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WATER SUPPLY CONTRACT

This Water Supply Contract (hereinafter, "Contract") is entered into between the City of Texarkana, Texas (hereinafter, "Texarkana") and TexAmericas Center (hereinafter, "Purchaser").

WHEREAS, Texarkana is fully empowered to enter into contracts with other governmental entities and political subdivisions 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, Texarkana owns a municipal water treatment and supply system (hereinafter referred to as the "System") capable of providing an adequate water supply as agreed herein; and

WHEREAS, the Purchaser, a political subdivision of the State of Texas, has a need for such water supply and desires to enter into a contractual arrangement with Texarkana for water from said System; and

WHEREAS, Texarkana and Purchaser, 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 a water supply contract to assist Purchaser 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 Purchaser's economic development objectives and its tenants and landowners.

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 Purchaser hereby agree as follows:

1. Texarkana agrees:

- 1.1 To reserve capacity in the System so as to furnish the Purchaser at the point of delivery hereinafter specified during the term of this Contract and any renewal or extensions thereof, potable treated water as may be required by the Purchaser to fulfill its obligation to provide water to Red River Army Depot under that certain Solicitation, Offer and Award, Contract NO DAAE32-02-D-008 dated May 14, 2002 (Army Contract) and to provide water to the retail water customers of Purchaser as of the date hereof and in the future during the term of this Agreement (the initial reserve capacity to be required by Purchaser is estimated at 300,000,000 gallons annually. Texarkana further agrees to reserve capacity in the System to be able to supply to Purchaser, if required by Red River Army Depot, an annual allocation of 25,000 acre-feet of water for Red River Army Depot's water requirements from the Texarkana, Texas, municipal water system. Water delivered under this Contract shall be of the same quality as that distributed by Texarkana to its other customers on this System. If in the future, a larger quantity of water is desired by the Purchaser, any improvements required shall be at the expense of the Purchaser or if such quantity of water is voluntarily available from another purchaser with reserved capacity in the drinking water system, then agreed upon capacity may be transferred to

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Purchaser upon completion of appropriate contract amendments that include but are not limited to changes in payment under Section 3, below.

- 1.2 To provide treated surface water meeting all applicable Texas and Federal regulations, in such volumes, pressures and rates of flow that will enable Purchaser to fulfill its obligations to Red River Army Depot pursuant to the terms of the Army Contract as provided in Sections C.3.5 and C.3.5.1 of said contract.
- 1.3 To allow the Purchaser to use existing connections, with certain upgrades stated herein including backflow devices and Supervisory Control and Data Acquisition (SCADA) equipment, to Texarkana's system to receive the quantities of water specified in this Contract. Said connections, including all monitoring, control, transmission, metering, telemetry and attendant facilities are recognized as the property of Texarkana, except all backflow prevention facilities shall remain the property and responsibility of the Purchaser. Purchaser specifically agrees to install at Purchaser's expense backflow prevention devices and telemetry equipment acceptable to Texarkana and meeting any applicable Texas Commission on Environmental Quality (TCEQ) rules and regulations at the point of delivery.
- 1.4 To furnish the Purchaser, not later than the 15th day of the month following water usage, with an itemized statement of the amount of water furnished the Purchaser and the charges for such during the preceding month. The quantity of water for which Purchaser shall be billed shall be based upon the reading of the master meter of Texarkana except under conditions set out in ¶ 1.5. The unit of measure for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure, rounded to the nearest 1,000 gallons. The monthly billing statement to Purchaser shall issue from the Chief Financial Officer of Texarkana.
- 1.5 To maintain and calibrate (or arrange for calibration of) its metering equipment as often as it considers necessary or such time as Purchaser may show reasonable evidence of error. Upon any test, the percentage of any inaccuracy thereof --- if found to be in excess of two percent (2%) registration thereof --- shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. In the event Purchaser has provided no check meter with reference thereto and if for any reason any master meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meter is out of service or out of repair shall be determined by Texarkana from the best available information, by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculations, or by estimating the quantity of water by the deliveries made during preceding periods under similar conditions when the meter was registering accurately, or from pump records of Texarkana and other customers on the same supply line.

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- 1.6 Upon the Purchaser's request, in an effort to ensure regulatory compliance with water quality standards, to provide the Purchaser with Texarkana's sampling, laboratory analysis and reporting data in connection with Texarkana's water treatment plant and Texarkana's transmission main up to the point of delivery.

2. The Purchaser agrees:

- 2.1 For water delivered in accordance with the rates set forth in Section 3 of this Contract, to make monthly payments to Texarkana not later than thirty (30) days from the date of receipt of the invoice/billing. Purchaser's monthly payment shall be tendered to Texarkana's Chief Financial Officer.
- 2.2 That should Purchaser fail to make any payments as required under this Contract, interest on such amounts shall be due and owing to Purchaser and shall accrue at the rate determined pursuant to Section 2251.025 of the Texas Government Code from the date such payment becomes due until paid in full with interest as herein specified.
- 2.3 That while Purchaser may at any time seek additional water sources, it agrees to pay the minimum payment as provided in ¶ 2.1 and Section 3 of this Contract each month throughout the contract term.
- 2.4 That Texarkana is hereby authorized to enter onto any Purchaser's properties, whether held in fee simple or by easement, upon reasonable notice and within normal business hours, wherein there is reasonable need to operate and / or maintain Texarkana's lines and facilities located on Purchaser's properties, whether for the present system or for any mutually agreed upon future facilities (such operation and maintenance shall be provided by Texarkana on its lines and facilities up to and including the meter located at the point of delivery, except as otherwise stated).
- 2.5 That its meter shall be of the type required by Texarkana. Purchaser shall pay all costs of meter replacement at a frequency not greater than that of once every ten (10) years. Said costs shall be in addition to rates and fees as provided in ¶ 2.1 and Section 3 of this Contract
- 2.6 To fix and collect such rates and charges as required, in combination with any other funds legally available and reasonably assured of the purpose, to make possible the prompt payment of all expenses of operating and maintaining its water system and all payments as required under this Contract.
- 2.7 That control and monitoring facilities by telemetry are a necessary part of the connection facilities in the form of SCADA equipment. The Purchaser agrees to install at the point of delivery, at its sole expense, SCADA equipment approved by Texarkana. Such equipment to be compatible with Texarkana's current SCADA system.

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- 2.8 That all payments to be made hereunder shall constitute “operating expenses” of its waterworks system with the effect that the obligation to make such payments from its waterworks system revenues under this Contract shall be an operating expense as defined by Chapter 1502 of the Texas Government Code.
- 2.9 That backflow devices to protect Texarkana's system are a necessary part of the connection facilities and agrees to install, test and maintain such facilities as necessary and required by state or local codes or statutes, but in no case shall maintenance and inspections be performed less than annually. Purchaser shall supply all records of such maintenance and inspections on an annual basis to Texarkana. Texarkana is hereby authorized to enter onto any of Purchaser's properties with prior notice and during normal business hours, whether held in fee simple or by easement, necessary to verify maintenance and inspection of backflow prevention. Purchaser agrees that during the term of this Contract, should the existing backflow measures be inadequate to meet the State's standards, to bring the backflow measures up to the State's standards at Purchaser's sole expense. As an alternative to backflow prevention devices, the Purchaser may install an “air gap” system at the primary intake to separate Texarkana's water supply from the Purchaser's water supply. Any “air gap” system installed by the Purchaser shall meet the approval of Texarkana.
- 2.10 That Purchaser shall at all times have the right to records and audits of all costs for water treatment and delivery, and shall have the right to discuss with Texarkana its concerns or opposition to rate increases as well as a right to appeal such increase to the City Council of Texarkana, Texas, after discussion with Texarkana’s City Manager. Nothing in this section prevents the Purchaser from making appeal directly to the Texas Commission on Environmental Quality or its successor as allowed by law.

3. Purchaser’s Monthly Payment

- 3.1 *First Year of Term.* During the first year of the Contract term, Purchaser’s monthly payment shall be set at the current year’s potable water rate which is established using the City's system budgeted production costs for water from Lake Wright Patman and total budgeted gallons, and shall be an averaged, fixed charge.
- 3.2 *Subsequent Years of Term.* Purchaser’s monthly payment during subsequent years of the Contract term shall be determined in the following manner:
- 3.2.1 No later than August of each calendar year, the parties shall confer and compare budgeted total cost and usage to actual audited cost and usage (the “true-up” process). No later than November of each calendar year, the parties shall reach a consensus on the next year’s monthly payment. To facilitate Purchaser’s preparation of an annual budget, the potable water rate shall be an averaged, fixed monthly charge, computed on an annual basis.

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- 3.2.2 If, during the “true-up” process, it is determined that the past year’s actual billing of the potable water rate:
 - 3.2.2.1 exceeds the past year’s usage, then, the determined overage shall be calculated to the nearest rounded dollar figure, computed on an annual basis; this amount will be pro-rated and applied to each monthly billing charge for the next year as a credit.
 - 3.2.2.2 is less than the past year’s usage, then, the determined shortfall shall be calculated to the nearest rounded dollar figure computed on an annual basis; this amount will be pro-rated and applied to each monthly billing charge for the next year as an additional charge.
- 3.2.3 If, during the “true-up” process, it is calculated that the actual, audited production cost is more or less than the budgeted cost projection for the current year, then the true cost as determined annually by independent audit shall be calculated and the overage or shortfall between actual, audited production cost and budgeted cost projection shall be credited or deducted, at the case may be, in whole dollars to the purchaser.
- 3.2.4 In the event Purchaser is in arrears in performing the payment obligations owed to Texarkana under this Contract, the amount as determined in the “true-up” process shall constitute only a floor or base rate, to which Texarkana may add an additional payment to liquidate the unpaid balance due and owing to Texarkana.
- 3.2.5 Any dispute arising during the “true-up” process or in establishing a monthly payment for subsequent years of the term shall be resolved pursuant to Section 6 of this Contract. Pending the resolution of any dispute, the potable water rate payment shall remain fixed at the parties’ last agreed-upon rate.
- 3.3 In no event shall the potable water rate charged to Purchaser in any given budget cycle exceed either the rate calculated from the City’s system production costs for water from Lake Wright Patman or the lowest corresponding rate charged by Texarkana to other municipalities contracting with Texarkana, whichever is less. Notwithstanding the above, the Parties acknowledge that any overages, credits, or liquidation payments as set forth in Section 3 above shall be included in determining the potable water rate to be charged, but are separate charges or credits derived from the “true-up” process.

4. It is further mutually agreed between Texarkana and the Purchaser:

- 4.1 *Point of Delivery.* The exact Point of Delivery of water to Purchaser shall be at a meter to be installed by Purchaser which will become operational upon either construction of a direct interconnection between Texarkana’s water system and the Purchaser’s water distribution system, or use of another interconnection. The location of the meter shall be determined by Purchaser in consultation with Texarkana.

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- 4.2 *Force Majeure.* As used herein, the term “force majeure” as employed herein shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemy, orders or actions of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, breakage or accident to dams, machinery, pipelines, or canals or other structures of machinery, partial or entire failure of water supply and inability on the part of Texarkana to deliver water hereunder, or of Purchaser to receive water, on account of any other cause not reasonably within the control of the party claiming such liability.
- 4.2.1 If, for any reason of “force majeure”, either of the parties hereto shall be rendered unable wholly or in part to carry out its obligation under this agreement, other than the obligation of Purchaser to make the payments required under the terms this Contract, then if such party shall give notice and full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the party giving such notice, so far as it is affected by such “force majeure”, shall be suspended during the continuance of the inability than claimed, but for no longer period, and any such parties shall endeavor to remove or overcome such inability with all reasonable dispatch. It is understood and agreed that the settlement of strikes and lock-outs shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. No failure of Texarkana to meet any obligation by reason of force majeure shall relieve Purchaser from its obligations to make payments required under the terms of this Contract.
- 4.2.2 No damages shall be recoverable from Texarkana by reason of the suspension of delivery of water due to any of the causes above-mentioned. If Texarkana's ability to deliver water to Purchaser is affected by any of such causes, Texarkana shall promptly notify Purchaser, in writing, giving the particulars as soon as practicable after the occurrence of the cause or causes for such interruption.
- 4.2.3 It is expressly recognized by Purchaser that Texarkana may be compelled to make necessary alterations, perform maintenance, make repairs or construct extensions of new or additional water transporting or treatment facilities from time to time during the life of this Contract and any suspension of delivery to Purchaser due to such operation shall not be cause for claim of damage against Texarkana provided all reasonable effort is used by Texarkana to provide Purchaser with water in accordance with this Contract. In such case Texarkana shall give Purchaser at least forty-eight (48) hours notice or as much advance notice as may be practicable of the suspension of delivery and of the estimated duration thereof.

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- 4.2.4 That this Contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and Texarkana and Purchaser will collaborate in obtaining such permits, certificates, or the like as may be required to comply herewith.
- 4.2.5 That Purchaser shall not enter into any contracts for the wholesale supply or resale of water supplied by Texarkana to any other entity or agency or provide wholesale service outside its territorial boundary or certificate of convenience and necessity (CCN) without first having received approval, in writing, from Texarkana, and such approval will not be unreasonably withheld. However, Purchaser may provide retail service to current and future customers located inside or outside of Purchaser's territorial boundary and to Red River Army Depot. Nothing in this section will prohibit Purchaser from exercising its full authority under the laws of the State of Texas as they currently exist or shall in the future be amended.
- 4.2.6 That in the event of any occurrence rendering the Purchaser incapable of performing under this Contract, any successor of the Purchaser, whether the result of legal process, assignment or otherwise, shall succeed to the rights of the Purchaser hereunder.
- 4.2.7 That Texarkana is not responsible or liable for delivering a greater quantity of water to all combined customers than the capacity of the distribution main at the time of the execution of this Contract.
- 4.2.8 In the event any sales or use taxes, or taxes of any similar nature are hereafter imposed upon the gathering, taking, sale, use or consumption of the water received by Purchaser under this Contract, the amount of such taxes shall be borne by Purchaser, in addition to all other charges; and whenever Texarkana shall be required to pay, collect, or remit any such taxes on water received by Purchaser, then Purchaser shall promptly reimburse Texarkana for payment of such taxes.
- 4.2.9 In the event of an extended shortage of water or the supply of water available to Texarkana is otherwise diminished over any extended period of time, the supply of water to Purchaser shall be reduced or diminished in the same ratio or proportion as the supply to other wholesale customers on the system is reduced or diminished. It is specifically provided, however, that to the extent allowed by applicable law and subject to Texarkana's existing contractual commitments to others, Texarkana shall give priority to providing sufficient water to Purchaser to allow Purchaser to meet its obligations to Red River Army Depot as required by the Army Contract.

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5. Term and Termination

- 5.1 The initial term of this Contract shall begin when the terms and conditions under Articles One and Two under that certain Economic Development Water System Transfer Contract (executed concurrently with this Contract) have occurred or otherwise have been fulfilled. This Contract shall terminate on May 13, 2022, upon the termination of TAC's obligation under its existing contract with the U.S. Army / Red River Army Depot to provide potable water. Purchaser shall have the unilateral option to renew/extend the term in increments of 10 years, not to exceed a total contract term of 50 years provided that Red River Army Depot exercises its unilateral option to renew/extend the Army Contract as provide in Section C.19.3 thereof. Thereafter, this Contract may be renewed or extended for such term, or terms, as may be agreed upon by Texarkana and Purchaser.
- 5.2 This Contract may also be terminated by mutual agreement of the parties.
- 5.3 This Contract may also be terminated by Purchaser upon written notice of termination to Texarkana of one year prior to the effective date of termination.
- 5.4 Subject to Section 6, below, this Contract may be terminated by one party upon breach or failure of the other party to perform any of its obligations under this Contract, such failure not being cured by the breaching party within ninety (90) days following receipt of the non-breaching party's intent to terminate the Contract.

6. Dispute Resolution

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. At all times during such dispute resolution efforts, the parties shall continue to perform their respective obligations under this Contract. Jurisdiction and venue for any litigation arising out of this Contract shall be in the District Court of Bowie County, Texas.

7. General Provisions

- 7.1 *No Third Party Beneficiaries.* Nothing herein should be construed to benefit any person or entity not a signatory to this Contract.
- 7.2 *Governing Law.* This Contract shall be governed exclusively by the laws of the State of Texas.
- 7.3 *Construction.* In construing this Contract, none 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.

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- 7.4 *Independent Contractors.* The parties to this Contract are independent contractors. No party shall exercise control over either the performance of any 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.
- 7.5 *Effective Date.* This Contract becomes effective upon execution by the latter of the parties to execute this Agreement; provided, however, the actual purchase and sale of water shall commence upon completion of the connection of Purchaser's System to Texarkana's System.
- 7.6 *Notices.* Unless otherwise specified in this Contract, any notice required or document to be provided under this Contract shall be given by hand delivery or by U.S. Mail to the following persons:
- for Texarkana, its City Manager, 220 Texas Blvd., Texarkana, Texas 75501
 - for Purchaser, its Executive Director, 107 Chapel Lane, New Boston, TX 75570
- 7.7 *Amendment.* Any amendment to this Contract must be in writing.
- 7.8 *Severability.* 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.
- 7.9 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.
- 7.10 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns

IN WITNESS WHEREOF, Texarkana, as properly authorized by its City Council, has caused this Contract to be executed by its City Manager and attested by its City Secretary, and Purchaser, as properly authorized by its governing board, has caused this Contract to be executed by its Executive Director.

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IT IS AGREED:

**Purchaser,
TexAmericas Center**

William V. Cork, Executive Director

Approved as to Form:

Raymond W. Jordan
Jordan Law Firm, L.L.P.
Retained Legal Counsel

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The City of Texarkana, Texas

Attest

F. Larry Sullivan, Ed. D.
City Manager

Kerry Meredith
City Secretary

Approved as to Form:

Jo Thomason
Jeffery C. Lewis
Atchley, Russell, Waldrop & Hlavinka, LLP
Retained Legal Counsel