The procedures set forth in Section 23.3(C), (D) and (E) (Purchase Option Procedures) shall apply to any purchase of Project Assets under this Section. Upon payment of the purchase price for the Project Assets provided in this Section, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate. Between the date of notice given by the Project Company under this Section and such Termination Date, the Project Company shall have no obligation to perform the Contract Obligations, and interest on SAWS' overdue amounts shall accrue at the Overdue Rate as provided in Section 17.17 (Interest on Overdue Amounts).

ARTICLE 22

TERMINATION

SECTION 22.1. TERMINATION RIGHTS.

(A) SAWS Termination Rights. This Water Transmission and Purchase Agreement may be terminated by SAWS prior to the Expiration Date:

(1) In connection with the convenience termination rights of SAWS during the Development and Financing Period, pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally);

(2) In connection with a Project Company Event of Default, pursuant to Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date);

(3) In connection with a Project Company Event of Default, pursuant to Section 20.4 (SAWS Termination Right); or

(4) Upon the exercise by SAWS of any of its options to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), in which event this Water Transmission and Purchase Agreement shall terminate upon the date of purchase.

(B) Project Company Termination Rights. This Water Transmission and Purchase Agreement may be terminated by the Project Company prior to the Expiration Date:

(1) In connection with the convenience termination right of the Project Company during the Development and Financing Period, pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period); or

(2) In connection with a SAWS Event of Default, pursuant to Section 21.2 (Project Company Options Upon a SAWS Event of Default).

(C) Extent of Termination Rights. Except as provided or referred to in Sections 22.1(A) and (B), neither party shall have the right to terminate this Water Transmission and Purchase Agreement.

(D) Termination Date. The "**Termination Date**" for any early termination of this Water Transmission and Purchase Agreement as provided in Sections 22.1(A) or (B) shall be the date notice of termination is given by one party to the other party in accordance herewith.

(E) Continued Performance. The parties shall continue to perform their obligations under this Water Transmission and Purchase Agreement (including SAWS continuing to pay the Monthly Water Purchase Payments) until the Termination Date, notwithstanding the giving of any notice of default.

(F) Completion or Continuance by SAWS. Subject to the rights of the Senior Debt Creditors under the Creditors' Remedies Agreement and the prior right of the Senior Debt Creditors to enter into agreements with other operators, contractors and technology and

equipment suppliers under agreements directly with such contract counterparties, after the Termination Date, and whether termination occurs due to a Project Company Event of Default or otherwise, SAWS may at any time (but without any obligation to do so) enter into contracts with the Operating Service Provider and other operators, contractors and technology and equipment suppliers. The Project Company waives any right at law or in equity it may have to restrict SAWS from entering into any such contracts.

ARTICLE 23

SAWS PROJECT ASSETS PURCHASE OPTIONS

SECTION 23.1. PROJECT ASSETS PURCHASE AND CONVENIENCE TERMINATION OPTION DURING THE TERM.

(A) Option. SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets, and thereby terminate this Water Transmission and Purchase Agreement for its convenience, at any time following the Financial Closing Date.

(B) Project Assets Purchase Price. If SAWS exercises its Project Assets purchase option under this Section, SAWS shall pay to the Project Company on the Project Assets Transfer Date a Project Assets Purchase Price (adjusted as appropriate as provided in Section 23.3(C) (Project Company Notice and Determination)) equal to the aggregate amount, without duplication, of:

(1) the aggregate amount required to prepay in full any Senior Debt outstanding as of the Project Assets Transfer Date, including any prepayment fees, original issue discount, breakage, hedge or swap termination fees, and other amounts that may be payable to any Senior Debt Creditor as a consequence of early termination;

(2) the Employee Payments, the Operating Service Provider Breakage Costs, and employee and lease termination costs and other reasonable costs incurred by the Project Company in terminating and winding up its business; and

(3) the present value sum, calculated using quarterly compounding, as of the Project Assets Transfer Date using a discount rate of 8.93165% (except as discussed below), of the Target Equity Return Amount in the Financial Model ("Quarterly Calculations" tab, row 2256) for each of the remaining Contract Years from the Project Assets Transfer Date through the final Contract Year. The Target Equity Return Amount shall mean the quarterly amount shown for each Contract Year as "Pure Equity, Nominal, Pre-SPV-Tax Cash Flows" on the "Quarterly Calculations" tab, row 2256 of the Financial Model as of the Contract Date until expiration of the Water Transmission and Purchase Agreement. In the event that the Project Company is required under the Equity Contribution Agreement executed at Financial Close to contribute an amount other than \$81.934 million, the Financial Model as of the Contract Date will be adjusted to reflect this revised equity contribution amount and the discount rate used to discount the Target Equity Return Amount shall be revised to solve for the internal rate of return that results in the present value sum of the Target Equity Return Amount equaling the revised equity contribution amount. This percentage will be multiplied by 0.65 and the resulting percentage will be substituted for the 8.93165% stipulated above. On or promptly following the Financial Closing Date, the parties shall execute a Contract Administration Memorandum setting forth in table or chart form the final Target Equity Return Amount payable for each Contract Year calculated using the methodology set forth in this paragraph (3).

The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

SECTION 23.2. PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.

SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets upon a Project Company Event of Default for a Project Assets Purchase Price equal to (1) the aggregate principal amount of Senior Debt outstanding as of the Termination Date, together with any accrued interest thereon, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Senior Debt Financing Agreements for the benefit of the Senior Debt Creditors on the Project Assets Transfer Date. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

SECTION 23.3. PURCHASE OPTION PROCEDURES.

(A) Notice of Exercise of Project Assets Purchase Option. SAWS shall give the Project Company prior written notice of its election to exercise its option to purchase the Project Assets:

(1) At least 180 days prior to the Project Assets Transfer Date, in the case of a purchase under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term); and

(2) On or following the date on which a Project Company Event of Default occurs, in the case of a purchase under Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default).

The written notice shall specify the closing date for the purchase and sale of the Project Assets (the "**Project Assets Transfer Date**").

(B) Notice of Intent Required for Certain Purchase Options. As a condition of SAWS' right to exercise its Project Assets Purchase Option under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), SAWS shall give the Project Company a notice of intent to exercise its Project Assets Purchase Option at least 270 days prior to the Project Assets Transfer Date. Notwithstanding the delivery of a notice of intent under this Section, SAWS shall have no obligation to exercise the Project Assets Purchase Option that was the subject of such notice.

(C) Project Company Notice and Determination. As soon as practicable after receipt of SAWS' notice of its election to purchase the Project Assets under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), the Project Company shall, acting reasonably, notify SAWS of the Project Company's determination of the amount of the Project Assets Purchase Price due, and include in such notice the details and calculations of each component thereof, including certificates from the Senior Debt Creditors as to the amounts owed to them. The Project Company shall provide to SAWS all such documents and information as may be reasonably required by SAWS to support and confirm the amount of the Project Assets Purchase Price due under such Section.

(D) Adequacy of Project Assets Purchase Price. The Project Company agrees that any applicable Project Assets Purchase Price provided for in this Article shall constitute the only compensation from SAWS to the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Project Company's right to perform this Water Transmission and Purchase Agreement in connection with the purchase of the Project Assets under this Article.

(E) Reliance on Senior Debt Creditors Certification. SAWS shall be entitled to rely on one or more certificates of agents of the Senior Debt Creditors as conclusive evidence of the amount of the Senior Debt outstanding, and any accrued interest and redemption premium, in any calculation of a Project Assets Purchase Price. Upon receipt of this amount by Project Company, the Senior Debt Creditors shall discharge SAWS' obligation to pay any portion of compensation due to the Project Company that is attributable to the Senior Debt.

(F) Termination. Upon payment of the Project Assets Purchase Price on the Project Assets Transfer Date pursuant to this Article, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate.

SECTION 23.4. CONVEYANCE.

(A) Obligation to Convey and Assign. Upon payment by SAWS of the applicable Project Assets Purchase Price under this Article, the Project Company shall assign and convey, or cause to be assigned and conveyed, to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definitions of Permitted Encumbrances. Such assignment, conveyance, acceptance and assumption shall be effective on the Project Assets Transfer Date. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including those particularly set forth in Article 4) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 23.4(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other party. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall cause the Water Supply Corporation, effective on the Project Assets Transfer Date, to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS the Project Real Property required to be conveyed under the Project Real Property Conveyance Agreement. Such conveyance shall convey good and indefeasible title and interest in the subject Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9) and (10) of the definition of Permitted Encumbrances.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for in Section 23.4(A) (Obligation to Assign and Convey), including executing and delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Project Liabilities. Upon the purchase of the Project Assets pursuant to this Article, SAWS shall assume the Assumed Liabilities as and to the extent provided in Appendix 12 (Project Assets and Liabilities). The Assumed Liabilities shall not include the Excluded Liabilities.

SECTION 23.5. FULL SETTLEMENT; ANTECEDENT AND POST-TERMINATION LIABILITIES.

Any and all amounts paid by SAWS to the Project Company upon a purchase of the Project Assets, and the related termination of this Water Transmission and Purchase Agreement, under this Article will be the full and final settlement of each party's rights and claims against the other party in connection with such purchase or with respect to the Project Assets, whether under contract, tort, restitution or otherwise, but without prejudice to:

(1) Any antecedent liability of either party to the other that arose prior to the date of termination of this Water Transmission and Purchase Agreement (but not from the termination itself); and

(2) Any liability of either party to the other that may arise after the Termination Date of this Water Transmission and Purchase Agreement (but not from the termination itself), including liabilities arising under the provisions of this Water Transmission and Purchase Agreement which are intended by Section 3.3 (Survival) to survive termination.

SECTION 23.6. ADDITIONAL OBLIGATIONS UPON PROJECT ASSETS PURCHASE.

(A) Transfer Responsibilities. If SAWS exercises its right to purchase the Project Assets under this Article, then on or promptly after the Termination Date:

(1) The Project Company shall, or will use reasonable efforts to cause a Project Contractor to, offer to sell to SAWS at fair market value, free from any security interest, all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or a Project Contractor and reasonably required by SAWS in connection with the operation of the Project or the provision of the Contract Obligations;

(2) The Project Company shall deliver to SAWS (to the extent not already delivered to SAWS):

(a) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Contact Obligations (or any Subcontracts); and

(b) to the extent reasonably available to the Project Company, copies of all Subcontracts (with confidential or commercially sensitive information redacted), together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment; and

(iv) the estimated cost of canceling each agreement;

(3) The Project Company shall give written notice of termination, effective as of the Expiration Date, promptly under each policy of Required Insurance (with a copy of each such notice to SAWS), but permit SAWS to continue such policies thereafter at its own expense, if possible; and

(4) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters.

(B) No Additional Compensation. The Project Company shall ensure that provision is made in all applicable contracts to ensure that SAWS will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

**SECTION 23.7. TRANSITIONAL ARRANGEMENTS.**

If SAWS exercises its right to purchase the Project Assets under this Article, the Project Company shall, in connection with the expiration or termination of this Water Transmission and Purchase Agreement:

(1) Stop performance of the Contract Obligations on the Termination Date;

(2) On the Termination Date deliver to SAWS:

(a) all keys, access codes or other devices required to operate the Project; and

(b) any Project Intellectual Property required to be delivered by the Project Company pursuant to Section 23.6(A) (Transfer Responsibilities);

(3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Project Sites, and leave the Project in a safe, clean and orderly condition;

(4) On request by SAWS and on payment of the Project Company's reasonable costs (including costs payable to the Operating Service Provider under the Operating Service Agreement) by SAWS, for a period not to exceed 90 days after the Termination Date, co-operate fully with SAWS and any successor providing to SAWS services in the nature of any of the Contract Obligations or any part of the Contract Obligations, in order to achieve a smooth transfer of the manner in which SAWS obtains services in the nature of the Contract Obligations;

(5) As soon as practicable following the Termination Date, remove from the Project Sites all property of the Project Company or any Project Company Person that does not constitute Project Assets or does not belong to SAWS and if it has not done so within 60 days after any notice from SAWS requiring it to do so, SAWS may (without being responsible for any loss, damage,

costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and

(6) Comply with all requirements of Section 11.7 (Project Assets Transfer Condition).

SECTION 23.8. PROJECT COMPANY TO COOPERATE.

If SAWS exercises its right to purchase the Project Assets under this Article and wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Operating Work following the Termination Date), the Project Company shall prior to the Termination Date co-operate with SAWS fully in such competition process, including by:

(1) Providing any information in the Project Company's control or possession which SAWS may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting SAWS by providing any participants in such competition process with reasonable access to the Project Sites, provided such access does not affect the Contract Obligations in a way that results in any reduction in Monthly Water Purchase Payments or materially interferes with the activities of the Project Company or the Operating Service Provider.

The Project Company shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services and an additional mark-up of 6% of such costs and expenses.

SECTION 23.9. RECORDING.

This Water Transmission and Purchase Agreement, or a memorandum hereof, shall be recorded in the land records of the Counties in order to preserve SAWS' assignment and conveyance rights under Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) and SAWS' purchase options for the Project Assets under this Article.

ARTICLE 24

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 24.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement or a Project Contract except:

(1) As security (in accordance with the Creditors' Remedies Agreement or otherwise substantially in a form approved by SAWS, acting reasonably) for any loan made to the Project Company under the Senior Debt Financing Agreements;

(2) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors' Remedies Agreement; or

(3) Otherwise:

(a) prior to the day that is two years after the Commercial Operation Date (the "**Transfer Restriction Date**"), with the prior written consent of SAWS, which may be given or withheld in SAWS' discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under Sections 24.1(2) or (3), the assignee assumes all the obligations of the Project Company under this Water Transmission and Purchase Agreement. Any purported assignment of this Water Transmission and Purchase Agreement in violation of this Section is void.

SECTION 24.2. LIMITATIONS ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Water Transmission and Purchase Agreement "**Change in Control**" means with respect to a person (other than SAWS) any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, Shares or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, Shares or equity, issuance of new shares, Shares or equity or amalgamation, merger consolidation, amendment of a limited liability company certificate or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

(1) Controlling the composition of the majority of the board of trustees of the entity or of a general partner or manager of the entity;

(2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of trustees or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;

(3) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited liability company) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited liability company) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the entity.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors' Remedies Agreement;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Affiliate of a Shareholder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company (or of any person who directly or indirectly owns shares or equity in the Project Company) to Abengoa or any of its Affiliates; or

(4) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of SAWS, which may be given or withheld in SAWS' discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed.

In determining whether to give its consent to any Change in Control under Section 24.2(B)(4)(b) (Limitations), the SAWS shall take into consideration the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the backgrounds and reputations of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective Affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on the other projects); (3) compliance with SAWS' conflict of interest requirements; and (4) the ability of the Project Company to meet its obligations under this Water Transmission and Purchase Agreement after the transfer.

#### SECTION 24.3. FACTORS SAWS MAY CONSIDER.

In determining whether to provide its consent under Sections 24.1(3)(b) (Limitation on Assignment by Project Company) or 24.2(B)(4)(b) (Limitations), and without limiting SAWS' consent rights thereunder, it will be reasonable for SAWS to refuse its consent if:

(1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;

(2) The proposed assignee or the new party in control of the Project Company, as the case may be, is, in the reasonable opinion of SAWS, less creditworthy than the assignor; or

(3) The assignment or Change in Control could, in the reasonable opinion of SAWS, have a material and adverse effect on SAWS or the Project.

SECTION 24.4. LIMITATION ON ASSIGNMENT BY SAWS.

SAWS shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement (except to another Governmental Body to which all or substantially all of the revenues, assets and liabilities constituting the SAWS municipal utility water enterprise are transferred), without the prior written consent of the Project Company, which may be given or withheld in the Project Company's reasonable discretion. This covenant shall not be construed to restrict the exercise by SAWS of its rights under Section 26.5 (Opportunities).

SECTION 24.5. COSTS OF REQUEST FOR CONSENT.

If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 24.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 24.2 (Limitations on Change in Control), the Project Company shall pay SAWS' reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of \$50,000 (Index Linked). After the decision of SAWS is rendered, SAWS will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

ARTICLE 25

INDEMNIFICATION

SECTION 25.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall indemnify and keep the City and SAWS, and their respective elected officials, trustees, members, appointed officers, employees, representatives, agents, attorneys, financial advisors, and contractors (each a "**SAWS Indemnitee**") indemnified at all times from and against all Loss-and-Expense that any SAWS Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person), arising by reason of any:

(1) Breach of any representation or warranty by the Project Company under this Water Transmission and Purchase Agreement;

(2) Negligent act or omission of the Project Company or any Project Company Person;

(3) Willful misconduct of the Project Company or any Project Company Person;

(4) Non-compliance by the Project Company or any Project Company Person with any of the provisions of this Water Transmission and Purchase Agreement or any Project Contract or Subcontract or any document, instrument or agreement delivered to SAWS as required under this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault;

(5) Release of Hazardous Substances by the Project Company or any Project Company Person, except to the extent excused by a SAWS Fault;

(6) Breach by the Project Company or any Project Company Person of, or non-compliance by the Project Company or any Project Company Person with, any Governmental Approval or Applicable Law, or the failure of the Project Company or any Project Company Person to obtain all necessary Governmental Approvals in accordance with this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault; or

(7) Any other act, event or circumstance as to which the Project Company is obligated to provide an indemnity hereunder, except to the extent excused by a SAWS Fault.

The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. Notwithstanding the foregoing, SAWS Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the SAWS Indemnitees. This Section may be relied upon by the SAWS Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 25.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a SAWS Indemnatee receives any notice, demand, letter or other document concerning any claim for which it appears that the SAWS Indemnatee is, or may become entitled to, indemnification or compensation under this Water Transmission and Purchase Agreement in respect of the entire claim, the SAWS Indemnatee shall give notice in writing to the Project Company.

(B) Consolidation of Claims. If a notice of claim is given pursuant to Section 25.2(A) (Notice) by more than one SAWS Indemnatee relating to the same facts or circumstances, the Project Company may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Project Company Right to Dispute Claim. If notice is given as provided in (A) (Notice), the Project Company shall be entitled to dispute the claim in the name of the SAWS Indemnatee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The SAWS Indemnatee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Conflicts of Interest. In defending any claim as described in Section 25.2(C) (Project Company Right to Dispute Claim) in which there is a conflict of interest between the Project Company and SAWS Indemnatee, SAWS Indemnatee may appoint independent legal counsel in respect of such claim and, if it is determined that the SAWS Indemnatee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the SAWS Indemnatee in so doing will be included in the indemnity or compensation from the Project Company.

(E) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to Section 25.2(C) (Project Company Right to Dispute Claim):

(1) The Project Company shall keep the SAWS Indemnatee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Project Company shall demonstrate to the SAWS Indemnatee, at the reasonable request of the SAWS Indemnatee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Project Company shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of SAWS, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of SAWS and (2) be subject to the consent of SAWS, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, SAWS (with the approval of the SAWS Board of Trustees, given in its discretion) shall, at the sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest.

(F) SAWS Indemnatee Rights to Conduct Defense. A SAWS Indemnatee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Project Company is not entitled to take conduct of the claim in accordance with Section 25.2(C) (Project Company Right to Dispute Claim); or

(2) The Project Company fails to notify the SAWS Indemnatee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the SAWS Indemnatee under Section 25.2(C) (Project Company Right to Dispute Claim) or notifies the SAWS Indemnatee that it does not intend to take conduct of the claim; or

(3) The Project Company fails to comply in any material respect with Section 25.2(E) (Rights and Duties of the Parties).

(G) Transfer of Conduct of Claim to SAWS Indemnatee. A SAWS Indemnatee may at any time, without limiting the Project Company's obligation to indemnify SAWS under this Article (including the obligation to pay fees and costs in connection with such indemnity), give notice to the Project Company that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 25.2(C) (Project Company Right to Dispute Claim) applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the SAWS Indemnatee, and will provide to the SAWS Indemnatee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(H) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without additional cost to SAWS;  
and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 26

MISCELLANEOUS PROVISIONS

SECTION 26.1. MAINTENANCE OF PROJECT SITE CONVEYANCE INSTRUMENTS; COVENANT AGAINST SALE OF THE PROJECT.

(A) Right-of-Way Easements. In acquiring the Transmission Pipeline Easements (other than the Transmission Pipeline Easements acquired by partial assignment of existing easements from Cross County Water Supply Corporation), the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right of Way Easement Form). Except for such Cross County Water Supply Corporation easement assignments, all such right-of-way easements shall permit the construction of two water pipelines in the right-of-way, shall provide for an easement width of at least 100 feet (which may be lessened on a case-by-case basis as reasonably approved by SAWS), and shall not contain any indemnity provisions that would according to their terms apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements. In the case of a Transmission Pipeline Easement acquired by way of a judgment in a condemnation proceeding, such instrument shall be in the form as prescribed for such proceedings, but shall in substance conform to the requirements set forth hereinabove. In acquiring right-of-way easements for the Collection Pipelines Rights-of-Way, the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right-of-Way Easement Form).

(B) Compliance With Project Site Conveyance Instruments Generally. The Project Company shall comply with its material obligations under the Project Site Conveyance Instruments and keep and maintain the Project Site Conveyance Instruments in full force and effect, and shall promptly notify SAWS of any material breach or default by any party thereto.

(C) Groundwater Leases. With respect to the Groundwater Leases, the Project Company shall, to the extent required in order to provide the Baseline Annual Volume: (1) maintain Raw Groundwater production at levels sufficient to avoid termination of a Groundwater Lease by any Groundwater Lessor, (2) pay all royalties and other amounts due any party thereunder, and (3) comply with all rules and regulations of the POSGCD and other Applicable Law relating to any activity conducted pursuant to rights granted under the Groundwater Leases.

(D) Covenant Against Sale of the Project. The Project Company shall not sell, lease, assign, convey, move or otherwise transfer its ownership or other interests in the Project, the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater without the consent of SAWS given in its discretion, except in connection with an assignment of this Water Transmission and Purchase Agreement pursuant to Section 24.1 (Limitation on Assignment by Project Company). There shall be no Encumbrances registered or recorded on the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater or any part of the Project other than Permitted Encumbrances.

SECTION 26.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of SAWS and the relationship between the parties shall be limited to performance of this Water Transmission and Purchase Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Water Transmission and Purchase Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits,

such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Water Transmission and Purchase Agreement or the performance thereof.

SECTION 26.3. NO OTHER BUSINESS; NO PUBLIC UTILITY.

(A) No Other Business. The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder.

(B) No Public Utility. Nothing contained in this Water Transmission and Purchase Agreement shall be construed as an intent by the Project Company to dedicate its property or any Project facilities to public use or subject itself to rate regulation as a "retail public utility" (as defined in Chapter 13 of the Texas Water Code or any other Applicable Law).

SECTION 26.4. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from SAWS or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstance or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by SAWS to the Project Company under this Water Transmission and Purchase Agreement, or the length of the extension of time. Upon request from SAWS, the Project Company shall promptly submit a detailed description, supported by all such documentation as SAWS may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this Section.

(B) Mitigation by SAWS. In all cases where SAWS is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, SAWS shall use all reasonable efforts to mitigate such amount required to be paid by the Project Company to SAWS under this Water Transmission and Purchase Agreement, provided that such obligation shall not require SAWS to:

- (1) Take any action which is contrary to the public interest, as determined by SAWS in its discretion;
- (2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) Alter the amount of Deductions it is entitled to make in accordance with Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

SAWS shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or otherwise as expressly provided in this Water Transmission and Purchase Agreement. Upon request by the Project Company, SAWS shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by SAWS to mitigate and meet its obligations under this Section.

SECTION 26.5. OPPORTUNITIES.

(A) General. Except as may be specifically agreed in writing between SAWS and the Project Company during the Term, SAWS reserves the right to all commercial and other opportunities for, arising from, or related to, the Project.

(B) Opportunities Expressly Reserved. Without limiting the generality of Section 26.5(A) (General), SAWS reserves, and subject to the Project Company's rights under Section 5.9 (Restrictions on SAWS-Requested Design Requirements and SAWS-Requested Capital Modifications), the right to arrange for and exclusively benefit from the conveyance and sale of Product Water to any person, and to direct the Project Company to make a SAWS-Directed Design Requirements Change or a SAWS-Directed Capital Modification to the Transmission Pipeline System to allow for the interconnection of pipelines necessary to convey Product Water to any person. In any such arrangement, SAWS shall remain solely responsible to the Project Company for the purchase of all Product Water in accordance herewith.

SECTION 26.6. CONTRACT ADMINISTRATION.

(A) Authority of SAWS Representative. The Project Company understands and agrees that the SAWS Representative has only limited authority with respect to the implementation of this Water Transmission and Purchase Agreement, and cannot bind SAWS with respect to any Water Transmission and Purchase Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the SAWS Representative. The SAWS Representative shall have the right at any time to issue the Project Company a written request for information relating to a possible breach of this Water Transmission and Purchase Agreement. Any such written request with respect to a material breach designated as a "priority request" shall be responded to by the Project Company within three Business Days.

(B) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Project Company shall be given by the SAWS Representative and Operating Notices to SAWS shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Water Transmission and Purchase Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Water Transmission and Purchase Agreement between the parties which do not require a Water Transmission and Purchase Agreement Amendment shall be a "**Contract Administration Memorandum.**" A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by SAWS and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Water Transmission and Purchase Agreement in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of SAWS reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the SAWS Representative and the Project Company Representative. SAWS and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Water Transmission and Purchase Agreement Amendments and all other documents relating to the administration and performance of this Water Transmission and Purchase Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Water Transmission and Purchase Agreement.

SECTION 26.7. WATER TRANSMISSION AND PURCHASE AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 26.6 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Water Transmission and Purchase Agreement shall be made except through a written amendment to this Water Transmission and Purchase Agreement (a "**Water Transmission and Purchase Agreement Amendment**") duly authorized by SAWS and by the Project Company. Water Transmission and Purchase Agreement Amendments shall be dated and signed by the SAWS Representative and the Project Company Representative.

(B) Water Transmission and Purchase Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Water Transmission and Purchase Agreement, when a Water Transmission and Purchase Agreement Amendment or other agreement with respect to this Water Transmission and Purchase Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging the Water Transmission and Purchase Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 26.8. SAWS APPROVALS AND CONSENTS.

When this Water Transmission and Purchase Agreement requires any approval or consent by SAWS to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of Section 26.6 (Contract Administration), be given by the SAWS Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by SAWS with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Water Transmission and Purchase Agreement, and except for (1) Appendix 4 (Design and Construction Review

Procedures, Commissioning and Substantial Completion), and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Water Transmission and Purchase Agreement, require a response or action, if SAWS does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of SAWS' receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless SAWS' approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification.

SECTION 26.9. DISCLOSED DATA.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Water Transmission and Purchase Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. The Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any SAWS Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Water Transmission and Purchase Agreement on the grounds:

- (1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (2) That the Disclosed Data was incorrect or insufficient; or
- (3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than SAWS,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Water Transmission and Purchase Agreement on any such ground.

SECTION 26.10. INTELLECTUAL PROPERTY RIGHTS.

The Project Company shall indemnify, defend and hold harmless SAWS and the SAWS Indemnitees in the manner provided in Section 25.1 (Project Company's Obligation to Indemnify) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Construction Work and the Operating Work. At its option, the Project Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe.

SECTION 26.11. ACTIONS OF SAWS IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Water Transmission and Purchase Agreement shall be interpreted as limiting the rights and obligations of SAWS under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against SAWS, not based on this Water Transmission and Purchase Agreement, arising out of any act or omission of SAWS in its governmental capacity.

SECTION 26.12. PROJECT COMPANY'S CONFIDENTIALITY OBLIGATIONS.

(A) Confidential SAWS Information. The Project Company shall treat as confidential and proprietary to SAWS all information obtained from SAWS in connection with the Contract Obligations ("**Confidential SAWS Information**"). The Project Company shall not (a) use Confidential SAWS Information for any purpose other than the performance of the Contract Obligations, or (b) disclose any Confidential SAWS Information to any person other than its own employees, agents, Project Contractors or Subcontractors who have a need for such information in the performance of their work relating to the Project, unless such disclosure is specifically authorized in writing by SAWS.

(B) Security Plan. If requested by SAWS, the Project Company shall prepare a security plan to assure that Confidential SAWS Information is not used for any unauthorized purpose or disclosed to unauthorized persons by the Project Company or any of its Project Contractors or Subcontractors. The Project Company shall advise SAWS of any request for disclosure of such information or of any actual or potential disclosure of such information, whether or not a security plan has been prepared by the Project Company.

SECTION 26.13. SAWS' CONFIDENTIALITY OBLIGATIONS.

(A) General. The Project Company acknowledges that SAWS is governed by and must comply with the Texas Public Information Act, as set forth in Chapter 552 of the Texas Government Code, as the same may be amended from time-to-time. SAWS shall have the right to disclose and make public any information received from the Project Company, except as provided in Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information) (the "**Confidential Project Company Information**") and Section 26.13(E) (Procedures Upon Third Party Requests for Confidential Project Company Information).

(B) Disclosable Information. Specifically, SAWS shall have the right to disclose and make public certain information, including the following information, whether or not such information may be withheld pursuant to an exception to disclosure under the Texas Public Information Act:

(1) information which is or comes into the public domain other than through any disclosure prohibited by this Water Transmission and Purchase Agreement;

(2) reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to SAWS;

(3) information supplied to any Governmental Body, including regulatory reports and the information and sampling and testing results provided pursuant to Section 9.8(D) (Reports to Governmental Bodies);

(4) periodic reports prepared by the Project Company pursuant to Section 9.11 (Periodic Reports);

(5) records required to be retained and maintained pursuant to Section 9.12 (Maintenance of Records);

(6) the Performance Test Report delivered to SAWS pursuant to Section 8.3(F) (Test Report);

(7) invoices prepared pursuant to Section 17.9 (Billing and Payment), including information and supporting documentation requested by SAWS pursuant to such Section;

(8) any information related to the maintenance, repair and replacement of the Project provided pursuant to Article 11 (Maintenance, Repair and Replacement);

(9) operating procedures, plans, and readings of monitors and operating manuals and records of chemical consumption;

(10) any output of the Financial Model; and

(11) photographs and videos of the exterior of the Project.

(C) Confidential Project Company Information; Non-Disclosable Information. Except as may be required by Applicable Law, SAWS agrees not to disclose the following information that is provided to SAWS and specifically identified by written notation as “confidential” at the time of disclosure to SAWS:

(1) the computer program that generated the Financial Model;

(2) process and instrumentation diagrams of Project systems and data sheets;

(3) financial information regarding Project Contractors and Subcontractors;

(4) any Project Contract or Subcontract;

(5) information relating to trade secrets, or secret processes; and

(6) any legal proceedings involving a Project Contract or Subcontract.

(D) Use of Confidential Project Company Information by SAWS’ Professional Advisors and Consultants. Notwithstanding the terms and provisions of Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information), SAWS may disclose or grant access to Confidential Project Company Information to its professional advisors and consultants to the extent necessary to enable SAWS to perform (or to cause to be performed) or to enforce its rights or obligations under this Water Transmission and Purchase Agreement (provided that such advisors and consultants agree for the benefit of the Project Company not to disclose such Confidential Project Company Information on such terms as may be reasonably agreed to by the Project Company and such advisors or consultants).

(E) Procedures Upon Third Party Requests for Confidential Project Company Information. If SAWS receives a third party request under the Texas Public Information Act for Confidential Project Company Information, SAWS agrees to deliver prompt written notice to the Project Company of any such third-party request so that the Project Company may seek, at no cost to SAWS, an opinion from the Texas Attorney General for SAWS to withhold disclosure of such Confidential Project Company Information. The obligation to maintain the confidentiality of Confidential Project Company Information does not apply to the extent that SAWS is required to disclose such Confidential Project Company Information as determined by the Texas Attorney General.

SECTION 26.14. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information of employees or agents of SAWS:

- (1) with the prior consent of SAWS;
- (2) to the extent necessary to perform the Project Company's obligations under this Water Transmission and Purchase Agreement; and
- (3) in accordance with Applicable Law, including the Public Information Act as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow SAWS on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 26.15. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under all agreements of the Project Company which are material to the performance of its obligations under this Water Transmission and Purchase Agreement.

SECTION 26.16. BINDING EFFECT.

This Water Transmission and Purchase Agreement shall inure to the benefit of and shall be binding upon SAWS and the Project Company and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control).

SECTION 26.17. NOTICES, CONSENTS AND APPROVALS.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Water Transmission and Purchase Agreement (other than Operating Notices as provided in Section 26.6(B) (Operating Notices), shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

- (1) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (2) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt)

on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(3) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(4) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(B) SAWS Notice Address. Notices (other than Operating Notices) required to be given to SAWS shall be addressed as follows:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(C) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

Abengoa Vista Ridge, LLC  
2600 Via Fortuna, Suite 220  
Austin, TX 78746  
Attention: CEO  
Fax No.: (512) 732-2252  
Email: \_\_\_\_\_

with a copy to:

Abengoa Vista Ridge, LLC  
2600 Via Fortuna, Suite 220  
Austin, TX 78746  
Attention: General Counsel  
Fax No.: \_\_\_\_\_  
Email: \_\_\_\_\_

SECTION 26.18. NOTICE OF LITIGATION.

In the event the Project Company or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 26.19. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Water Transmission and Purchase Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Water Transmission and Purchase Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Water Transmission and Purchase Agreement to be executed by their duly authorized representatives as of the day and year first above written.

APPROVED BY THE CITY OF SAN ANTONIO,  
TEXAS, PURSUANT TO CITY ORDINANCE  
NUMBER \_\_\_\_\_

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

Name: Ivy R. Taylor

Title: Mayor

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

THE CITY OF SAN ANTONIO, TEXAS  
ACTING BY AND THROUGH THE  
SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

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

Name: Heriberto "Berto" Guerra, Jr.

Title: Chairman

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

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

Name: Robert R. Puente

Title: President/Chief Executive Officer

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

ABENGOA VISTA RIDGE, LLC

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

Name: Pedro Almagro Gavilán

Title: Manager and President

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

**ABENGOA**  
VISTA RIDGE, LLC

2023.12.20 03:52:10 CTH

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