

FINAL DRAFT

**ECONOMIC DEVELOPMENT
WATER SYSTEM TRANSFER CONTRACT**

This Contract is entered into between the City of Texarkana, Texas (“Texarkana”), and TexAmericas Center (“TAC”).

RECITALS

WHEREAS, Texarkana is a home-rule municipality operating under a municipal charter adopted as authorized by Article XI, Section 5, of the Texas Constitution and as recognized by Texas Local Government Code Section 5.004, and having full power of local self-government not inconsistent with the Texas Constitution, Texas general laws, or the municipal charter, and is fully empowered to enter into contracts with other governmental entities and political subdivisions for the ownership and operation of water works, water distribution, and water supply systems and for the purpose of selling water for municipal, domestic, industrial and other useful purposes permitted by law and upon such terms and for such time as the parties may agree; and

WHEREAS, TAC (formerly known as Red River Redevelopment Authority) is a special district and political subdivision of the State of Texas operating pursuant to Chapter 3503 of the Texas Special District Local Laws Code; and

WHEREAS, on or about September 30, 2010, TAC acquired from the United States of America a tract containing approximately 8,867 acres more particularly described in that certain Deed Without Warranty dated September 1, 2010 recorded in Volume 5898 at Page 1 of the Real Property Records of Bowie County, Texas (the “Property”); and

WHEREAS, as a portion of the acquisition of the above-referenced Property, TAC acquired the water distribution system for that portion of the former Lone Star Army Ammunition Plant located West of Central Avenue and located upon the Property described in the above-referenced Deed; and

WHEREAS, TAC is charged by the Texas Legislature with the responsibility and has been given the authority to redevelop the Property for the purpose of economic development and job creation; and

WHEREAS, Texarkana and TAC, through their authorized representatives, signed a "Letter of Intent" dated September 28, 2010, which addressed, among other things, the mutual intent of both parties to negotiate an agreement for a direct interconnection between Texarkana’s water system and the water distribution system located upon the Property in connection with negotiating a water supply contract to assist TAC in providing competitively-priced water to its largest customer, Red River Army Depot, and to ensure that abundant supplies of water are made available to support TAC’s economic development objectives and its tenants and landowners; and

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WHEREAS, Texarkana and TAC are of the opinion that the economic development of the Property is of vital importance to the economic growth of the region, and that they should cooperatively work for the economic development of the Property by implementing a direct interconnection between Texarkana's water system and the water distribution system located upon the Property, in addition to Texarkana acquiring, owning, and operating the water distribution system upon the Property, and TAC developing the Property, including development of the Property's road infrastructure and wastewater treatment facilities.

NOW, THEREFORE, pursuant to Chapter 791 of the Texas Government Code and in consideration of the premises and the mutual promises, covenants, and agreements contained herein, Texarkana and TAC hereby contract as follows:

ARTICLE ONE WATER SYSTEM TRANSFER

- 1.1 *TAC-East Water System Transfer.* TAC agrees to transfer to Texarkana, and Texarkana agrees to accept the transfer from TAC, of the water distribution system located upon the Property consisting of all water pipes greater than 10 inches in size; all meters, pumps, valves and accessories attached thereto; and all service laterals that serve existing customers up to the point of the property line of that customer or to a meter or appurtenance that establishes the point of service to that property (the "TAC-East Water System"). Within 90 days after transfer, the parties shall prepare a system map and inventory that memorializes the final assets subject to this transfer along with the definitive easement rights thereto.
- 1.1.1 The parties agree that the TAC-East Water System is valued at approximately \$849,702.00.
- 1.1.2 The transfer of the TAC-East Water System shall be conveyed by TAC to Texarkana in a Bill of Sale without warranty and all parts of the system shall be transferred in their "AS IS" condition; provided, however, that Texarkana's acquisition of the "as-is" risk of the TAC-East Water System's condition shall not extend to the following:
- (a) pre-existing environmental conditions;
 - (b) obligations of TAC to others unless expressly assigned to or otherwise assumed by Texarkana with the consent of the City Council of Texarkana; and
 - (c) the presence of functioning subsurface structures used by TAC.
- 1.1.3 TAC shall also convey to Texarkana easements having a width of fifteen (15) feet on each side of the center line of the existing water lines, thirty (30) feet total, transferred pursuant to § 1.1 of this Contract. Texarkana agrees that it will repair to a like-kind condition any damage to roads, culverts, or other structures caused by either its access to such easements, or its repair, maintenance, or replacement

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of the water lines in such easements, or adding of additional water lines located in such easements.

- 1.1.4 As part of the transfer of the TAC-East Water System, TAC shall cause to be transferred to Texarkana by assignment or other means any TAC customer accounts for those customers receiving water from the TAC-East Water System (excluding the U.S. Army / Red River Army Depot), so that such customers become Texarkana customers and Texarkana assumes responsibility for providing potable water under separate water supply contracts to such customers.
- 1.2 *Consideration and Payments.* As consideration for the conveyance of the TAC-East Water System and related facilities and as consideration for the right to use the easements and the roads within the TAC property, Texarkana agrees to the following:
 - 1.2.1 For a period of no more than twenty (20) years, or until the dissolution of TAC, or until the value of the TAC-East Water System set forth in § 1.1.1 has been paid, whichever occurs first, Texarkana shall pay to TAC \$0.03 per 1,000 gallons of water delivered by Texarkana to its customers on the TAC-East Water System (excluding the U.S. Army / Red River Army Depot).
 - 1.2.2 Payments shall be made on a quarterly basis and tendered to TAC not later than the 90th day following the quarter in which water was delivered to TAC-East Water System customers.
 - 1.2.3 TAC agrees that all monies paid by Texarkana under §1.2 and subsections shall be deposited in a separate TAC escrow or trust fund, specifically designated and used solely for economic development.
- 1.3 *True-Up.* Upon receipt and review of audited financials, the parties shall review data of water delivered to TAC-East Water System customers and calculate a true-up of payments made under §1.2 for the twelve-month period following the conveyances described in §1.1 (“Payment Year”), and for each successive Payment Year.
 - 1.3.1 If, during any Payment Year, the aggregate amount paid by Texarkana exceeds \$42,485.00 (the “ceiling aggregate”), then the overage is credited to Texarkana and applied to the following Payment Year.
 - 1.3.2 If, during any Payment Year, the aggregate amount paid by Texarkana is less than the ceiling aggregate, no further monies are due from Texarkana to TAC for that Payment Year.
 - 1.3.3 If, at any time, the total payments made by Texarkana to TAC exceed the value of the TAC-East Water System set forth in § 1.1.1, then TAC shall refund such excess to Texarkana, and Texarkana shall not owe TAC any additional payments.

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- 1.3.4 If, at the end of the twenty-year period referenced in §1.2.1, the total payments made by Texarkana to TAC are less than the value of the TAC-East Water System set forth in § 1.1.1, then Texarkana shall not owe TAC any additional payments.
- 1.4 *Timing of Conveyances and Payments.* The conveyances and transfers described in §1.1 and its subsections, together with the beginning of the first twelve-month period for payments described in §1.2.1, shall coincide with the date that Texarkana begins supplying water to TAC pursuant to that certain “Water Supply Contract” between Texarkana and TAC.

ARTICLE TWO WATER SUPPLY INTERCONNECT

- 2.1 *Water Supply Interconnect.* Subject to § 2.2, below, TAC shall construct an interconnect between the System and Texarkana’s water line adjacent to U.S. Highway 82 (the “Interconnect”). The Interconnect shall consist of the improvements identified in the attached Exhibit A estimate of construction costs (exclusive of the 250,000 elevated storage facility).
- 2.1.1 *Construction Cost.* The construction cost for the Interconnect shall be paid by Texarkana providing the sum of \$250,000.00 in economic development funds, and TAC providing the remainder of the construction cost from its available funds and /or a DEAAG assistance grant (the parties acknowledging that TAC requires a local match from Texarkana in order to secure a DEAAG assistance grant).
- 2.1.2 *Transfer of Title.* Title to the Interconnect shall be transferred to Texarkana upon the date that Texarkana begins supplying water to TAC through the Interconnect pursuant to that certain “Water Supply Contract” between Texarkana and TAC. At such time, TAC shall additionally convey to Texarkana easements for the construction and continued maintenance of the Interconnect.
- 2.2 *Alternative Water Supply Interconnect.* If, within sixty (60) days of signing this Contract, Texarkana has a firm commitment from Day & Zimmerman to acquire certain assets which would provide for an alternative interconnection and obviate the need for construction of the Interconnect, then § 2.1 and its subsections shall be suspended for a period not to exceed ninety (90) days from the signing of this Contract in order for Texarkana to negotiate and finalize such acquisition. However, if, within sixty (60) days of signing this Contract, Texarkana does not have a firm commitment from Day & Zimmerman to acquire certain assets which would provide for an alternative interconnection and obviate the need for construction of the Interconnect, then § 2.1 and its subsections shall be in full force and effect.

ARTICLE THREE AUTHORIZATION FOR FUTURE NEGOTIATIONS

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- 3.1 *TAC Central Water System Negotiations.* The parties acknowledge that in addition to the TAC-East Water System, TAC presently owns and operates a potable water production and distribution system which draws water from Caney Lake and Elliott Lake, both located upon Red River Army Depot, and a water treatment plant located at Caney Lake (the “TAC Central Water System”), which presently serves Red River Army Depot, the TexAmericas Center – Central Campus, and others. By signing this Contract, Texarkana and TAC authorize their designated representatives to explore the feasibility – and, if feasible, to begin negotiations – of Texarkana acquiring the TAC Central Water System, which would necessarily include an amendment and modification of TAC’s agreement with the Department of the Army such that the Red River Army Depot would become a direct water purchasing customer of Texarkana. TAC agrees to provide assistance to Texarkana in negotiating the terms of the amendment and/or modification of TAC’s agreement with the Department of the Army given TAC’s expertise and knowledge in operating the system and having previously negotiated amendments and changes to said contract.
- 3.2 *No Effect on Other Provisions or Water Supply Contract.* If Texarkana does not acquire the TAC Central Water System, such shall not void or invalidate Articles One, Two, and Four of this Contract, nor shall it affect the Water Supply Contract between Texarkana and TAC.

ARTICLE FOUR
MISCELLANEOUS PROVISIONS

- 4.1 This Agreement shall be governed exclusively by the laws of the State of Texas and, where applicable, the laws of the United States of America.
- 4.2 In construing this Agreement, neither of the parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any provisions herein, construed against such party solely by reason of such party having drafted the same.
- 4.3 The parties to this Contract are independent contractors. No party shall exercise control over either the performance of the other party or the employees of any other party; and no party shall be deemed to be the agent, employee or representative of any other party.
- 4.4 Unless otherwise specified in this agreement, any notice required or document to be provided under this agreement shall be given by hand delivery or United States Mail to the following:

City of Texarkana, Texas
Attn: City Manager
220 Texas Boulevard
Texarkana, Texas 75501

TexAmericas Center
Attn: Executive Director
107 Chapel Lane
New Boston, Texas 75570

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- 4.5 Should any portion of this agreement be determined or declared to be invalid, illegal, or unenforceable for any reason, the remaining portions hereof shall remain in full force and effect as though the invalid, illegal or unenforceable portions were not contained herein.
- 4.6 This Agreement may be amended only by a written document signed by duly authorized representatives of the parties hereto.
- 4.7 This Agreement and/or the rights and obligations of the parties may not be assigned by either party without the written consent of the other party which consent shall not be unreasonably withheld.
- 4.8 If a dispute arises between the parties relating to the rights, duties, or obligations arising out of this agreement, the parties agree to meet informally in a good faith effort to negotiate a resolution of the dispute prior to the initiation of any litigation. The parties may, but are not obligated to, bring into said negotiations a neutral third party, or may refer the matter to formal mediation to assist in resolving the dispute. Jurisdiction and venue for any litigation arising out of this agreement shall be in the District Court of Bowie County, Texas. Each party shall pay its own cost and expenses, including attorney's fees, incurred during any facet of dispute resolution prior to litigation. The prevailing party in any litigation, as determined by the Judge of the presiding court, is entitled to recover reasonable attorney's fees and court and other costs incurred in the litigation.
- 4.9 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 4.10 This Agreement shall be effective upon the date of the last of the parties to execute the same.

CITY OF TEXARKANA, TEXAS

TEXAMERICAS CENTER

By: _____
F. Larry Sullivan, Ed.D.
City Manager

By: _____
William V. Cork,
Executive Director

Date: _____

ATTEST:

Kerry Meredith, City Secretary

Date: _____

APPROVED AS TO FORM:

Raymond W. Jordan,
JORDAN LAW FIRM, L.L.P.
Retained Legal Counsel

APPROVED AS TO FORM:

Jo Thomason
Jeffery C. Lewis
ATCHLEY, RUSSELL, WALDROP & HLAVINKA, LLP
Retained Legal Counsel