DEFINITIVE AGREEMENT

BETWEEN

SAN ANTONIO WATER SYSTEM

AND

LOWER COLORADO RIVER AUTHORITY

MARCH 1, 2002
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DEFINITIVE AGREEMENT
BETWEEN
SAN ANTONIO WATER SYSTEM AND LOWER COLORADO RIVER AUTHORITY

This DEFINITIVE AGREEMENT (the “Definitive Agreement”) is made and entered into effective as of the 1st day of March, 2002 (the "Effective Date"), by and between the City of San Antonio, Texas, a municipal corporation, acting by and through its SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES (“SAWS”) and the LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district of the State of Texas (“LCRA”) acting by and through its Board of Directors (collectively, the “Parties” and, individually, a “Party”).

The term of this Agreement consists of two phases, the first being a seven (7) year Study Period during which the Parties will determine if up to 330,000 acre-feet per annum of water can be made available from sources within the Lower Colorado River Basin. The second phase is a fifty (50) year Implementation Period during which SAWS, in its discretion, may reserve and purchase a Firm Supply of up to 150,000 acre-feet of water per year from LCRA. The Implementation Period may be extended for one (1) thirty (30) year period.

RECITALS

WHEREAS, the Parties, in entering into this Definitive Agreement, have utilized certain capitalized terms which, when used herein, shall have the meanings ascribed to them set forth on Exhibit A attached hereto and incorporated herein.

WHEREAS, the LCRA wishes to make various improvements in the Lower Colorado River Basin in order to increase average lake levels at Lake Buchanan and Lake Travis and to increase the quantity of water available to customers in the LCRA Service Area.

WHEREAS, SAWS has agreed (i) to fund certain studies to determine if there are cost efficient methods of making available from sources within the Lower Colorado River Basin 180,000 acre-feet per year of water for the LCRA Service Area and for a period not to exceed 80 years, an additional 150,000 acre-feet per year of water for SAWS, while adequately protecting the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities, and (ii) that if making such water available is determined to be feasible as acknowledged by the adoption of an Agreed Implementation Plan, SAWS will, through the reservation and use of water and payment of fees and surcharges, provide for the costs of making such water available, on the terms set out herein.

WHEREAS, the Board of Directors of the LCRA and the Board of Trustees of SAWS have each determined that it is in the best interest of their respective entities to enter into this Definitive Agreement and the Board of Directors of the LCRA has found that all of the conditions of Section 28 of the LCRA Act have been or will be met.

WHEREAS, the Board of Directors of the LCRA, after affording the public an opportunity for providing the LCRA input, has found that this Definitive Agreement: (1) protects
and benefits the lower Colorado River watershed and the LCRA Service Area, including municipal, industrial, agricultural, recreational, and environmental interests; (2) is consistent with regional water plans filed with the Texas Water Development Board ("TWDB") on or before January 5, 2001; (3) ensures that beneficial inflows remaining after any water diversions will be adequate to maintain the ecological health and productivity of the Matagorda Bay system; (4) provides for instream flows no less protective than those included in the LCRA Water Management Plan for the Lower Colorado River Basin, as approved by the Texas Natural Resource Conservation Commission ("TRNCC"); (5) ensures that, before any water is delivered under this Definitive Agreement, SAWS will have prepared a drought contingency plan and will have developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of SAWS; (6) provides for a broad public and scientific review process designed to ensure that all information that can be practicably developed is considered in establishing beneficial inflow and instream flow provisions; and (7) benefits stored water levels in LCRA's existing reservoirs.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged by each Party, the Parties covenant and agree as follows:

**ARTICLE I**

**STUDY PERIOD TERMS AND CONDITIONS**

Section 1.1. **Length of Study Period.** The first phase of this Definitive Agreement (the "Study Period") shall last from March 1, 2002, up to and including February 28, 2009 (the "Study Period Expiration Date"), unless extended beyond or concluded prior to such date as provided in this Article I or terminated pursuant to the provisions of Section 1.11.

Section 1.2. **Goal of Study Period.** The goal of the Study Period is to identify multiple cost-efficient means for making an additional 330,000 acre-feet per year of water available from the Colorado River to be used by the Parties as set out in this Definitive Agreement, including providing Raw Water availability for communities upstream of the Highland Lakes as identified in the Region K SB-1 Plan, while adequately protecting the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities. During the Study Period, the Parties intend to evaluate different programs and projects which may increase the water available in Region K from within the Lower Colorado River Basin, which additional water would be available for use by the LCRA and SAWS as set out in this Definitive Agreement and the Agreed Implementation Plan. The LCRA, as described in this Definitive Agreement, shall use the information gathered during the Study Period to prepare and present the proposed Agreed Implementation Plan to SAWS for SAWS' approval in accordance with Section 1.8 hereof. The feasibility and estimated costs of making 330,000 acre-feet per year of water available will substantially influence whether SAWS decides to proceed with and enter the Implementation Period of this Definitive Agreement.
Section 1.3. Study Period Analyses. During the Study Period, the Parties shall identify and pursue scientific and engineering analyses and studies to determine the feasibility of making available an additional 330,000 acre-feet per year of water from the Lower Colorado River Basin while adequately protecting the environment of the Lower Colorado River Basin (the “Feasibility Studies”). During the first 12 months of the Study Period, LCRA, in consultation with SAWS and providing for a broad public and scientific review process, shall develop an overall study plan (the "Study Period Plan"), which shall include (i) the identification and prioritization of individual Feasibility Studies; (ii) a study plan for each specific Feasibility Study, including the specific scope, budget and other parameters of such specific Feasibility Study ("Specific Study Plan"); and (iii) the identification of Permits required to make the additional 330,000 acre-feet of water per year available. After completion of the proposed Study Period Plan, LCRA shall submit the proposed Study Period Plan to SAWS. LCRA’s submission of the Study Period Plan to SAWS shall confirm the LCRA Board of Director’s approval of the proposed Study Period Plan. LCRA shall only implement the Feasibility Studies after the SAWS Board of Trustees has properly approved the Study Period Plan. During the Study Period, the Parties may, as part of the approved Study Period Plan, apply decision science tools and methodologies to aid in the analysis of complex issues and the level of certainty associated with Feasibility Study conclusions.

1.3.A. Feasibility Studies. The Feasibility Studies shall include, without limitation, the following:

(1) Current Demand Reduction and Conservation. The LCRA, with input from SAWS, shall initiate a series of comprehensive analyses to determine how best to reduce through conservation the volume of water historically diverted from the Colorado River by major agricultural operations in the Lower Colorado River Basin, including but not limited to, the GARWOOD, LAKESIDE, and GULF COAST irrigation districts (collectively, the “Agricultural Users”), as well as other conservation measures not proposed in the Region K SB-1 Plan (the "Conservation Studies"). The Conservation Studies may include, without limitation, analyses of: (i) supporting agricultural research to develop alternatives to rice production and to develop new strains of high yield, low water consumption rice, (ii) engineering technical improvements in the Agricultural Users’ irrigation canals and water distribution systems, and (iii) developing various other agricultural technologies to reduce the Agricultural Users’ water consumption. The goal of the Conservation Studies shall be to determine the feasibility of implementing water conservation and reduction of demand to the extent that will result in a decrease of approximately 118,000 acre-feet per year in the Agricultural Users’ historical water consumption from the Colorado River. This estimated 118,000 acre-feet per year is included in the overall goal of 330,000 acre-feet per year of water. The Conservation Studies should, at a minimum, identify the estimated requirements, costs, and time required to implement each project.

(2) Development of Off-Channel Reservoirs, Run-of-River Flows and Stored Water Releases. The LCRA, with input from SAWS, shall develop studies to examine the potential for developing new Firm Supply from the Colorado River and Raw Water delivery systems for communities upstream of the Highland Lakes (the “Development Studies”). LCRA shall conduct the Development Studies once the Parties have approved the scope and nature of
the studies according to the provisions of Section 1.6 of this Definitive Agreement. The goal of the Development Studies shall be to determine the feasibility of developing 150,000 acre-feet per year of Firm Supply from the Colorado River and stored water releases for SAWS. In particular, the Development Studies will analyze the feasibility and cost-effectiveness of constructing Off-Channel Reservoirs in Colorado, Wharton and/or Matagorda counties for storage of Run-of-River Flows and stored water releases from the Colorado River. The Development Studies are also intended to determine to what extent additional pumping stations on the Colorado River may be necessary to divert Run-of-River Flows and stored water releases to the planned Off-Channel Reservoirs.

The Development Studies shall include technical, financial and engineering analyses of the corresponding Component Projects and shall determine the expense and practicality of building the Off-Channel Reservoirs and their accompanying diversion stations. The Development Studies shall identify specific locations for the Off-Channel Reservoirs, Diversion Points and Delivery Points and shall encompass preliminary plans for each Component Project as well as identify the expected costs and time to build or implement each such Component Project.

(3) **Groundwater.** The LCRA, with input from SAWS, shall develop studies to analyze the extent to which Groundwater in Region K may be used to supplement Run-of-River Flows and stored water releases from the Colorado River (the “Groundwater Studies”). The goal of the Groundwater Studies shall be to determine the feasibility of making Groundwater available to the Agricultural Users to replace Run-of-River Flows and/or stored water releases from the Colorado River currently available to the Agricultural Users. The Groundwater Studies shall include Groundwater modeling and other technical and engineering analyses of the issues involved in supplementing Run-of-River Flows and/or stored water releases with Groundwater, such as subsidence, local drawdown effects and Groundwater quality, in order to determine a safe and sustainable level of pumpage. The Groundwater studies shall also include the estimated cost and time required to implement each Groundwater project.

(4) **Environmental Impact.** The LCRA, with input from SAWS, shall investigate the anticipated environmental impact of implementing this Definitive Agreement; identify alternative mitigation measures to address potential adverse environmental impacts from the construction, operation, and maintenance of the Component Projects and the LCRA Transmission Facilities in order to adequately protect the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities; and identify the various permits, licenses and other governmental approvals the Parties will need in order to implement this Definitive Agreement (collectively, the “Environmental Studies”). Once the Parties have properly approved the parameters, scope and cost of each Environmental Study as part of the Study Period Plan or as otherwise provided in Section 1.6.B. hereof, the LCRA shall initiate the Environmental Study to ascertain the expected effect of prospective SAWS Projects, Region K Projects, and LCRA Transmission Facilities on the Matagorda Bay system, coastal wetlands, areas to be disturbed by project-related construction, and the Lower Colorado River Basin. In addition, the Environmental Studies are intended (i) to identify and evaluate various measures to mitigate any potential adverse impacts of prospective
SAWS Projects, Region K Projects, and LCRA Transmission Facilities on the environment, (ii) to ensure compliance with all local, state and federal environmental regulations (such as the Clean Water Act and any EPA and TNRCC rules) and permitting requirements during the Implementation Period, and (iii) to determine the estimated cost of all such undertakings.

1.3.B. **Public Participation and Scientific Review.** Throughout the term of this Definitive Agreement, LCRA and SAWS shall provide for a broad public and scientific review process designed to ensure that all information that can be practicably developed is considered in establishing beneficial bay and estuary inflow and instream flow provisions.

1.3.C. **Termination for Lack of Board Approval of Study Period Plan.** In the event a proposed Study Period Plan has not been submitted by the LCRA Board of Directors by the first anniversary of the Effective Date, SAWS may terminate this Definitive Agreement by giving 30 days written notice to LCRA. In the event the SAWS Board of Trustees has not approved the Study Period Plan within 180 days after the date LCRA submitted the proposed Study Period Plan to SAWS, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party, and in the event of such termination the Study Period Option Fee for the year of termination shall be prorated on a daily basis to the date of termination.

**Section 1.4. Permitting, Licensing and other Regulatory Requirements.**

1.4.A. **Applicable Laws and Regulations.** All proposed or approved Feasibility Studies are subject to, and LCRA shall comply with, all federal, state and local laws and any applicable ordinances, rules, orders, permits and regulations of any federal, state or local governmental authority with jurisdiction, which are applicable and controlling, including all applicable and controlling sections of the TEXAS WATER CODE and the LCRA ACT as well as the applicable and controlling rules of the TNRCC or any successor agency (“Applicable Law”). LCRA agrees to take all steps reasonably necessary to complete and file all required reports and to comply with all Applicable Law throughout the entire term of this Definitive Agreement.

1.4.B. **Permitting and Licensing Obligations of LCRA.** In conjunction with the Feasibility Studies, LCRA shall pursue during the Study Period, all permits, licenses or approvals required by Applicable Law (the “Permits”) that the Parties jointly determine will be necessary during the Implementation Period and are appropriate to obtain during the Study Period.

1.4.C. **Participation by SAWS.** SAWS shall have the right, but not the obligation, to participate in the acquisition of the Permits. SAWS shall cooperate with LCRA in obtaining any Permits that relate either to: (i) the Study Period; (ii) the design or creation of a Feasibility Study; (iii) the implementation of an approved Feasibility Study; or (iv) the construction or implementation of Component Projects during the Implementation Period.
Section 1.5. Study Period Fees and Expenses.

1.5.A. Study Period Option Fee. SAWS shall pay LCRA a Study Period Option Fee of Five Hundred Thousand and No/100 Dollars ($500,000.00) per year beginning March 1, 2002, and on the first (1st) day of March each year thereafter for the duration of the Study Period, including any extension of the Study Period as provided in Section 1.8.A. (the “Study Period Option Fee”). The Study Period Option Fee may be used by LCRA for any lawful purpose it deems appropriate in its sole discretion and shall not be refundable to SAWS or applied to the Credit Accounts hereafter established for any reason other than as set out in Sections 1.8.A. and 1.10 hereof.

1.5.B. Feasibility Study Expense. SAWS shall pay all costs and expenses of preparing and obtaining the approval of the Study Period Plan, all costs and expenses of the Feasibility Studies, all costs and expenses of preparing reports required by the terms of this Definitive Agreement, and all costs and expenses associated with obtaining and maintaining necessary Permits and complying with Applicable Law, which are incurred during the Study Period (the “Study Period Costs”). LCRA shall use diligent efforts to identify all Study Period Costs as the Study Period progresses. Without limiting the generality of the foregoing definition, Study Period Costs will include the direct salaries of LCRA and/or SAWS employees specifically assigned to and involved in preparing the Study Period Plan(s), conducting the Feasibility Studies, pursuing Permits, and/or preparing the Agreed Implementation Plan. Salaries of employees dedicating only a part of their time to such work shall be prorated based on the time they devote to such Study Period activity. Study Period Costs shall not include LCRA and SAWS home office overhead (inter alia, office space, utilities, or cost of indirect support such as that associated with senior management, or support departments, such as human resources).

1.5.C. Annual Study Period Advance. On March 1, 2002, and the first (1st) day of March each year thereafter for the duration of the Study Period, including any extension of the Study Period as provided in Section 1.8.A., SAWS shall pay the additional sum of Five Hundred Thousand and No/100 Dollars ($500,000.00) to the LCRA as a deposit for Study Period Costs (the "Annual Study Period Advance"). The Annual Study Period Advance shall be held by the LCRA in an account (the "Study Period Account") established by LCRA. Interest earned on funds in the Study Period Account shall be added to the Study Period Account. LCRA shall use the Annual Study Period Advance funds (including accrued interest) solely to pay approved Study Period Costs as they are incurred.

(1) If, at any time during the Study Period, LCRA reasonably believes that the cumulative Study Period Costs exceed the cumulative amount of the Aggregate Annual Study Period Advances (as defined below in this Subsection), then the LCRA shall notify SAWS in writing (together with reasonable explanation or supporting material) of the amount of additional funds required to pay that year's then-estimated Study Period Costs. SAWS shall pay the additional funds ("Additional Study Period Advances") to LCRA for deposit into the Study Period Account within thirty (30) days of receipt of the request for the funds.
SAWS shall only be required to pay specific Study Period Costs if the scope and nature of the specific Feasibility Studies have been previously approved by SAWS as part of the approved Study Period Plan or as otherwise provided in Section 1.6.B. below.

(2) If, at any given time there is a credit balance in the Study Period Account, then the balance shall be retained in the Study Period Account to be used by LCRA to pay future Study Period Costs. SAWS has no right to any refund of any Annual Study Period Advances or Additional Study Period Advances except as set out in this Section 1.5 and Section 1.12 of this Definitive Agreement.

Within one hundred twenty (120) days following the end of the Study Period, the amount of the cumulative Annual Study Period Advances, Additional Study Period Advances, and accrued interest (together, the "Aggregate Study Period Advances") in excess of the cumulative Study Period Costs shall be returned to SAWS.

1.5.D. Quarterly Accounting. The LCRA shall provide SAWS a quarterly accounting of the Study Period Account showing all account activity, including deposits, disbursements and interest accruals.

1.5.E. Characterization of SAWS' Payments to LCRA during Study Period. The Parties agree that all Study Period Option Fees paid by SAWS to LCRA shall constitute revenues of the LCRA Stored Water System and may be used by the LCRA for any lawful purpose. The Parties agree that the Aggregate Study Period Advances are to be held by LCRA in the Study Period Account to be used solely as provided herein.

Section 1.6. Management and Operations of Feasibility Studies.

1.6.A. General Operations and the Feasibility Study Plans. The LCRA shall develop, in consultation with SAWS, the specific scope, budget and other parameters of each Specific Study Plan as provided in Section 1.3 or Section 1.6.B. Once a Specific Study Plan has been approved by SAWS, either as part of the Study Period Plan approved by both Parties or as set out in Section 1.6.B., below, the LCRA shall implement such Feasibility Study in accordance with the terms of the approved Specific Study Plan. During the Study Period, the LCRA shall report in writing at least quarterly to SAWS and to the LCRA Board of Directors on the progress and results of each specific Feasibility Study and Specific Study Plan.

1.6.B. Approval of and Amendments to a Specific Study Plan. No specific Feasibility Study shall proceed under this Definitive Agreement until the corresponding Specific Study Plan has been approved in writing by SAWS, either as part of the Study Period Plan approved by both Parties or as set out in this Section 1.6.B. In the event that, after approval of the Study Period Plan by SAWS, LCRA determines, in consultation with SAWS, that a Feasibility Study not included in the approved Study Period Plan is necessary to accomplish the goals of the Study Period, then LCRA shall develop, in consultation with SAWS and in
accordance with Section 1.3.B., a Specific Study Plan for the additional Feasibility Study which additional plan must be approved by SAWS before it is implemented. SAWS shall approve or disapprove a Specific Study Plan in writing within thirty (30) days after receipt from the LCRA of a written request, which will include specific details of the scope, parameters, methods and procedures of the Feasibility Study and the estimated study costs associated with such Feasibility Study. Any material change in a Feasibility Study or a Specific Study Plan that materially modifies the scope, timing, or cost of an approved Feasibility Study or Specific Study Plan may be made only with SAWS' written approval.

1.6.C. Conclusion or Termination of Feasibility Studies. LCRA may, in its discretion, determine that a particular approved Feasibility Study or Specific Study Plan has been completed or should be terminated.

Section 1.7. LCRA Agreement to Withhold Water Reservation and Delivery. During the Study Period, LCRA agrees not to reserve, sell, transfer, donate, or otherwise dispose of to any third party any surface water up to the first 150,000 acre-feet per year that the Feasibility Studies reveal as being potentially available as additional future supplies if one or more SAWS Projects were to be constructed or implemented in accordance with the Feasibility Studies. It is expressly understood that all of the demand reduction measures and the supply development projects identified in the Region K SB-1 Plan as having the potential to result in 330,000 acre feet of water per year are exclusively available to meet the goals of this Definitive Agreement, except to the extent that water associated with any of the measures or projects becomes Released Water under this Definitive Agreement. However, to the extent agreeable to both Parties, alternatives may be jointly-studied or jointly-implemented, with appropriate cost-sharing, to meet the requirements of Section 27 of the LCRA Act. This section shall not be construed to prevent or impair the LCRA from planning for or constructing the Region K Projects, or from reserving, selling, transferring, donating or otherwise disposing of any water currently available to the LCRA or any water that may be made available in the future as a result of constructing or planning for the construction of any Region K Component Projects or made available from any source other than the SAWS Projects.

Section 1.8. Development and Approval of Agreed Implementation Plan.

1.8.A. Submission and Approval of Agreed Implementation Plan. If the Parties determine that the Feasibility Studies demonstrate that 330,000 or more acre-feet per year of water can be made available on terms acceptable to the Parties, while adequately protecting the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities, the LCRA, in consultation with SAWS, shall develop a master Component Project development plan (identified herein as the “Agreed Implementation Plan”) in accordance with this Section 1.8. If the Feasibility Studies demonstrate that less than 330,000 acre-feet per year of water can be made available, while adequately protecting the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities, then SAWS may, in its sole discretion, elect to have the LCRA proceed with the preparation of the proposed Agreed Implementation Plan with SAWS' Reserved Quantity being (i) the difference between the
demonstrated quantity of water and 180,000 acre-feet per year; or (ii) such other quantity equal to or less than 150,000 acre feet per year as LCRA and SAWS may agree upon. In making the above-described determination about water availability and protection of the environment, the Parties may apply decision science tools and processes that facilitate the understanding and assessment of the broad range of issues. SAWS shall have the right to designate the size and order of the SAWS Component Projects so that the Agreed Implementation Plan conforms with SAWS' projected water needs. The LCRA shall prepare the Agreed Implementation Plan according to the provisions of this Section 1.8.

The LCRA shall develop and submit the proposed Agreed Implementation Plan to SAWS for SAWS' approval. The LCRA's submission of the proposed Agreed Implementation Plan to SAWS shall (a) constitute the LCRA's written approval of the proposed Agreed Implementation Plan, and (b) confirm the LCRA's Board of Directors' determination that implementation of the Agreed Implementation Plan will adequately protect the environment of the Lower Colorado River Basin from any adverse effects of the Component Projects and the LCRA Transmission Facilities (i) protect and benefit the lower Colorado River watershed and the LCRA Service Area, including municipal, industrial, agricultural, recreational and environmental interest; (ii) be consistent with the regional water plans filed with the TWDB on or before January 5, 2001; (iii) ensure that beneficial inflows remaining after any water diversions will be adequate to maintain the ecological health and productivity of the Matagorda Bay system; (iv) provide for instream flows no less protective than those included in the LCRA Water Management Plan as approved by the TNRCC; (v) benefit the stored water levels in the LCRA's existing reservoirs; and (vi) complies with all requirements of the LCRA Act. SAWS shall have not less than six (6) months from the initial presentation of the proposed Agreed Implementation Plan by the LCRA to review and approve such Agreed Implementation Plan. The date both Parties have approved in writing the Agreed Implementation Plan shall constitute the effective date of the Agreed Implementation Plan.

If the LCRA Board of Directors and the SAWS Board of Trustees have not both approved the Agreed Implementation Plan before the Study Period Expiration Date, then the Study Period shall automatically be extended ("Study Period Extension") until the earlier to occur of (i) the LCRA Board of Directors and the SAWS Board of Trustees both approving the Agreed Implementation Plan, or (ii) either Party's giving the other thirty (30) days written notice that the notifying Party elects to terminate this Definitive Agreement provided that such notice of termination may not be given during the first five (5) months of the Study Period Extension. Such Study Period Extension shall not extend, reduce or limit the term of the Implementation Period. The Study Period Option Fee shall be continued during the Study Period Extension but shall be prorated on a daily basis until the Implementation Period is commenced or this Definitive Agreement is terminated, in which event LCRA shall return the unearned portion of the Study Period Option Fee to SAWS within sixty (60) days after the effective date of such termination. SAWS shall also pay all Study Period Costs incurred by LCRA during the Study Period Extension.
1.8.B. **Substance of Agreed Implementation Plan.** The Agreed Implementation Plan shall, without limitation, contain the following:

(1) **SAWS Projects.** The Agreed Implementation Plan shall contain a master schedule or order of development outlining each of the proposed SAWS Component Projects intended to enable LCRA to make water available to SAWS to the extent herein provided (collectively the "SAWS Projects"). The Agreed Implementation Plan shall identify (i) the quantity of water to be made available to LCRA for sale to and use by SAWS as provided herein; (ii) each of the SAWS Component Projects; (iii) the estimated overall time period to construct each SAWS Component Project; (iv) the then estimated Capital Costs of each SAWS Component Project; and (v) a schedule and order for implementation of each SAWS Component Project. Accompanying each SAWS Component Project implementation schedule will be a preliminary design, scope of work, and budget for that SAWS Component Project. The Agreed Implementation Plan shall: (i) contain detailed procedures for implementing each SAWS Component Project; (ii) identify any Permits required by Applicable Law to implement each SAWS Component Project; (iii) designate which Permits remain to be obtained; (iv) provide an outline of the appropriate procedures for obtaining each of the remaining Permits; and (v) provide the estimated cost and period of time for obtaining each of the Permits remaining to be obtained.

(2) **Region K Projects.** The Agreed Implementation Plan shall contain a separate master schedule or order of development for each proposed Region K Component Project intended to enable LCRA to make water available to the LCRA Service Area (collectively the "Region K Projects"). This master schedule shall identify the Region K Component Projects LCRA intends to implement, the order of implementation and the overall time period necessary to complete them. In addition, the Agreed Implementation Plan shall have a separate implementation schedule for each Region K Component Project, which shall estimate the time period necessary to construct or otherwise implement that Region K Component Project. The Agreed Implementation Plan shall also contain a preliminary design, scope of work and budget for each Region K Component Project and shall identify any applicable Permits required by Applicable Law to implement each Region K Component Project and an outline of the appropriate procedures, timing and estimated cost for obtaining such Permits. LCRA, in its sole and absolute discretion, may construct any Region K Component Project at any time. SAWS shall not have approval rights over the timing of implementation of any Region K Component Projects.

(3) **Preliminary Designs and Component Plans.** At SAWS' option, the Agreed Implementation Plan will include the Preliminary Design and Project Plan described in Sections 3.2, 3.3 and 6.1 of this Definitive Agreement for any Region K Component Projects and/or SAWS Component Projects. SAWS may require project plans for specific Component Projects in the Agreed Implementation Plan beyond the thirty percent (30%) design level during the Study Period. SAWS shall pay the costs of the project design and plans incurred during the Study Period as Study Period Costs.
costs of design of SAWS Component Projects during the Study Period beyond the thirty percent (30%) design level are not subject to the fifty percent (50%) reimbursement by LCRA if this Definitive Agreement is terminated pursuant to Section 1.12 hereof.

1.8.C. Calculation of Estimated Capital Costs. As set forth in the Region K SB-1 Plan, the estimated Capital Costs for implementing the SAWS Projects and Region K Projects (and specifically excluding any "Transmission Facilities" or financing costs such as interest, debt service coverage and similar financing costs) as of January 1, 2000, is Two Hundred Three Million and No/100 Dollars ($203,000,000.00) (“Total Estimated Capital Cost”). The Parties agree that the following adjustments shall be made to the Total Estimated Capital Cost in any approved Agreed Implementation Plan without the necessity of formally amending that Agreed Implementation Plan.

(1) Funds Used to Pay Capital Costs. The portion of the Capital Cost of any proposed SAWS Component Project(s) or Region K Component Project(s) shall be reduced by the amount of estimated Capital Costs no longer necessary because: (a) any grant proceeds received by either Party are applied directly to the costs of such Component Project(s), or (b) contributions, whether cash or in-kind, are made to and accepted by LCRA by any person or entity and used to pay any of the Capital Costs of such Component Project(s).

(2) Increases in Capital Costs. In accordance with the SUPPLEMENTAL CONSIDERATION AGREEMENT dated May 23, 2000, by and between LCRA and the Testamentary Trusts of Lacy Withers Armor (the “Pierce Ranch Agreement”), the Parties shall increase the Total Estimated Capital Cost by the amount of any supplemental consideration payments that become due and payable by LCRA upon the commitment of LCRA to provide “Pre-Option Contract Water” (as defined in the Pierce Ranch Agreement) to SAWS. LCRA agrees to apportion pro rata any such Pre-Option Contract Water charges among all additional Out-of-Service-Area Customers.

(3) Other Adjustments to Total Estimated Capital Cost. The Parties agree to adjust the Total Estimated Capital Cost every year of the Study Period for actual and projected changes due to the rate of inflation applicable to Total Estimated Capital Cost or for any other reasons approved or agreed to by the Parties. The Parties shall make adjustments to the Total Estimated Capital Cost as of the first (1st) day of each year of the Study Period. During the Implementation Period, Total Estimated Capital Cost shall be updated as set out in Section 2.5.

Section 1.9. Proceed to Implementation Period. The Study Period shall end and the Implementation Period shall commence only if and when (i) both Parties approve an Agreed Implementation Plan according to Section 1.8 of this Definitive Agreement, and (ii) either (a) the Study Period has ended, or (b) SAWS has directed the LCRA to proceed with the implementation of the Agreed Implementation Plan. Upon commencement of the Implementation Period any credit balance in the Study Period Account after payment of all Study Period Costs shall be paid to SAWS.
Section 1.10. Annual Report of LCRA. The LCRA shall prepare a written annual report at least forty-five (45) days before each anniversary of the Effective Date during the Study Period (the "Study Period Annual Report"). The Study Period Annual Report shall include a list of all active and non-active Specific Study Plans as well as a statement of all Study Period Costs incurred in relation to the Feasibility Studies and Projects during the prior twelve (12) month period. In addition, the Study Period Annual Report shall include a statement of the Aggregate Study Period Advances paid to date by SAWS and any increase or decrease in the Total Estimated Capital Cost then-expected for the implementation of SAWS Projects and Region K Projects. SAWS shall review the Study Period Annual Report in connection with its decision to exercise SAWS' right to terminate this Definitive Agreement pursuant to Section 1.11.A. In lieu of termination of this Definitive Agreement, SAWS may notify LCRA in writing that it will not accept the revised amount of Total Estimated Capital Cost by LCRA, in which event LCRA may terminate this Definitive Agreement pursuant to Section 1.11.B.

In the event LCRA delivers a Study Period Annual Report to SAWS less than forty-five (45) days prior to the anniversary date of this Definitive Agreement, the respective time periods and deadlines of SAWS and LCRA for electing to terminate the Study Period and this Definitive Agreement set forth under Section 1.11.A. and 1.11.B. or to indicate an approval or rejection of the Total Estimated Capital Cost figure, shall be extended to and include the forty-fifth (45th) day following the actual delivery of the Study Period Annual Reports to SAWS (the "Extended SAWS Decision Period"). If SAWS elects to terminate this Definitive Agreement during the Extended SAWS Decision Period, SAWS shall nevertheless be responsible for Study Costs incurred during any such extension but shall be refunded any Study Period Option Fee paid during the Extended SAWS' Decision Period.

Section 1.11. Parties Termination Rights During Study Period.

1.11.A. SAWS’ Termination Right During the Study Period, SAWS may terminate the Study Period and this Definitive Agreement in its sole discretion, with or without cause, effective on the next following anniversary of this Definitive Agreement’s Effective Date by providing not less than fifteen (15) days prior written notice of termination to LCRA. The period in which SAWS may elect to terminate this Definitive Agreement may be extended pursuant to Section 1.10. If SAWS terminates this Definitive Agreement during the Study Period as permitted herein, only those obligations specifically surviving termination under Section 1.12 shall continue to bind the Parties.

1.11.B. LCRA’s Termination Right During the Study Period, LCRA may terminate the Study Period and this Definitive Agreement only if the following two conditions are met: (i) the LCRA’s Study Period Annual Report concludes that the Total Estimated Capital Cost under this Definitive Agreement should be increased, and (ii) SAWS indicates in writing (according to the provisions of Section 1.10) that the proposed increase in the Total Estimated Capital Cost is unacceptable. LCRA may exercise its right of termination under this subsection, only within thirty (30) days after SAWS has declined in writing to accept the new Total Estimated Capital Cost. The Study Period and Definitive Agreement shall terminate as of the date the LCRA
notice of termination is given to SAWS. If LCRA terminates this Definitive Agreement during the Study Period as permitted herein, only those obligations specifically surviving termination under Section 1.12 shall continue to bind the Parties.

1.11.C. Failure to Meet Objectives of Definitive Agreement. As described in Section 1.8.A., either Party may terminate this Definitive Agreement if the Parties have not agreed on an Agreed Implementation Plan within six (6) months after the Study Period Extension Date. Further, the Parties may, at any time during the Study Period, agree in writing that the objectives of this Definitive Agreement are not feasible or have not been met, and that the Study Period and this Definitive Agreement are terminated. If this Definitive Agreement is terminated by written agreement of the Parties during the Study Period, only those obligations specifically surviving termination under Section 1.12 shall continue to bind the Parties.

Section 1.12. Post-Termination Obligations of Parties when Termination Occurs During the Study Period.

1.12.A. Acts After Termination; Winding Up Period: In the event this Definitive Agreement is terminated during the Study Period pursuant to this Article I, the Parties shall take no other actions in connection with the Study Period or this Definitive Agreement except for those necessary to fulfill their post-agreement obligations under this Section 1.12. The post-agreement obligations are limited to those obligations appearing in this Section 1.12.

On and following the termination date of this Definitive Agreement, except as necessary to wind up any ongoing Feasibility Studies in an orderly fashion, the LCRA shall stop further work on all pending Feasibility Studies and Permits activity; provided, however, LCRA may continue any such Feasibility Study or Permit proceeding at LCRA's own expense. Any such costs incurred by LCRA after the termination date other than as necessary to wind up Feasibility Studies in an orderly fashion shall not be considered as Study Period Costs. The period after the termination of this Definitive Agreement pursuant to Article I during which LCRA is winding up ongoing Feasibility Studies shall be called the “Winding Up Period.”

1.12.B. Sharing of Feasibility Study Period Costs. If the Parties terminate this Definitive Agreement during the Study Period in accordance with Section 1.8.A., Section 1.10 or Section 1.11.A., B. or C., the LCRA shall prepare a final report (the “Study Period Final Report”). Costs incurred by LCRA to prepare the Study Period Final Report shall be considered Study Period Costs. The Study Period Final Report shall contain all the information required for a Study Period Annual Report as well as a detailed accounting of: (i) the Aggregate Study Period Advances paid by SAWS during the entire Study Period, including interest accrued and added to the account; (ii) all Study Period Costs paid or incurred during the entire Study Period (but excluding SAWS Component Project design work requested by SAWS beyond the thirty percent (30%) design level); and (iii) all expenditures necessary to wind up the Feasibility Studies in an orderly fashion paid and/or projected during the Winding Up Period.

The LCRA shall, within sixty (60) days after delivery of the Study Period Final Report, pay SAWS fifty percent (50%) of the amount of Aggregate Study Period Advances paid by
SAWS (including accrued interest added to the account) less sums refunded pursuant to Section 1.12.C. After such payment by LCRA to SAWS, the Parties shall continue to share equally any costs and expenses associated with late-arriving bills and invoices related to approved Specific Study Plans; SAWS shall not however pay costs for which it is not liable as provided in Section 1.12.A. LCRA shall pay such expenses and SAWS shall reimburse LCRA for its fifty percent (50%) share within thirty (30) days after receipt of an invoice from LCRA.

1.12.C. **Study Period Account Balance.** If this Definitive Agreement is terminated, the funds held by the LCRA in the Study Period Account after payment of all appropriate Study Costs shall be paid to SAWS.

1.12.D. **Survival.** The provisions of this Section 1.12 shall survive termination of this Definitive Agreement and continue to bind the Parties as necessary to implement this Section.
ARTICLE II

WATER RESERVATION AND PURCHASE IN IMPLEMENTATION PERIOD

Section 2.1. Initial Duration of Implementation Period and Option to Extend.

2.1.A. Duration of Implementation Period. The Implementation Period shall begin on the first day after the conclusion of the Study Period (“Implementation Date”) if this Definitive Agreement has not been terminated as provided in Article I hereof. The Implementation Period shall last for a period of fifty (50) years, beginning on the Implementation Date and ending on the day before the fiftieth (50th) anniversary of the Implementation Date (“Initial Termination Date”), unless extended under subsection B. of this Section 2.1.

2.1.B. Option to Extend Implementation Period.

(1) Option to Extend and Notification Procedures. SAWS is hereby granted the option (the “Option”) at any time during the Implementation Period to extend the term of the Implementation Period of this Definitive Agreement for an additional thirty (30) years beyond the Initial Termination Date (the "Extended Term") by giving written notice of exercise of the Option to LCRA at least one hundred and eighty (180) days prior to the Initial Termination Date ("SAWS Notice of Extension"). If SAWS exercises this Option, the Extended Term shall begin on the first day after the Initial Termination Date and end on the thirtieth (30th) anniversary of the Initial Termination Date. Notwithstanding the foregoing, if LCRA has not timely received the SAWS Notice of Extension by one hundred and eighty (180) days prior to the Initial Termination Date, LCRA will give SAWS written notice (the “LCRA Notice”) of SAWS’ failure to give the SAWS Notice of Extension. SAWS shall be entitled, for a period of thirty (30) days from the date that LCRA delivers to SAWS the LCRA Notice, to exercise the Option by giving the SAWS Notice of Extension. SAWS' sole remedy for the LCRA's failure to give the LCRA Notice shall be the extension of the period for giving the SAWS Notice of Extension to the date thirty (30) days following the day the LCRA Notice is finally given. If the fifty (50) year primary term of this Definitive Agreement is extended beyond the Initial Termination Date to allow the LCRA Notice to be given and to give SAWS the thirty (30) day opportunity to give the SAWS Notice of Extension, the Extended Term shall be reduced by a number of days equal to the number of days the primary fifty (50) year term was extended so that the Implementation Period, including the Extended Term, does not exceed eighty (80) years.

(2) Operation of Extended Term. During the Extended Term, this Definitive Agreement shall continue on all of the terms, covenants and conditions set forth in this Definitive Agreement; provided, however, there shall be no additional rights or options to extend the term of this Definitive Agreement beyond the Extended Term.
Section 2.2. SAWS' Initial Payment to LCRA. In the event an Agreed Implementation Plan is agreed upon by the Parties, SAWS shall, on or before the Implementation Date, pay LCRA Twenty-Four Million Five Hundred Thousand and No/100 Dollars ($24,500,000.00) (the “Initial Payment”). The Initial Payment will in part secure the Reserved Quantity for SAWS' exclusive reservation, subject to the terms of this Definitive Agreement. Upon LCRA's receipt of the Initial Payment, the LCRA shall enter a Credit Entry to the Region K Credit Account in an amount equal to the Initial Payment, in accordance with the procedures in Article V.

Section 2.3. LCRA’s Reservation of Water for SAWS.

2.3.A. Initial Reservation of Water.

(1) Obligations of SAWS. On or before the Implementation Date, SAWS shall deliver a written notice to LCRA of the quantity of water that SAWS desires to reserve under this Definitive Agreement (the “Reserved Quantity”). SAWS must initially reserve a minimum of 50,000 acre-feet of water per year unless the Agreed Implementation Plan establishes a lesser minimum volume that SAWS may initially reserve at the commencement of the Implementation Period. SAWS may not reserve more than 150,000 acre-feet of water per year or such lesser maximum Reserved Quantity as may be set out in the Agreed Implementation Plan. If the Reserved Quantity is less than 150,000 acre-feet of water per year, the difference between 150,000 acre-feet of water per year (or the maximum volume available to SAWS under the Agreed Implementation Plan) and the Reserved Quantity shall be Released Water.

(2) Obligations of LCRA. LCRA shall reserve for SAWS the Reserved Quantity until the Reserved Quantity is reduced or eliminated in connection with any of the following: (i) the Implementation Period terminates, (ii) SAWS releases, in writing, all or any part of the Reserved Quantity in accordance with this Section 2.3, or (iii) there is a release or reduction of all or any part of the Reserved Quantity by operation of the provisions of Section 2.3.C. and Section 2.3.D. hereof.

(3) Minimum Period of Reservation. Notwithstanding any other provision of this Article II, SAWS is required to reserve the Reserved Quantity set by SAWS' written notice to LCRA under Section 2.3.A. for a period of ten (10) years commencing on the Implementation Date (“Minimum Reserved Period”).

2.3.B. Releasing Reserved Water. SAWS may release any portion of its Reserved Quantity after the Minimum Reserved Period by giving LCRA not less than five (5) years written notice of the portion of the Reserved Quantity that SAWS desires to release. The Parties expressly agree that notice of release of any portion of the Reserved Quantity may be given during the Minimum Reserved Period. Any Reserved Quantity released by SAWS shall become Released Water on the date identified in SAWS’ notice of release to LCRA provided such date is at least five (5) years after the date of the notice of release and at least ten (10) years after the Implementation Date. SAWS shall pay the Aggregate Reservation Fee on the portion of the
Reserved Quantity released until the date identified in SAWS' notice of release unless the terms of Section 2.26 apply, in which event, such Section 2.26 shall control.

2.3.C. Automatic Release of Reserved Quantity. If SAWS has exercised its Option to extend the Implementation Period, then on the last day of the seventieth (70th) year of the Implementation Period, any remaining Reserved Quantity which has not become Committed Purchase Quantities of water shall become Released Water. Neither Party is required to provide the other Party with notice of this release. After this automatic release, SAWS shall be entitled to only the Committed Purchase Quantity of water.

2.3.D. Effect of Released Quantity and Committed Purchase Quantity on Reserved Quantity. On the effective date of any release of all or any portion of the Reserved Quantity, the Reserved Quantity thereafter for purposes of this Definitive Agreement shall be reduced by the amount of any such release. As SAWS gives notice of a purchase of any Committed Purchase Quantity from LCRA as provided in Section 2.6 of this Definitive Agreement, the Reserved Quantity shall be reduced by the amount of the Committed Purchase Quantity. However, for purposes of calculating the Aggregate Reservation Fee during the Interim Purchase Period, the Committed Purchase Quantity shall be treated as part of the Reserved Quantity.

2.3.E. SAWS’ Payment of Aggregate Reservation Fee. SAWS shall pay an Aggregate Reservation Fee every year for which it maintains a Reserved Quantity. The Aggregate Reservation Fee for the first ten (10) years of the Implementation Period shall be calculated based on the Reserved Quantity set by SAWS’ written notice to LCRA under Section 2.3.A. and for each subsequent year thereafter the Aggregate Reservation Fee shall be calculated based on the Reserved Quantity as of January 1 of that year. The Aggregate Reservation Fee is an annual payment to be invoiced by the LCRA by December 1 of the year preceding the year for which the payment is due and is payable by SAWS within thirty (30) days after date of the invoice; provided, however, that the payment of the Aggregate Reservation Fee for the year in which the Implementation Period commences shall be prorated from the date of the first day of the Implementation Period and shall be due and payable thirty (30) days after the first day of the Implementation Period.

2.3.F. Prepayment of Aggregate Reservation Fee. During the Implementation Period (and any Extended Term) SAWS shall have the right to prepay future Aggregate Reservation Fees. If such a prepayment is made at the commencement of the Implementation Period, then SAWS may direct that seventy-five percent (75%) of that prepaid amount be credited to the Region K Credit Account, rather than have thirty-seven and one-half percent (37½ %) of that prepaid amount credited to each of the SAWS Credit Account and the Region K Credit Account. Any discount or other terms of a prepayment are subject to the mutual agreement of the Parties.

2.3.G. LCRA’s Use of Released Water. LCRA may use Released Water for any lawful purpose that does not diminish LCRA’s ability to reserve the remaining Reserved Quantity and deliver the Committed Purchase Quantity to SAWS.
Section 2.4. Agreement by LCRA to Reserve Water to be Made Available by SAWS Projects. For the term of the Implementation Period, as long as SAWS complies with all payment requirements to reserve the Reserved Quantity, the LCRA agrees to reserve for SAWS the Reserved Quantity (as such Reserved Quantity may be reduced from time to time as herein provided), and not commit, reserve, sell or supply to any other entity, any water comprising the Reserved Quantity which will be made available as a result of the corresponding SAWS Component Projects. Further, LCRA agrees not to construct the SAWS Component Projects corresponding to any then Reserved Quantity unless and until SAWS gives notice of its purchase commitment, which notice shall also authorize implementation of the corresponding SAWS Component Project.

Section 2.5. Modification and Update of the Agreed Implementation Plan.

2.5.A. Parties’ Voluntary Modification of Agreed Implementation Plan. SAWS and LCRA may agree to amend the Agreed Implementation Plan at any time during the Implementation Period (including any Extended Term) for any reason, including accommodating changes in Applicable Law and/or economic conditions or other circumstances pertaining to this Definitive Agreement. A Party desiring an amendment shall send a written notification to the other Party setting forth the requested amendment and the underlying reason for such amendment. The Parties agree to negotiate any amendment to the Agreed Implementation Plan in good faith. All amendments to the Agreed Implementation Plan must be in writing and approved in writing by both Parties.

2.5.B. Mandatory Five-Year Update to Agreed Implementation Plan. LCRA shall update, at least once every five (5) years following the Implementation Date, the Agreed Implementation Plan as it pertains to the estimated Capital Cost, and construction and implementation schedules for all the Component Projects that have not been constructed or implemented as of the date of the update.

2.5.C. SAWS’ Request for Additional Updates. SAWS may, by written notice to LCRA, require the LCRA to update the estimated Capital Costs, and construction and implementation schedules in the Agreed Implementation Plan more often than once every five (5) years, but under no circumstances may SAWS request more than one update per calendar year for each Component Project. SAWS may require updates of only one or more Component Projects in lieu of an update of all Component Projects, costs and schedules.

2.5.D. Update Costs. Costs incurred by LCRA to update the Agreed Implementation Plan as provided in this Section 2.5 shall be Capital Costs of the Region K Projects until the end of the Minimum Reserved Period; thereafter, such costs shall be Capital Costs of the SAWS Projects.

2.5.E. Update Approvals. Until a new update is approved in writing by the Parties, the last mutually approved Agreed Implementation Plan as amended or updated shall remain in force and effect.
Section 2.6. SAWS' Purchase of Committed Purchase Quantity(ies) from LCRA.

2.6.A. SAWS’ Purchase of Water. SAWS shall have the right to make purchases of water in accordance with this Definitive Agreement and the Agreed Implementation Plan. At any time after the commencement of the Implementation Period, SAWS may provide written notice to LCRA of SAWS’ election to purchase any or all of the Reserved Quantity (such notice being a "Purchase Notice").

2.6.B. Notification of Purchase of Water.

(1) Notification of Committed Purchase Quantity. SAWS may, in accordance with the Agreed Implementation Plan, notify LCRA of its election to purchase all or some lesser increment of the Reserved Quantity (the “Committed Purchase Quantity”); provided however, that the Committed Purchase Quantity elected by SAWS must equal the amount of water that can be made available by the corresponding SAWS Component Project(s) identified in the Agreed Implementation Plan and authorized by SAWS to be built or implemented as set out in Section 2.6.B.2 below. SAWS must provide LCRA with the Purchase Notice for the initial purchase at least ten (10) years prior to the first purchase delivery date. For each purchase thereafter, SAWS shall give LCRA the Purchase Notice not less than the required notice period set out in the Agreed Implementation Plan for the corresponding SAWS Component Project. SAWS shall, within thirty (30) days after delivery of any Purchase Notice to LCRA, deliver to LCRA copies of SAWS’ then-current drought contingency plan and water conservation plans and programs.

(2) Authorization to Construct SAWS Project(s). The Purchase Notice shall also authorize LCRA to construct or implement the corresponding SAWS Component Project(s) that are necessary to enable LCRA to make available the Committed Purchase Quantity for delivery to SAWS, as outlined in the Agreed Implementation Plan and as indicated in the Purchase Notice. SAWS shall have the right to indicate which SAWS Component Projects consistent with the Agreed Implementation Plan shall be constructed or implemented to provide the Committed Purchase Quantity indicated in the Purchase Notice. LCRA shall construct or implement the appropriate SAWS Component Project(s) according to the Agreed Implementation Plan, the Purchase Notice, and the provisions of Article III of this Definitive Agreement.

2.6.C. Commencement of Purchase Phases.

(1) Interim Purchase Period and Purchase Phases. The Purchase Phase associated with a particular Committed Purchase Quantity shall begin on the later of: (1) the date identified by SAWS in its written notice to LCRA as the date SAWS expects to receive delivery of the Committed Purchase Quantity, or (2) the date on which LCRA completes construction or implementation of the corresponding SAWS Component Project(s) necessary to enable LCRA to make available for delivery the Committed Purchase Quantity, in accordance with the Agreed Implementation Plan (the “Purchase
Phase”). The Parties expect that the period from notification to the beginning of a Purchase Phase (the “Interim Purchase Period”) for a Committed Purchase Quantity will last approximately ten (10) years (or such other period of time as set forth in the Agreed Implementation Plan) due to design, permitting, and construction time requirements. The Agreed Implementation Plan shall set out the estimated Interim Purchase Period for each SAWS Component Project.

(2) **Fees in Interim Purchase Period.** During the Interim Purchase Period for any specific Committed Purchase Quantity, SAWS shall pay the Aggregate Reservation Fee on the Reserved Quantity, including any Committed Purchase Quantity for which the Purchase Phase has not commenced. After a Purchase Phase commences as to any Committed Purchase Quantity for the purpose of calculating fees, the Reserved Quantity shall be reduced by, and SAWS shall no longer pay the Aggregate Reservation Fee on, that Committed Purchase Quantity, but will instead, in accordance with this Section and the provisions of Article V, pay the Aggregate Committed Purchase Fee as to the Committed Purchase Quantity.

If the LCRA is not able to deliver a Committed Purchase Quantity to SAWS by the delivery date set out in the Purchase Notice for any reason other than SAWS’ default or breach or a Force Majeure event, then SAWS shall receive a credit against the Aggregate Committed Purchase Fee of the delayed Committed Purchase Quantity equal to the Aggregate Reservation Fee paid by SAWS for such delayed water during the delay period. The credit will be applied evenly over a period of time equal in length to the period of the delay.

2.6.D. **Purchasing Water in the Purchase Phase.**

(1) **Fee Paid on Committed Purchase Quantity.** Commencing on the first day of the first month of a Purchase Phase and on the first day of each calendar month thereafter (subject to the terms of Section 2.6.C.(2)) SAWS shall pay to LCRA (regardless of how much, or whether, any water is actually taken by SAWS from the Committed Purchase Quantity) an amount equal to one-twelfth (1/12) of the Aggregate Committed Purchase Fee. LCRA shall invoice SAWS monthly and each invoice shall be due and payable within thirty (30) days of the date of the invoice. Notwithstanding the foregoing, the monthly payment(s) for the second month of any year beginning after the first year of a Purchase Phase shall be reduced by the Prior Year Undelivered Quantity Credit, if any, as computed in Section 5.8.B.(3).

(2) **Minimum Initial Committed Purchase Quantity.** With regard to the first Purchase Notice (the “First Notice”), the Committed Purchase Quantity must be consistent with the Agreed Implementation Plan and the other provisions of this Definitive Agreement and must equal or exceed 50,000 acre-feet per year of water, unless the Agreed Implementation Plan indicates otherwise.
(3) **Purchasing Committed Purchase Quantities after the Initial Committed Purchase Quantity.** Once SAWS has sent the First Notice, any further Purchase Notices may include Committed Purchase Quantities of less than 50,000 acre-feet of water per year, but such Purchase Notices shall be consistent with the Agreed Implementation Plan and the other provisions of this Definitive Agreement. In any event, SAWS may only purchase Committed Purchase Quantities up to its total Reserved Quantity.

(4) **Credit for Prepaid Reservation Fees.** Once a Purchase Phase for a particular Committed Purchase Quantity begins, SAWS shall no longer pay any Aggregate Reservation Fee on that Committed Purchase Quantity. Furthermore, if SAWS has already paid the Aggregate Reservation Fee for the year in which a Purchase Phase begins and the applicable Committed Purchase Quantity which becomes available for delivery was included in the calculation of that year's Aggregate Reservation Fee, LCRA shall credit a pro-rata amount of that year's Aggregate Reservation Fee to the Aggregate Committed Purchase Fee paid by SAWS for such Committed Purchase Quantity being made available. The pro-rata portion of the Reservation Fee shall be calculated based on the date the applicable Committed Purchase Quantity becomes available for delivery to SAWS.

(5) **Committed Purchase Period.** Once SAWS gives a Purchase Notice for a particular Committed Purchase Quantity, SAWS shall be committed to purchase that particular Committed Purchase Quantity (subject to the terms of Section 2.6.C.(2)) until the earlier of (i) SAWS' release of the corresponding water from this Definitive Agreement pursuant to Section 2.6.D.(6), or (ii) the release of Committed Purchase Quantities under Section 2.8, or (iii) the termination of this Definitive Agreement.

(6) **Release of Water.** SAWS may reduce any or all of the total Committed Purchase Quantity at any time by giving the LCRA not less than five (5) years prior written notice that SAWS has elected to release a designated portion of the Committed Purchased Quantity from this Definitive Agreement. As of the effective date of the release set out in the notice of release, the Committed Purchase Quantity shall be reduced by the released quantity of water. SAWS shall have no further right, option or obligation to buy such quantity of Released Water under this Definitive Agreement.

2.6.E. **Agreement to Provide Firm Supply.** Except as otherwise set forth below in Section 2.6.F. and/or for reasons of Force Majeure, LCRA agrees that all of the Committed Purchase Quantity shall be a Firm Supply after the Interim Purchase Period unless the Agreed Implementation Plan provides otherwise.

LCRA agrees that its ability to meet its obligations under this Definitive Agreement with respect to the Committed Purchase Quantity shall not be diminished by any sale or transfer of any water by LCRA to any other party, either inside or outside the LCRA Service Area. LCRA shall have no obligation to make available, and does not warrant that it will make available, any volume of water in excess of the Committed Purchase Quantity. SAWS and LCRA agree that LCRA’s obligation to make available the Committed Purchase Quantity is and will be subject to:
(1) specific Permit conditions, (2) the LCRA Water Management Plan, (3) Applicable Law, and (4) any other applicable terms and conditions of this Definitive Agreement, including, without limitation, Force Majeure.

2.6.F. Regulatory Agency or Weather-Related Reductions in Committed Purchased Quantity. This Definitive Agreement shall, in all respects, be subject to the LCRA WATER MANAGEMENT PLAN, dated September 20, 1989, AS AMENDED THROUGH MARCH 1, 1999, and as may be hereafter amended or updated from time to time and approved by the TNRCC (“LCRA Water Management Plan”). LCRA agrees that it will not submit, propose or approve, or consent to, without first having pursued reasonable administrative and judicial remedies available, any amendment or update of the LCRA Water Management Plan that reduces or adversely affects the Firm Supply commitment to SAWS differently and not in the same proportion as the Firm Supply of other LCRA customers are affected. To the extent any amendment or update to the LCRA Water Management Plan reduces the Firm Supply available to SAWS for reservation or purchase, SAWS may elect to release its right to the reduced water ("Reduced Water") in which event, SAWS shall be released of its obligation to pay the Aggregate Reservation Fee or Aggregate Committed Purchase Fee for the Reduced Water as of the effective date of the change and the released Reduced Water shall be Released Water.

SAWS’ Committed Purchase Quantities under this Definitive Agreement shall constitute a Firm Supply commitment by the LCRA as defined in the LCRA Water Management Plan unless the Agreed Implementation Plan provides otherwise. In the event of a hydrologic cycle worse than the Drought of Record, the LCRA agrees to meet with SAWS and LCRA’s other Firm Supply customers in accordance with the LCRA Water Management Plan and to develop with these customers a specific Firm Supply allocation plan. Water restrictions imposed on SAWS shall not be proportionally more severe than the restrictions imposed on LCRA’s other Firm Supply customers inside or outside the LCRA Service Area. All curtailments of SAWS Committed Purchase Quantities shall be in accordance with Section 11.039 of the Texas Water Code and other Applicable Law.

2.6.G. Prepayment of Implementation Period Fee. During the Implementation Period (including any Extended Term), SAWS shall have the right to prepay future Aggregate Committed Purchase Fees. Any discounts or other terms of a prepayment are subject to the mutual agreement of the Parties.

Section 2.7. Paying for Project Costs. LCRA shall pay for all Capital Costs of both the Region K Projects and the SAWS Projects and shall provide any required financing. LCRA shall charge SAWS the Aggregate Reservation Fee and the Aggregate Committed Purchase Fee (which, together with the Initial Payment, shall be referred to as the “Implementation Period Fees”) to account for the Capital Costs in the manner described in Article V by the use of the books and records (including a SAWS Credit Account and a Region K Credit Account) for each Component Project and a master set of books and records for all Component Projects. These books shall reflect the Capital Costs of the Component Projects, the Debit Entries to the Credit Accounts in relation to those Capital Costs, and the Credit Entries earned by SAWS through its payment of Implementation Period Fees all as herein provided.
Section 2.8. Restrictions on Reservation and Delivery of Water in Extended Term.

SAWS’ Committed Purchase Quantity during the Extended Term, if any, of this Definitive Agreement shall be automatically reduced in the last ten (10) years of the Extended Term as set out in this Section 2.8. Beginning in the seventy-first (71st) year of the Implementation Period and in each year thereafter, SAWS’ Committed Purchase Quantity shall be reduced so as not to exceed those quantities appearing in the following schedule for the designated year and SAWS shall reduce its purchase of water accordingly. If in any of the last ten (10) years of the Extended Term SAWS uses more water than indicated in the table below, such action shall constitute an Expansive Action and an Expansive Action Surcharge (as described in Section 2.9.B. below) shall be due and payable as set out in Section 2.9.B. and Section 5.8. The following schedule presents the maximum Committed Purchase Quantity in acre-feet per year that SAWS shall be entitled to have delivered or made available from the LCRA from all sources under this Definitive Agreement in each year of the last ten (10) years of the Extended Term.

<table>
<thead>
<tr>
<th>Year</th>
<th>Maximum Committed Purchase Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>Lesser of (i) 140,000 acre-feet, or (ii) 99% of year 70 CPQ</td>
</tr>
<tr>
<td>72</td>
<td>Lesser of (i) 130,000 acre-feet, or (ii) 98% of year 70 CPQ</td>
</tr>
<tr>
<td>73</td>
<td>Lesser of (i) 120,000 acre-feet, or (ii) 97% of year 70 CPQ</td>
</tr>
<tr>
<td>74</td>
<td>Lesser of (i) 110,000 acre-feet, or (ii) 96% of year 70 CPQ</td>
</tr>
<tr>
<td>75</td>
<td>Lesser of (i) 100,000 acre-feet, or (ii) 95% of year 70 CPQ</td>
</tr>
<tr>
<td>76</td>
<td>Lesser of (i) 90,000 acre-feet, or (ii) 94% of year 70 CPQ</td>
</tr>
<tr>
<td>77</td>
<td>Lesser of (i) 80,000 acre-feet, or (ii) 93% of year 70 CPQ</td>
</tr>
<tr>
<td>78</td>
<td>Lesser of (i) 70,000 acre-feet, or (ii) 92% of year 70 CPQ</td>
</tr>
<tr>
<td>79</td>
<td>Lesser of (i) 60,000 acre-feet, or (ii) 91% of year 70 CPQ</td>
</tr>
</tbody>
</table>
Delivery of water by LCRA to SAWS in excess of the maximum permitted quantity allowed under this Section 2.8. in any year due to an error or mistake of the LCRA shall not constitute an Expansive Action or implement the Expansive Action Surcharge.

Section 2.9. Prohibited Expansive Actions to Increase Water Delivered to SAWS.

2.9.A. Prohibited Expansive Actions. The following acts constitute “Expansive Actions”:

(1) Pursuit of Legal Action. SAWS initiates any legal action, suit, or proceeding in law or equity, in any court or regulatory agency to obtain:

(i) an increase in the quantity of water reserved and/or purchased by SAWS under this Definitive Agreement to more than 150,000 acre-feet per year or such lesser maximum quantity as is applicable during the last ten (10) years of the Extended Term pursuant to Section 2.8 of this Definitive Agreement; or

(ii) an extension of the term of this Definitive Agreement beyond the end of the Implementation Period, including the Extended Term, if any.

(2) Compelled Increases in Supply or Duration. LCRA is compelled by any lawful authority having jurisdiction to reserve, sell, divert, supply, or otherwise make available to SAWS:

(i) more than 150,000 acre-feet of water per year or such lesser maximum quantity as is applicable during the last ten (10) years of the Extended Term pursuant to Section 2.8 of this Definitive Agreement; or

(ii) any volume of water for any period of time beyond the term of this Definitive Agreement, including the Extended Term, if any;

and SAWS is not opposing and has not relinquished in writing all of its rights to any water in excess of the water authorized to be provided to SAWS under this Definitive Agreement.

2.9.B. Consequences of Expansive Actions. Notwithstanding anything in this Definitive Agreement to the contrary, if in any given year an Expansive Action occurs or otherwise exists SAWS shall pay in that year, Aggregate Reservation Fees and Aggregate Committed Purchase Fees calculated as if the Stored Water Rate is equal to five (5) times the Stored Water Rate (the "Expansive Action Surcharge"); provided, however, any monies paid as a
result of an Expansive Action in excess of what would have been paid otherwise shall not be credited to the Credit Accounts.

Section 2.10. SAWS’ Receipt of Excess Water without Expansive Action. SAWS may not receive more water at the Delivery Point(s) than the agreed Committed Purchase Quantity at any time during the Implementation Period without the prior written consent of LCRA; provided, however, that in no event shall SAWS ever receive more than 150,000 acre-feet per year of water nor shall SAWS be entitled to further reservation, use, or delivery of any water from LCRA under this Definitive Agreement after the end of the Implementation Period (including an Extended Term, if any). If SAWS receives any excess water by reason other than an Expansive Action, then the Aggregate Committed Purchase Fee on the excess water volume over and above the approved Committed Purchase Quantity shall be calculated using the then-current LCRA Inverted Block Rate instead of the Stored Water Rate. The LCRA Inverted Block Rate shall not apply to any excess water delivered to SAWS over and above SAWS’ Committed Purchase Quantity if SAWS receives such excess water due to LCRA’s own delivery error at the Delivery Point(s).

Section 2.11. Approved Sources of Water.

2.11.A. Specific Approved Water Sources. The LCRA shall, according to the Agreed Implementation Plan, meet its obligations to SAWS to deliver the Committed Purchase Quantity under this Definitive Agreement from any one or more of the following sources ("Approved Water Sources"):

(1) Run-of-River Flows: Any Run-of-River Flows from the Colorado River downstream from Mansfield Dam lawfully available to LCRA, including without limitation, those flows under Certificates of Adjudication currently or hereafter owned by LCRA. These Run-of-River Flows include run-of-river water from the Colorado River made available due to (a) demand reduction and/or conservation as may be implemented as a result of Conservation Studies ("Conservation Water"), and/or (b) replacement of Run-of-River Flows and/or stored water releases from the Colorado River currently available to the Agricultural Users with new sources of Groundwater implemented as a result of the Groundwater Studies; and

(2) LCRA Stored-Water System: Any water that LCRA is lawfully entitled to and that is either diverted from the Off-Channel Reservoirs as may be implemented as a result of the Development Studies or that is released from storage in the LCRA Stored Water System when used in conjunction with the Off-Channel Reservoirs.

In any event, all water made available to SAWS pursuant to this Definitive Agreement shall be diverted from an Off-Channel Reservoir(s) built pursuant to this Definitive Agreement and the Agreed Implementation Plan, prior to delivery to SAWS.

2.11.B. SAWS Approves LCRA Water Sources. SAWS agrees to accept water from any or all of the Approved Water Sources identified in this Section. LCRA does not warrant or
represent the availability of water to satisfy SAWS’ Committed Purchase Quantity from any particular source and may meet its obligations to supply water to SAWS under this Definitive Agreement from any of the Approved Water Sources described in Section 2.11. The LCRA does warrant to SAWS that the Committed Purchase Quantity will be made available and delivered to SAWS, except as otherwise set forth in Sections 2.6.E. and F.

2.11.C. **Diversion of Water.** To satisfy SAWS’ Committed Purchase Quantity, LCRA shall divert water at one or more Diversion Point(s) along the Colorado River downstream of Mansfield Dam, as determined under the Agreed Implementation Plan. All Diversion Points of such water shall be consistent with the Region K SB-1 Plan, the Region L SB-1 Plan, and the LCRA Water Management Plan, as it may be amended or updated from time to time.

**Section 2.12. Groundwater Prohibited as Source of Water.**

2.12.A. **Specific Prohibited Water Sources.** In no event shall Groundwater be sold to SAWS pursuant to this Definitive Agreement.

2.12.B. **Limitations on Groundwater Use by LCRA for Agricultural Purposes.** LCRA may make Groundwater pumped in Colorado, Wharton or Matagorda counties available for use by the Agricultural Users, provided that any such pumping of Groundwater within a duly organized groundwater conservation district must be in compliance with the applicable rules and regulations of such district. SAWS and LCRA shall determine the extent to which LCRA may engage in this practice as part of the Agreed Implementation Plan in order to make other water from the Colorado River available to meet LCRA’s obligations under this Definitive Agreement. Colorado River water made available by use of Groundwater to meet irrigation demand may form the general basis of one or more Component Projects, which may be included in the Agreed Implementation Plan. The Parties expect that, if agreed to in the Agreed Implementation Plan, such Groundwater pumpage will be limited to no more than:

1. 95,000 acre-feet in any one year;
2. a 10-year rolling average of 62,000 acre-feet per year; and
3. an average of 36,000 acre-feet per year during the entire term of the Implementation Period, including any Extended Term, if applicable.

It shall be the LCRA's sole responsibility to ensure compliance with any such limits. In any event, the restrictions set forth in this Section 2.12.B. shall not affect the amount of Committed Purchase Quantity delivered by LCRA pursuant to this Definitive Agreement.

**Section 2.13. Water Quality.**

2.13.A. **Water Quality.** The water delivered under this Definitive Agreement will be untreated water as it is found in LCRA’s Off-Channel Reservoirs. LCRA makes no representations or warranties to SAWS whatsoever concerning the quality of any such water from any source other than that the water at the Diversion Points will be substantially the same.
quality as other water available for diversion from the Colorado River in the vicinity of the Diversion Point(s) and that the LCRA will exercise due diligence not to degrade the quality of the water in the Off-Channel Reservoirs. LCRA shall have no responsibilities with respect to water quality under this Definitive Agreement except as provided in this Section 2.13. SAWS will accept water under this Definitive Agreement “as is” when delivered to SAWS at the Delivery Point(s).

2.13.B. Monitoring of Water Quality. LCRA will periodically monitor the quality of water in the Colorado River, in the Off-Channel Reservoirs, in the LCRA Stored Water System, and at the various Diversion Point(s) along the Colorado River. LCRA will advise SAWS as soon as reasonably possible of any significant changes in the quality of the Raw Water delivered to SAWS. Upon SAWS’ request, LCRA shall provide SAWS with copies of water quality reports or other reports of the LCRA which pertain to the quality of the Raw Water delivered to SAWS hereunder and which reports will facilitate the treatment of the water by SAWS. By providing such reports, the LCRA is not warranting to SAWS the accuracy of the reports and is not liable to SAWS for any error or oversight in such reports.

2.13.C. Watershed Management. LCRA will take all reasonable measures to encourage best management practices to protect water quality in the portion of the Colorado River watershed over which it has jurisdiction for water quality purposes.

Section 2.14. Limitations on SAWS’ Water Service. During the Implementation Period (including the Extended Term, if any), SAWS agrees to limit certain of its water sales, Water Service, and other commercial activities according to the provisions of this Section.

2.14.A. Sales and Service within LCRA Service Area. SAWS agrees not to provide any Water Service within the boundaries of the LCRA Service Area as those boundaries existed on January 1, 2001, (the "LCRA Service Area"), without the prior written consent of LCRA. The boundaries of the LCRA Service Area are identified in Exhibit B. LCRA may withhold its consent at its sole and absolute discretion, either reasonably or unreasonably, however, LCRA may not unreasonably withhold or delay the notice to SAWS of its decision to withhold or reject its consent. Notwithstanding the limitation on SAWS’ Water Service contained in this section, SAWS may provide water to local water suppliers, individuals or entities as required by the Alcoa-SAWS Contract dated December 31, 1998. Within the LCRA Service Area, such water shall be for use only in areas within Bastrop, Lee or Williamson counties where groundwater supplies are adversely affected by groundwater production pertaining to the Simsboro Project and such water may only be provided when necessary to mitigate actions that adversely affect these areas as related to the Simsboro Project (SCTN 3c) included in the Region L SB-1 Plan. SAWS may mitigate using other groundwater or surface water, but only in a manner consistent with a TWDB-approved Region L SB-1 Plan. SAWS shall have no authority to provide Water Service within those portions of Bastrop, Lee or Williamson counties that are within the LCRA Service Area except as provided above. Any Water Service provided by SAWS under this section shall be wholesale water service or through local entities having authority or a certificate of convenience and necessity to provide retail water service to the affected person or entities. If no such local entity exists, SAWS shall first offer to allow LCRA to be the retail provider of
such service using water purchased from SAWS, and only if LCRA refuses to become the retail provider, which refusal shall not be unreasonably delayed, shall SAWS have the authority to provide retail water service directly to any person or entity within the affected areas. As used in this Section 2.14.A, only, “mitigate” shall mean to replace groundwater supplies to persons or entities whose ability to take groundwater is directly affected by groundwater production from property owned by City Public Service of San Antonio or Alcoa (including succeeding owners of such property) as the part of the Simsboro Project.

2.14.B. Resale of Water outside Region L. SAWS may not resell, transfer, or deliver any water sold to SAWS pursuant to this Definitive Agreement outside the boundaries of Region L as such boundaries existed on January 1, 2001, ("Region L") (see attached Exhibit C). Furthermore, SAWS shall not resell, transfer or deliver any water sold to SAWS pursuant to this Definitive Agreement within any part of Region L that lies within the LCRA Service Area (see attached Exhibit B), without the written approval of LCRA, which approval may not be unreasonably withheld. It shall not be considered unreasonable for LCRA to deny such approval if LCRA intends to provide Water Service to the proposed Water Service area. LCRA shall not unreasonably withhold or delay its response to SAWS’ request to sell, transfer or deliver water.

2.14.C. Legal Mandates. SAWS may, without violating this Definitive Agreement, provide Water Service to any area that SAWS is required to serve by Applicable Law.

Section 2.15. Limitations on LCRA Water Service.

2.15.A. General Restrictions on LCRA Sales and Service in Region L. During the term of this Definitive Agreement (including the Extended Term, if any) the LCRA agrees not to deliver Water Service to any area located within the boundaries of Region L.

2.15.B. Exceptions to Restrictions on LCRA Sales and Service. The restriction set out in Section 2.15.A. shall not apply to the following:

(1) Customers within LCRA’s Service Area. LCRA may deliver Water Service to any customer or geographic area within Region L that is also located within the LCRA Service Area.

(2) SAWS-Approved Service. LCRA may deliver Water Service to any area within Region L which is located outside of the LCRA Service Area with SAWS’ prior written consent. SAWS may withhold its consent to such LCRA Water Service in SAWS’ sole and absolute discretion. SAWS approval of such service shall not affect the right of any other Region L Provider to object to LCRA’s proposed service. SAWS shall not unreasonably delay its response to an LCRA request.

(3) Unserved Customers and Regions. LCRA may deliver Water Service to an entity or area within Region L that SAWS (after consultation with other Region L Providers) has declined in writing to serve. SAWS’ notification to the LCRA of SAWS decision to decline service shall not be unreasonably withheld or delayed. The basis on
which SAWS may decline LCRA's request to provide Water Service may be the commitment of another Region L Provider to provide the Water Service. Notwithstanding the foregoing, if the requested service conflicts with the authority of an existing river authority or other governmental entity to provide service to the entity or area, then such authority or governmental entity and SAWS must have notified the LCRA in writing that they will not provide the requested service before the LCRA may provide the Water Service.

(4) **Contiguous Service Areas.** LCRA may provide Water Service to any area which LCRA is authorized to serve under TEXAS WATER CODE §49.215(a) because the area is “contiguous to or in the vicinity of” the boundaries of the LCRA Service Area. The exception contained in this subsection shall not permit LCRA to provide Water Service to any new Region L customer outside the LCRA Service Area unless the appropriate Region L Providers (including SAWS) have declined to provide such area with Water Service and notified LCRA of this decision in accordance with Section 2.15.B.(3) of this Definitive Agreement.

(5) **Legal Mandates.** LCRA may, without breaching this Definitive Agreement, provide Water Service to any area that LCRA is required to serve by Applicable Law.

2.15.C. **Hays County Service.** The LCRA and SAWS agree to cooperate in good faith with other regional water providers (including river authorities) to find a means of providing Water Service to Hays County consistent with the TWDB approved regional water plans for Region K and Region L. SAWS hereby consents to LCRA providing Water Service to areas currently within the existing certificate of convenience and necessity of Creedmoor-Maha Water Supply Corporation and the area proposed to be added thereto in TNRCC Docket No. 2000-0018-UCR and SOAH Docket No. 582-00-0546, currently pending at the State Office of Administrative Hearings.

**Section 2.16. SAWS' Right of First Refusal.** If after the Effective Date, LCRA is authorized to sell more than 150,000 acre-feet of water per year outside of the LCRA Service Area, SAWS shall have and is hereby granted a right of first refusal (“Right of First Refusal”) to match offers by potential purchasers outside the boundaries of the LCRA Service Area, for the purchase of such additional water if, and to the extent, the additional water is made available as a result of SAWS Projects or Region K Projects. LCRA shall give SAWS written notice of the third party terms of the offer to purchase water and SAWS shall have ninety (90) days from its receipt of such notice to notify LCRA of its decision whether to purchase the offered water on the offered terms. The Right of First Refusal does not apply to Released Water. Purchase of any such subsequently authorized water shall not be an Expansive Action.

**Section 2.17. Measurement and Delivery of Purchased Water.**

2.17.A. **Construction of Water Meters.** LCRA shall set water meters (the "Meters") at the Delivery Point(s) for the purpose of measuring the quantity of water per year delivered to SAWS pursuant to this Definitive Agreement. LCRA shall own, operate and calibrate the
Meters. LCRA shall keep accurate records of all measurements of water volume delivered to SAWS hereunder. All Meters, measuring device(s), recording equipment and records relating to such measuring devices, shall be open for inspection to SAWS and its agents at all reasonable times. As necessary or appropriate to do so, and in any event at least once each calendar year, LCRA shall calibrate the Meters. When any such calibration is to be made, LCRA shall provide to SAWS at least three (3) business days’ prior written notice of the time and date of such calibration. SAWS and/or its agent shall have the right to attend the calibration. If a representative of SAWS is not present at the time identified, calibration and adjustment may proceed in the absence of any SAWS’ representative. SAWS, at its expense, may conduct independent calibrations of the Meters.

2.17.B. Inaccuracy in Water Measurements. If upon any test of the Meters, the percentage of inaccuracy of such metering equipment is found to be in excess of five percent (5%) of full scale, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable in a manner acceptable to the Parties, the registration thereof shall be corrected for a period extending back one-half (½) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If any Meter that records the amount of water delivered are out of service or in disrepair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such Meter(s) are out of service or in disrepair shall be estimated and agreed upon by the Parties based on pumping rates and hours of operation.

2.17.C. Delivery of Committed Purchase Quantities. Committed Purchase Quantities of water shall be delivered to SAWS at the Delivery Point(s). SAWS and LCRA shall meet at least quarterly to budget the appropriate quantity of Committed Purchase Quantities that SAWS wishes to have delivered each month. For each month, SAWS may, subject to the physical limitations of the SAWS Component Project(s) and the LCRA Transmission Facilities, schedule delivery of Committed Purchase Quantities in its discretion. Unless otherwise agreed by the Parties, the Committed Purchase Quantities shall be delivered to SAWS in approximately equal quantities throughout each month. LCRA and/or SAWS may require a revised delivery schedule to allow for scheduled maintenance as set out in the Agreed Implementation Plan.

Section 2.18. Title to Water. Title to, and all legal responsibility for, all water supplied hereunder shall be in LCRA to any Delivery Point. Title to, and all legal responsibility, for such water shall pass to SAWS at each Delivery Point.

Section 2.19. Purpose of Use. All water delivered by LCRA to SAWS in accordance with this Definitive Agreement may be used for any lawful purpose authorized by the TNRCC under the applicable Permits, as amended, and Applicable Law, subject to the restrictions and limitations set out in Section 2.14 of this Definitive Agreement regarding place of use.

Section 2.20. Protection of Water Rights. LCRA agrees to take all reasonable actions to maintain in good standing all LCRA Permits necessary to meet its obligations under this Definitive Agreement for the entire term of this Definitive Agreement (including the Extended
Term, if any). SAWS agrees not to take any action, or directly or indirectly support any action during the term of this Definitive Agreement (including an Extended Term, if any) that causes a materially adverse alteration of any terms and conditions of any LCRA Permits required for the delivery of water to SAWS under this Definitive Agreement.

Section 2.21. SAWS’ Obligation to Pay Implementation Period Fees and, if applicable, Termination Fees. On the Implementation Date, SAWS shall become obligated to pay Implementation Period Fees, and, if applicable, the Termination Fees under this Definitive Agreement.

Section 2.22. LCRA's Use of Released Water. LCRA may use Released Water for any lawful purpose. LCRA is not required to keep Released Water available for sale to SAWS and Released Water is not subject to SAWS’ Right of First Refusal. LCRA may reserve, sell, store or transfer Released Water as it, in its sole and absolute discretion, elects.

Section 2.23. Ownership of Personal Property, Fixtures and Appurtenances. Notwithstanding anything herein to the contrary, LCRA shall own all personal property, fixtures and appurtenances within the LCRA Service Area that are used for supply, diverting, or delivering water to SAWS pursuant to this Definitive Agreement.

Section 2.24. SAWS Obligation to Maintain Conservation Plan in Effect. As required for compliance with Section 28(m)(5) of the LCRA Act, throughout the term of this Definitive Agreement, SAWS shall maintain in effect and shall implement a drought contingency plan and water conservation plans and programs that will result in the highest practicable levels of water conservation and efficiency achievable in the area in which SAWS has jurisdiction. SAWS shall periodically update such plans and programs to take advantage of new or advanced technologies, standards, and other factors. SAWS shall deliver to LCRA copies of SAWS’ then-current plans and programs within thirty (30) days after receipt of written request from LCRA for such copies.

Section 2.25. Investment of SAWS' Funds. The LCRA shall invest all Aggregate Study Period Advances held by the LCRA on behalf of SAWS in an interest bearing account and in accordance with the Public Funds Investment Act as amended, Chapter 2256, Texas Government Code.

Section 2.26. Resale of Certain Released Water. SAWS shall be released of its obligation to pay the future Aggregate Reservation Fee and/or Aggregate Committed Purchase Fee for Released Water under the following conditions and to the following extent:

If (i) LCRA has reserved or sold all Firm Supply available for sale by LCRA, (ii) SAWS has given notice that it has elected to release either Reserved Quantity or Committed Purchase Quantity, (iii) such Released Water is the only Firm Supply available to LCRA for reservation or sale, and (iv) LCRA reserves or sells all or part of the Released Water to a third party within the five (5) year period immediately following the SAWS notice of release, then SAWS shall be released from its obligation to pay the corresponding Aggregate Reservation Fee or Aggregate
Committed Purchase Fee for the remainder of the five (5) year notice period on the increment of the Released Water that has been reserved or sold to the third party.

If any LCRA customer within the LCRA Service Area other than SAWS releases water prior to LCRA's selling or reserving any Released Water, then the other customer's released water shall be considered to be the first water reserved or sold by LCRA, and SAWS' obligation to pay the Aggregate Reservation Fee and/or Aggregate Committed Purchase Fee shall continue. However, if all conditions in the previous paragraph have been met, including LCRA's having reserved or sold Released Water to a third party, and SAWS has been released from its obligation to pay the Aggregate Reservation Fee and/or Aggregate Committed Purchase Fee, then any future release of water by any third party customer within the five (5) year notice period shall have no effect on the release of SAWS' obligation to pay such fees.

**Section 2.27 Maintenance and Insurance.** LCRA shall operate and maintain the Component Projects and the LCRA Transmission Facilities in good order and condition and to the extent reasonably practical, in a manner that will not interfere with the delivery of the Committed Purchase Quantity to SAWS. LCRA shall also maintain adequate insurance or self-insurance to repair and/or replace the SAWS Component Projects should they be damaged or injured by insurable casualty risks. All such insurance proceeds shall be used by LCRA to repair and restore the SAWS Component Project to maintain the delivery of the Committed Purchase Quantity. All insurance costs related to a particular Component Project incurred after completion of construction of the Component Project are costs of the LCRA Stored Water System. Costs of insurance on the LCRA Transmission Facilities are operation and maintenance costs of the LCRA Transmission Facilities. Third party builders' risk insurance shall be a Capital Cost of the Component Project being built.
ARTICLE III
DEVELOPMENT OF COMPONENT PROJECT(S) IN IMPLEMENTATION PERIOD

Section 3.1. LCRA Responsibility. The LCRA shall have responsibility for the development and design of the Component Project(s) in consultation with SAWS. Such responsibilities shall include the preparation of plans and specifications for, and the construction, installation and/or implementation of the Component Projects in accordance with the Agreed Implementation Plan. Notwithstanding anything in this Article III to the contrary, LCRA may construct any Region K Component Project as needed to meet the needs of the LCRA Service Area. However, if LCRA has not complied with the provisions of this Article III in constructing such Region K Component Project(s), SAWS shall have the right to require that the Parties submit to mediation and/or arbitration any disagreement concerning the actual Capital Cost of such Region K Component Project incurred by LCRA to the extent that the same exceeds the estimated Capital Cost of each such Region K Component Project as last approved by the Parties.

Section 3.2. Development of Component Project(s) Preliminary Design.

3.2.A. Preliminary Design. The LCRA, in consultation with SAWS, shall develop a proposed design, budget and scope of work for each Component Project that conforms to the terms of the Agreed Implementation Plan. The proposed design (thirty percent (30%) design level), budget and scope of work for each Component Project shall be the basic design of such Component Project (the “Preliminary Design”). Each Preliminary Design shall contain those elements necessary for the drafting of a Project Plan. The LCRA shall deliver the Preliminary Design and budget to SAWS for review and approval. SAWS shall have three (3) months to approve or reject the Preliminary Design and may not unreasonably withhold or delay this decision.

In the event SAWS rejects a Preliminary Design, SAWS shall provide the LCRA with a detailed explanation of the reasons for its rejection and a list of recommendations for improving the Preliminary Design. The LCRA may incorporate these recommendations into the Preliminary Design and/or authorize further analysis and development of the Preliminary Design. The LCRA shall send a revised Preliminary Design to SAWS for SAWS further consideration and approval. SAWS shall consider the revised Preliminary Design according to the provisions of this Section as if the LCRA were submitting the Preliminary Design for the first time. The LCRA shall have four (4) opportunities to resubmit a Preliminary Design. In the event a Preliminary Design is not agreed upon during (i) the Study Period, or (ii) the Implementation Period using the procedures set out in this Section 3.2, the Parties shall pursue Mediation as set out in Section 10.5 to agree on a Preliminary Design and if agreement is not reached through Mediation, then either Party may implement the arbitration procedures set out in Section 10.6 of this Definitive Agreement to establish the Preliminary Design.
**Section 3.3. Component Project Plan.**

3.3.A. **Drafting the Project Plan.** The LCRA shall begin preparations on project plans (the “Project Plan”) for a given Component Project promptly after SAWS approves the Component Project’s Preliminary Design. The LCRA shall prepare a draft Project Plan in consultation with SAWS. The LCRA shall base the draft Project Plan on the Preliminary Design for that Component Project. The draft Project Plan shall include (i) an implementation schedule, (ii) preliminary development and operating policies and procedures, (iii) budgets for development and construction costs, (iv) plans for repair and maintenance (where necessary), and (v) such other reports and specifications as may be necessary for planning and implementing the Component Project. The LCRA shall use reasonable efforts to complete a draft Project Plan and submit such Project Plan to SAWS for SAWS’ approval within six (6) months after SAWS’ approval of the Preliminary Design for such Component Projects.

3.3.B. **SAWS’ Review of Project Plan.** SAWS shall have sixty (60) days after its receipt of the draft Project Plan to approve or reject it. In the event SAWS rejects the submitted Project Plan, SAWS shall provide the LCRA with a detailed explanation for this rejection and a list of recommendations for improving the Project Plan. The LCRA may incorporate these recommendations into the draft Project Plan and may authorize further analysis and development of the draft Project Plan. The LCRA may then send the revised Project Plan to SAWS for its further consideration and approval. SAWS shall consider the revised Project Plan according to the provisions of this Section as if the LCRA were submitting the draft Project Plan for the first time. The LCRA shall have four (4) opportunities to resubmit a draft Project Plan. If a Project Plan is not agreed upon during (i) the Study Period, or (ii) the Implementation Period using the procedures set out in this Section 3.3, the Parties shall pursue Mediation as set out in Section 10.5 to agree on a Project Plan and if agreement is not reached through Mediation, then either Party may initiate the arbitration procedures set out in Section 10.6 of this Definitive Agreement to establish the Project Plan.

**Section 3.4. Final Plans and Specifications for Component Project(s).**

3.4.A. **LCRA Preparation of Final Plans and Specifications.** LCRA shall develop final plans and specifications for construction of each Component Project based on the approved Project Plan. The final plans and specifications shall include the following: (i) construction documents, (ii) all legal documentation (such as service contracts and deeds of title to affected real property), (iii) architectural drawings, (iv) engineering reports and other analyses, (v) scientific studies and accompanying data, and (vi) various other documents and plans necessary to construct or implement the Component Project. LCRA shall begin the preparation of these final plans and specifications within sixty (60) days after the later of the date that (i) the Project Plan is approved pursuant to Section 3.3 of this Definitive Agreement, or (ii) SAWS has given the Purchase Notice for a Committed Purchased Quantity requiring the construction of the applicable Component Project. LCRA shall use diligent efforts to complete final plans and specifications for each Component Project within twelve (12) months from the date work must begin on such final plans and specifications as set out in the preceding sentence.
(1) **Region K Projects.** LCRA shall develop and submit to SAWS for SAWS' approval, the final plans and specifications for any Region K Component Project by the end of the twelve (12) months after approval of the Project Plan for the Region K Component Project. SAWS may not object to the Final Region K Plans and Specifications if the revised total estimated Capital Cost of the Region K Projects, based on such plans and specifications, does not exceed the Total Estimated Capital Cost of the Region K Projects as last approved by SAWS in the Agreed Implementation Plan as amended or updated, and such final plans and specifications do not reduce the quantity or quality of the water to be made available to SAWS. In any event, LCRA shall have discretion to approve or disapprove the final plans and specifications on Region K Component Projects. Once approved by LCRA, such plans and specifications shall become the “Final Plans and Specifications” for that Region K Component Project.

(2) **SAWS Projects.** With respect to SAWS Projects, LCRA shall consult with SAWS during preparation of the final plans and specifications. At SAWS' request, LCRA will update the cost estimates for the applicable Component Project or any part thereof before finalizing plans and specifications for the Component Project. If such updated estimates exceed the last approved total estimated Capital Cost for the applicable Component Project, then SAWS may (i) require that LCRA review and revise the plans for that Component Project with regard to bringing the estimated Capital Cost for the project in line with the last total estimated Capital Cost for the Component Project, or (ii) withdraw its approval to proceed with the applicable Component Project and notification to purchase the associated Committed Purchase Quantity, in which event the noticed Committed Purchase Quantity for the Component Project shall remain part of the Reserved Quantity. LCRA shall carefully consider SAWS' comments during the period for finalizing the final plans and specifications for the SAWS Component Project(s). SAWS may reject the Final Plans and Specifications for a specific Component Project if the then estimated Capital Cost exceeds total estimated Capital Cost for that Component Project as contained in the Agreed Implementation Plan as updated and amended. SAWS may, at its sole discretion, reject the Final Plans and Specifications for a specific SAWS Component Project if the engineer's cost estimate prepared immediately prior to bidding the construction of that SAWS Component Project exceeds the estimated Capital Cost for that Component Project set out in the Agreed Implementation Plan as amended or updated. Plans and specifications for a SAWS Component Project shall become "Final Plans and Specifications" only after LCRA and SAWS have each approved them.

Final Plans and Specifications for each Component Project shall be consistent with the description, standards and if applicable, Preliminary Design and Project Plan for the Component Project, including those approved in the Agreed Implementation Plan.

3.4.B. **Amendments to Final Plans and Specifications.** LCRA may, at any time after approval, amend the Final Plans and Specifications for a Component Project if the change will not increase the Capital Costs of the Component Project over the Capital Costs approved in the Project Plan and the amendment does not reduce the quantity of water made available by the Component Project. Any such amendments must comply with the Project Plan for the
Component Project in question. SAWS may request amendments to the Final Plans and Specifications for SAWS Component Projects at any time after the approval of such Final Plans and Specifications. LCRA shall not unreasonably refuse to incorporate SAWS’ suggested amendments into the Final Plans and Specifications for a particular Component Project.

Section 3.5. Construction of Component Project(s). LCRA shall bear sole responsibility for constructing each Component Project according to the Final Plans and Specifications for such Component Project. LCRA shall let all contracts pursuant to Applicable Law, including, but not limited to, the requirements for competitive bidding and bonding. Construction of the Component Projects shall proceed according to the construction schedules identified in the Final Plans and Specifications, which shall, in general, conform to the schedules established in the Agreed Implementation Plan. Once built, LCRA shall own, operate, maintain and insure the Component Projects.

SAWS shall have the right to approve the form and content of all construction contracts and related construction documents for Component Projects, which approval shall not be unreasonably withheld or delayed. All contracts shall require statutory payment and performance bonds from all contractors. SAWS shall have the right to participate in bid reviews with the LCRA. If the bid which the LCRA proposes to accept for a Component Project exceeds by ten percent (10%) or more the engineer's estimate prepared immediately before taking construction bids for the Component Project, then SAWS may require that all the bids be rejected, and LCRA shall either rebid, redesign, delay or cancel the Component Project.

Section 3.6. No Direct Obligation of SAWS for Payment of Capital Costs or Operation and Maintenance Expenses. From and after the date of substantial completion of each Region K Component Project and SAWS Component Project, LCRA shall maintain and operate the Component Project as part of the LCRA Stored Water System. SAWS shall have no responsibility or liability for the direct payment of the Capital Costs or for the operation and maintenance expenses of the Component Project(s). SAWS’ sole payment obligations for the Component Projects are the obligations specifically provided for in this Definitive Agreement.

Section 3.7. Modifications to Component Project(s). LCRA may, at its expense, extend, expand, maintain, repair, improve, upgrade or otherwise modify any Component Project from time to time, as it deems necessary or desirable, provided that there is no reduction in the quantity or quality of the water to be made available to SAWS. The cost of any such modification shall not be considered Capital Costs, and SAWS shall have no direct responsibility for expenses and costs associated with any such work unless the added work is part of the Agreed Implementation Plan or the SAWS’ approved Final Plans and Specifications for that particular Component Project. SAWS will pay part of such costs indirectly as part of the Stored Water Rate.

Section 3.8. Construction on Private Property for Component Projects. LCRA shall require owners of privately owned real property (such as certain Agricultural Users) “to properly maintain and care for” any improvements constructed on their property as part of the implementation or construction of Component Project(s) under this Definitive Agreement which
are designed to produce Conservation Water (“Conservation Improvements”). If such property owners refuse to agree to properly maintain and care for the Conservation Improvements, LCRA shall maintain them if LCRA proceeds with the construction of such Component Project(s) without the landowner’s agreement to maintain. The associated costs of such maintenance shall not be a Capital Cost of the relevant Component Project. Under this Section, “to properly maintain and care for” the Component Project(s) shall mean to maintain the improvements in a condition that reasonably ensures their continued use throughout either: (1) the improvements’ useful life, or (2) the Implementation Period of this Definitive Agreement (including the Extended Term, if any), whichever period is shorter.
ARTICLE IV

REGULATORY REQUIREMENTS; PERMITS; LICENSES

Section 4.1. Applicable Laws and Regulations. This Definitive Agreement is subject to and the Parties shall comply with Applicable Law.

Section 4.2. LCRA’s Obligation to Obtain Permits. LCRA shall have the ultimate and final responsibility for meeting the regulatory requirements involved in implementing all Component Projects and the LCRA Transmission Facilities as identified for development in the approved Agreed Implementation Plan. For each Component Project, LCRA agrees to timely apply for, and take all reasonable steps to obtain approval of all necessary Permits that either are or may be required at any time during the process of implementing, constructing, operating and/or maintaining that Component Project. LCRA further agrees to timely apply for, and take all reasonable steps to obtain approval of, all necessary Permits that LCRA needs or may need at any time to authorize the development and construction of the LCRA Transmission Facilities once the Parties have decided to construct those facilities in accordance with Article VI.

Section 4.3. Cooperation between LCRA and SAWS. During the Implementation Period LCRA agrees to pursue with reasonable diligence the development, construction and operation of all Component Projects and the LCRA Transmission Facilities as required by this Definitive Agreement. SAWS agrees to fully and timely cooperate with LCRA to apply for and take all reasonable steps to obtain approval of all Permits sought by LCRA pursuant to this Definitive Agreement. SAWS also agrees to fully and timely cooperate with LCRA in order to complete, furnish and file all schedules, reports or other documents of any kind required by Applicable Law.

Section 4.4. Development of Component Projects Conditional on Obtaining Permits and Licenses.

4.4.A. Development of Component Projects Conditional. LCRA’s obligations under this Definitive Agreement (including, without limitation, the obligations to construct and operate Component Projects and the LCRA Transmission Facilities, and to deliver any Committed Purchase Quantity) are expressly conditioned upon LCRA obtaining the Permits necessary to allow LCRA to construct the Component Projects and the LCRA Transmission Facilities and to deliver water to SAWS as contemplated in this Definitive Agreement.

4.4.B. Specific Permits Needed. Without limiting the generality of the condition established under Section 4.4.A., LCRA’s obligations under this Definitive Agreement are expressly conditioned upon LCRA’s obtaining, during the Study Period from the TNRCC, all amendments to any Permits necessary for LCRA to meet its obligations under this Definitive Agreement.

4.4.C. Allocation of Costs of Permits. The cost of obtaining amendments to the LCRA's existing surface water permits, rights and certificates of adjudication incurred before
March 1, 2002, will be the LCRA's own stored water expenses. The actual costs incurred during the Study Period in applying for, obtaining, defending and maintaining Permits and amendments to existing Permits related to the Component Project(s) and the LCRA Transmission Facilities shall be considered Study Period Costs to be paid by SAWS as provided in Section 1.5.C. All such similar costs incurred during the Implementation Period shall be considered Capital Costs of the appropriate Component Project. Costs of obtaining or amending any Permits benefiting Component Projects and LCRA's other operations shall be allocated between the applicable Component Project(s) and LCRA's stored water operations based on the relative benefits of the Permit. Such costs shall be allocated and paid by the Parties based on initial or estimated benefits and adjusted and reallocated once the actual benefits between the Parties are determined based on relative volumes of water made available to LCRA's other water rights as compared to the water rights for the Component Projects.

4.4.D. **SAWS’ Participation in Permit Process.** SAWS shall have the right, but not the obligation, to participate in obtaining Permits sought by LCRA.
ARTICLE V

CONTRACT ACCOUNTING; CREDIT ACCOUNTS; BOOKS AND RECORDS

Section 5.1. Maintenance of Books and Records. LCRA shall maintain, or cause to be maintained at its offices in Travis County, Texas, all financial records necessary to implement this Definitive Agreement in its entirety. Such financial records shall be maintained in accordance with the provisions of this Definitive Agreement.

All accounting records shall be maintained on a calendar year basis unless otherwise agreed in writing by the Parties. Therefore, the first year's financial records and reporting shall end December 31, 2002, without regard to the number of days in the reporting year. Thereafter, all financial reports and annual budgets shall be from January 1 of a calendar year through December 31 of the same calendar year.

Section 5.2. Calculating Aggregate Study Period Advances. Aggregate Study Period Advances shall be calculated and paid as provided in Section 1.5.

Section 5.3. The Study Period Account. As part of the books and records LCRA is required to maintain under this Definitive Agreement, LCRA shall establish the Study Period Account. The Study Period Account shall reflect as credit entries all payments of the Annual Study Period Advances and the Additional Study Period Advances pursuant to Section 1.5 and interest earnings thereon. The Study Period Account shall reflect as debit entries amounts incurred by LCRA for all Study Period Costs during the Study Period. LCRA shall provide SAWS with copies of the books and records related to the Study Period Account within thirty (30) days of receiving SAWS’ written request for these books and records and/or shall allow SAWS to review such books and records and supporting data at the LCRA’s offices in Travis County, Texas, during regular business hours. LCRA shall close the Study Period Account within ninety (90) days after the Study Period Expiration Date.

Section 5.4. The Credit Accounts and Other Books.

5.4.A. LCRA Obligation to Maintain Credit Accounts. In compliance with its obligation to maintain all books and records related to this Definitive Agreement, LCRA shall maintain records of Credit Accounts pursuant to this Section 5.4.

5.4.B. Two Credit Accounts. LCRA shall maintain two Credit Accounts: (1) a Region K Credit Account, and (2) a SAWS Credit Account (together, the “Credit Accounts”).

(1) Region K Credit Account. The Region K Credit Account shall be maintained by LCRA for the purpose of accounting for (i) the Capital Costs of the Region K Projects incurred from time to time by LCRA during the Implementation Period (the "Incurred Capital Costs of the Region K Projects"), (ii) the portion of the Implementation Period Fees allocated and credited to the Region K Credit Account, and (iii) the estimated Capital Costs to complete construction or implementation of the
Region K Component Projects that have not been completed (the "Unincurred Capital Costs of the Region K Projects").

(2) **SAWS Credit Account.** The SAWS Credit Account shall be maintained by LCRA for the purpose of accounting for (i) the Capital Costs of the SAWS Component Projects as incurred by LCRA (the "Incurred Capital Cost of the SAWS Projects") that SAWS has authorized to be built or implemented as applicable, as specifically set forth in Section 2.6.B., (ii) the portion of the Implementation Period Fees allocated and credited to the SAWS Credit Account, and (iii) the Monthly Capital Cost Amortization Figure (as defined in Section 5.8.B.(2)).

5.4.C. **Unincurred Capital Costs.** The Agreed Implementation Plan, as amended and updated from time to time, shall estimate the Unincurred Capital Costs of the Region K Projects and the estimated Capital Costs of the SAWS Projects not yet incurred, such estimates being costs at the time the estimate is given.

5.4.D. **Other Books and Records.** LCRA shall maintain such other books and records as the Parties, by written agreement, deem necessary for the implementing of this Definitive Agreement. Such books and records may include separate records of all Project Costs associated with each Region K Component Project and SAWS Component Project, sub-accounts itemizing debit-credit activity in the Region K Credit Account and the SAWS Credit Account, and any other books and records that may be necessary to effect this Definitive Agreement.

5.4.E. **Termination of Credit Accounts and Accounting.** The LCRA shall cease to (i) maintain the Region K Credit Account pursuant to Section 5.4, and (ii) maintain Region K Credit Account records pursuant to Section 5.5 at such time, after construction or implementation of all Region K Projects is complete and the Capital Costs of all the Region K Projects have been accounted for with credits to the Region K Credit Account, that the Region K Credit Account has a zero balance. LCRA shall cease to (i) maintain the SAWS Credit Account pursuant to Section 5.4, and (ii) maintain SAWS Credit Account records pursuant to Section 5.5 at such time as LCRA no longer is, or will be, able to assess Construction Adjustment Surcharges under this Definitive Agreement. From and after termination of the SAWS Credit Account accounting by the LCRA, the Parties shall have no further duties or obligations to each other with respect to maintaining the SAWS Credit Accounts.

**Section 5.5. Account-Level Accounting; Balancing Credits and Debits.** This Section describes particular procedures LCRA shall implement when making Credit-Debit Entries to the Credit Accounts and when calculating various Credit or Debit Entries applicable to the Region K Credit Account and the SAWS Credit Account. This Section shall not constitute a definitive description of all accounting procedures and book entries that LCRA may have to conduct in the performance of its obligations under this Article.

5.5.A. **Monthly Report.** By the last day of each month during the Implementation Period, the LCRA shall provide SAWS with a report indicating as of the last day of the preceding month, for each Region K Component Project and each SAWS Component Project: (i)
the balances of each Credit Account as of the last day of the month preceding the month in which the report is required (the “Preceding Month”), (ii) all payments received by LCRA from SAWS during the Preceding Month under this Definitive Agreement, (iii) all Credit Entries made by LCRA to each Credit Account during the Preceding Month, (iv) all Capital Costs incurred by LCRA during the Preceding Month, (v) all Debit Entries made to each Credit Account during the Preceding Month, (vi) year-to-date total payments received by LCRA from SAWS pursuant to this Definitive Agreement, (vii) year-to-date total Credit Entries made to the Credit Accounts, (viii) year-to-date total Capital Costs incurred by LCRA pursuant to this Agreement, and (ix) year-to-date total Debit Entries made to the Credit Accounts. For purposes of this paragraph, year-to-date totals include all activity that has occurred from January 1 of the year in which the report is prepared to the last day of the Preceding Month. Reports delivered by January 31 for each given year (other than the initial year of the Implementation Period) shall include year-to-date totals for the year preceding the year during which the LCRA is required to provide the report to SAWS. LCRA shall also report, for each SAWS Component Project and Region K Component Project, total Capital Costs incurred up to the last day of the Preceding Month.

5.5.B. Credit Account Entries and Balances.

(1) Credit Entry. "Credit Entry" shall mean an entry made to a Credit Account that represents a positive entry (an increase) in the balance of the Credit Account. As used herein, the term “credited to the Credit Account,” or similar term shall refer to a Credit Entry.

(2) Debit Entry. "Debit Entry" shall mean an entry made to a Credit Account that represents a negative entry (a decrease) in the balance of the Credit Account. As used herein, the term “debited to the Credit Account,” or similar term shall refer to a Debit Entry.

(3) Credit Balance. "Credit Balance" shall mean a balance in a Credit Account in which the sum of the Credit Entries exceeds the sum of the Debit Entries for that particular Credit Account.

(4) Debit Balance. "Debit Balance" shall mean a balance in a Credit Account in which the sum of the Debit Entries exceeds the sum of the Credit Entries for that particular Credit Account.

5.5.C. Debiting and Crediting the Credit Accounts.

(1) Application of the Initial Payment. The Initial Payment shall be credited one hundred percent (100%) to the Region K Credit Account as of the date it is received by LCRA.

(2) Application of Other Implementation Period Fees and Fee Payments. An amount equal to seventy-five percent (75%) of each payment of any Implementation Period Fees other than the Initial Payment (the “Amount Credited”) shall be credited to
the Credit Accounts in the following proportions:

(a) **Region K Credit Account.** Fifty percent (50%) of the Amount Credited shall be credited to the Region K Credit Account until Credit Entries to the Region K Credit Account equal the sum of Incurred Capital Costs of the Region K Projects and the then estimated Unincurred Capital Costs of the Region K Projects (meaning the costs as of date of computation), and thereafter, all amounts that would otherwise be credited to the Region K Credit Account under this provision shall be credited to the SAWS Credit Account. If the then estimated Unincurred Capital Costs of the Region K Projects at any time exceed the Credit Balance in the Region K Credit Account or if there is a zero balance or a Debit Balance in the Region K Credit Account, then fifty percent (50%) of the Amount Credited would again be credited to the Region K Credit Account until the Credit Balance in the Region K Credit Account again equals or exceeds the then estimated Unincurred Capital Costs of Region K Projects. Notwithstanding the foregoing, SAWS, at its option, may direct that fifty percent (50%) of the Amount Credited continue to be credited to the Region K Credit Account.

(b) **SAWS Credit Account.** Fifty percent (50%) of the Amount Credited shall be credited to the SAWS Credit Account, unless pursuant to Section 5.5.C.(2)(a), one hundred percent (100%) of the Amount Credited is to be credited to the SAWS Credit Account, except as otherwise provided in Section 2.3.F.

(3) **Application of an Ending Credit Balance in the Region K Credit Account.** In the event that the Region K Credit Account has a Credit Balance at any time after construction or implementation of all Region K Projects is complete and the Capital Costs of all the Region K Projects have been accounted for with credits to the Region K Credit Account, the amount of such Credit Balance shall be debited to the Region K Credit Account and credited to the SAWS Credit Account to reduce the Region K Credit Account to zero.

(4) **Capital Costs of the Region K Component Projects.** Incurred Capital Costs of the Region K Projects shall result in Debit Entries to the Region K Credit Account in the amounts and as of the dates that they are incurred.

(5) **Capital Costs of the SAWS Component Projects.** During construction of each SAWS Component Project, LCRA shall make a Debit Entry to the SAWS Credit Account at the end of each month for the amount of Incurred Capital Costs of the SAWS Project(s) incurred during the month. If at the end of any month during which construction of a SAWS Component Project is completed there is a Debit Balance in the SAWS Credit Account and such Debit Balance exceeds the total of the amount of the
Incurred Capital Costs of the SAWS Component Projects incurred on SAWS Component Projects of which construction is not then complete, then LCRA shall make a Credit Entry to the SAWS Credit Account in an amount equal to the amount of such excess. The amount thus credited (the "Amount Amortized") shall be utilized by LCRA pursuant to Section 5.8.B. of this Definitive Agreement to calculate the Monthly Capital Cost Amortization Figure and the Construction Adjustment Surcharge, if any. Thereafter, the SAWS Credit Account shall also be debited at the end of each month for the amount of the Monthly Capital Cost Amortization Figure for the number of months over which the Amount Amortized has been amortized.

Section 5.6. Interest Accrual Entry in Credit Accounts. The Credit Accounts shall be credited or debited, on a monthly basis, for amounts equal to multiplying the balance times the Credit Account Interest Rate, compounded monthly.

Section 5.7. SAWS’ Rights Regarding Books and Records. LCRA shall permit SAWS to examine and copy all the books and records kept by LCRA pursuant to this Definitive Agreement. SAWS’ right of inspection under this Section 5.7 shall continue until the termination of this Definitive Agreement (including the Extended Term, if any). This right of inspection is in addition to any rights SAWS has pursuant to Section 5.5. to receive reports regarding the books and records. Moreover, SAWS may cause, once every two years during the Implementation Period, and upon reasonable prior written notice to LCRA, a complete audit to be made of the books and records kept by LCRA pursuant to this Definitive Agreement as well as upon the information and documentation used to prepare the books and records. Any such audit shall be at SAWS' sole expense and shall be prepared by a mutually approved independent certified public accounting firm. If the audit report discloses actual errors in the books and records such that the Credit Accounts, cost amounts, or other books are in error then such error shall be corrected. If the error identified in the audit is greater than the cost of the audit, then, in such event, the LCRA shall pay the entire cost of the audit. Any dispute as to whether there is an actual error shall be resolved by the mediation and arbitration process provided in Article X.

Section 5.8. Calculating Implementation Period Fees. The Implementation Period Fees shall be paid during the Implementation Period (including the Extended Term, if any) of this Definitive Agreement. All Implementation Period Fees (other than the Initial Payment) shall be calculated according to the provisions of this Section, paid according to the provisions of Articles II and V, and applied to the Credit Accounts pursuant to Section 5.5. The Initial Payment shall be applied in full to the Region K Credit Account.

5.8.A. The Aggregate Reservation Fee. The Aggregate Reservation Fee shall mean an amount equal to the sum of the Reservation Fee, the Reservation Surcharge, if any, and the Reservation Adjustment Surcharge, if any, as determined under this Section. The Aggregate Reservation Fee shall be payable as provided in Section 2.3.E. and this Section. The Reservation Fee, the Reservation Surcharge and the Reservation Adjustment Surcharge for each year shall be calculated as follows:
(1) **Reservation Fee.** The Reservation Fee shall mean an amount to be paid by SAWS as partial consideration for the reservation of the Reserved Quantity pursuant to Section 2.3. The Reservation Fee for any particular year shall equal fifty percent (50%) of the Stored Water Rate multiplied by the Reserved Quantity as of January 1 of that year. For purposes of this calculation, any Committed Purchase Quantity of water noticed for delivery but for which a Purchase Phase has not yet commenced pursuant to Section 2.6.C. shall be considered Reserved Quantity. The Reservation Fee shall be calculated and payable annually as provided in Section 2.3.D.

(2) **Reservation Surcharge.** The Reservation Surcharge for a particular year shall equal twenty-five percent (25%) of the Reservation Fee for that year and shall be due and payable with the Reservation Fee each year; provided, however, the Reservation Surcharge shall be discontinued whenever the Credit Entries to the Region K Credit Account are equal to or greater than the sum of the Incurred Capital Costs for the Region K Projects and the then estimated Unincurred Capital Costs of the Region K Projects. The Reservation Surcharge shall be reinstated if the balance in the Region K Credit Account is ever less than the then estimated Unincurred Capital Costs of the Region K Projects. The Reservation Surcharge shall be reinstated as of the date the balance is less than the then estimated Unincurred Capital Cost of the Region K Projects and continued until the Credit Balance in the Region K Credit Account equals or exceeds the then estimated Unincurred Capital Costs of the Region K Projects.

(3) **Reservation Adjustment Surcharge.** The Reservation Adjustment Surcharge shall mean an amount of money to be paid by SAWS to LCRA each year during the Minimum Reserved Period equal to 1.33 times a fraction the numerator of which is the Incurred Capital Cost of Region K Projects plus the then estimated Unincurred Capital Costs of the Region K Projects plus the Debit Entries, if any, to the Region K Credit Account and the SAWS Credit Account due to accrual of interest at the Credit Account Interest Rate on any Debit Balances in those accounts less the sum of (a) all Credit Entries made to the Credit Accounts (both Region K and SAWS), including, but not limited to, the Initial Payment, without deduction or debits for costs incurred, and (b) the present value (using the Credit Account Interest Rate for the discount rate), of seventy-five percent (75%) of the Reservation Fee and Reservation Surcharge expected to be paid by SAWS over the remaining term of the Minimum Reserved Period and the denominator of which is the number of years remaining in the term of the Minimum Reserved Period.

5.8.B. **The Aggregate Committed Purchase Fee.** The "Aggregate Committed Purchase Fee" shall mean an amount equal to the sum of (i) the Committed Purchase Fee (which shall include a ten percent (10%) surcharge on the Stored Water Rate) plus (ii) the Construction Adjustment Surcharge, if any.

(1) **Committed Purchase Fee.** The Committed Purchase Fee on a particular Committed Purchase Quantity shall be equal to the product of the LCRA Stored Water Rate multiplied by one hundred ten percent (110%) of the Committed Purchase Quantity.
(2) **Construction Adjustment Surcharge.** If at the end of a month during which construction of a SAWS Component Project is completed, a Debit Balance exists in the SAWS Credit Account, then the Construction Adjustment Surcharge for the SAWS Component Projects shall be computed as of the first day of each month thereafter during the Purchase Phase as follows:

(a) On the first day of the first full month after completion of construction of any SAWS Component Project, any Amortized Amount shall be amortized at the Amortization Rate as of that date over the lesser of (i) three hundred sixty (360) months, or (ii) the number of months remaining in the Implementation Period (including the Extended Term, if any). The resulting monthly amortization amount multiplied by 1.25 (or any lesser LCRA bond coverage requirement then applicable) is the "Monthly Capital Cost Amortization Figure" for that SAWS Component Project.

(b) If in any month the projected Credit Entries to the SAWS Credit Account is less than the Monthly Capital Cost Amortization Figure to be debited to the SAWS Credit Account that month, then the Construction Adjustment Surcharge for that month shall be equal to 1.33 multiplied by the amount by which the Monthly Capital Cost Amortization Figure exceeds the projected Credit Entries for that month. If the amount of the projected Credit Entries equals or exceeds the Monthly Capital Cost Amortization Figure, then there is no Construction Adjustment Surcharge that month.

(c) On the last day of each month during construction of a specific SAWS Component Project and thereafter until all costs are amortized, the computations in (a) and (b) above shall be completed for that month, and thereafter the Incurred Capital Costs of the SAWS Component Projects incurred during that month shall be debited to the SAWS Credit Account.

(d) The calculation in (a) – (c) above will be repeated each month for the lesser of (i) the remaining three hundred fifty-nine (359) months, or (ii) the number of months remaining in the Implementation Period (including the Extended Term if exercised) after completion of construction or other implementation of a SAWS Component Project to determine if there is a Construction Adjustment Surcharge for that month for that Component Project.

(e) The process in (a) - (d) shall be applicable for each newly constructed SAWS Component Project. The computation in (b) and (c) shall be computed using cumulative Monthly Capital Cost Amortization Figures and cumulative projected Credit Entries for all SAWS Component Projects and payments.
(3) **Prior Year Undelivered Quantity Credit.** The Prior Year Undelivered Quantity Credit means the difference between (1) the Stored Water Rate times the Prior Year Undelivered Quantity times one hundred ten percent (110%) minus (2) one-half the Stored Water Rate times the Prior Year Undelivered Quantity times one hundred twenty five percent (125%) (if a Reservation Surcharge was then in effect) or one hundred percent (100%) (if no Reservation Surcharge was then in effect). The "Prior Year Undelivered Quantity" shall mean, for the prior year, the lesser of fifteen percent (15%) of the Committed Purchased Quantity or the difference between the Committed Purchased Quantity and the Delivered Quantity. The Prior Year Undelivered Quantity Credit shall be credited to SAWS as provided in Section 2.6.D.(1).

5.8.C. **Expansive Actions.** Any additional amounts paid by reason of an Expansive Action pursuant to Section 2.9 shall not result in a Credit Entry to any Credit Account.
ARTICLE VI

CONSTRUCTION, OWNERSHIP AND OPERATION
OF TRANSMISSION FACILITIES


6.1.A. General Principles for Constructing the LCRA Transmission Facilities. LCRA shall design and construct the LCRA Transmission Facilities according to the general procedures used for designing and constructing Component Project(s) under Article III. However, in all cases involving the LCRA Transmission Facilities, in the event the provisions of this Article conflict with or contradict the procedures for constructing Component Projects under Article III, the provisions of this Article shall prevail.

6.1.B. Development of Preliminary Design.

(1) Drafting the Preliminary Design. The LCRA shall begin to prepare the preliminary design for the LCRA Transmission Facilities during the Study Period. The Preliminary Design shall include the proposed design (thirty percent (30%) design level), a proposed budget of costs of construction, and operation, and a scope of work. The Preliminary Design shall not contain such details as construction documents and engineering plans. SAWS shall establish preliminary specifications and promulgate design standards for the LCRA Transmission Facilities in order that they will be compatible with SAWS Transmission Facilities. The Parties intend, unless otherwise agreed to in writing between them, that the Transmission Facilities in LCRA’s Service Area (“LCRA Transmission Facilities”) will be designed to common specifications with the Transmission Facilities in SAWS’ Service Area (“SAWS Transmission Facilities”) which shall deliver water from the Delivery Point(s) to SAWS’ system and customer. The LCRA Transmission Facilities shall consist of the water transmission lines and pumping facilities designed to transport water from any Off-Channel Reservoir directly to the Delivery Point(s). In no event shall the LCRA Transmission Facilities include any facilities, pumps, water lines or other water transportation facilities designed to transport water from the Colorado River to any Off-Channel Reservoir or from any Off-Channel Reservoir to the Colorado River.

(2) Approving the Preliminary Design. The LCRA shall forward copies of the Preliminary Design to SAWS for its review and approval. SAWS shall have three (3) months to approve or reject the draft Preliminary Design. SAWS shall have the right to reject the Preliminary Design if the specifications and design standards do not meet its requirements or would otherwise make the LCRA Transmission Facilities incompatible with the SAWS Transmission Facilities. In the event SAWS rejects the Preliminary Design for the LCRA Transmission Facilities, SAWS shall return the Preliminary Design to the LCRA with a description of SAWS’ reasons for rejecting the Preliminary Design. The LCRA shall address the issues raised by SAWS and, within sixty (60) days after receiving the notification, resubmit the revised Preliminary Design for such LCRA
Transmission Facility to SAWS for its approval. The LCRA shall have four (4) opportunities to obtain SAWS’ approval to the Preliminary Design. In the event a Preliminary Design is not agreed upon during (i) the Study Period, or (ii) the Implementation Period using the procedures set out in this Section 6.1, then the Parties shall pursue Mediation as set out in Section 10.5 to agree on the Preliminary Design and if agreement is not reached through Mediation, then either Party may implement the arbitration procedures set out in Section 10.6 of this Definitive Agreement to establish the Preliminary Design.

6.1.C. Drafting of Transmission Facilities Plan.

(1) Drafting the Transmission Facilities Plan. The LCRA shall begin preparing a draft "Transmission Facilities Plan" promptly after the Parties have approved the Preliminary Design. The LCRA shall base the draft Transmission Facilities Plan on the approved Preliminary Design. The Transmission Facilities Plan shall include (i) an implementation schedule, (ii) a schedule of costs that comply with the current Transmission Facilities Budget (see Section 6.5), (iii) repair and maintenance plans, procedures and protocols for repairs and maintenance, (iv) an analysis of the easements that will constitute the Transmission Easement, and (v) other necessary preliminary reports and specifications.

(2) Approving the Transmission Facilities Plan. The LCRA and SAWS must both approve the Transmission Facilities Plan. The LCRA shall forward the draft Transmission Facilities Plan to SAWS for its approval. SAWS may withhold its approval if it determines that the specifications and design standards promulgated in the Transmission Facilities Plan do not conform to the Preliminary Design or would not be compatible with the SAWS Transmission Facilities. SAWS shall have sixty (60) days from the date of SAWS’ receipt to approve or disapprove the draft Transmission Facilities Plan. In the event SAWS rejects the Transmission Facilities Plan, SAWS shall return it to the LCRA with a description of its reasons for rejecting it. The LCRA shall address the issues raised in SAWS’ rejection and, within sixty (60) days of receiving notice of SAWS' rejection, resubmit the revised Transmission Facilities Plan to SAWS for its approval. The LCRA shall have four (4) opportunities to obtain SAWS’ approval of the Transmission Facilities Plan. If a Transmission Facilities Plan is not agreed on during (i) the Study Period, or (ii) the Implementation Period using the procedures set out in this Section 6.1.C., then the Parties shall pursue Mediation as set out in Section 10.5 to agree on a Transmission Facilities Plan. If an agreement is not reached through Mediation, then either Party may implement the arbitration procedures set out in Section 10.6 of this Definitive Agreement to establish the Transmission Facilities Plan.

6.1.D. Final Specifications for LCRA Transmission Facilities. Once the Transmission Facilities Plan is approved by the Parties, the LCRA shall promptly prepare the final plans and specifications for constructing the LCRA Transmission Facilities. These final plans and specifications shall include: (i) construction documents, (ii) all legal and support documentation (including grants of easement for the Transmission Easement, real property
deeds, and service contracts with engineers, scientists and other professionals), (iii) engineering
drawings and analyses, (iv) financing papers, and (v) any other materials necessary to construct
the LCRA Transmission Facilities. LCRA shall provide to SAWS the proposed final plans and
specifications for review and approval. SAWS may not unreasonably withhold its approval.
SAWS may disapprove the draft final plans and specifications and may require whatever
amendments are necessary to make the specifications conform to the Transmission Facilities
Plan and be compatible with the SAWS Transmission Facilities. SAWS shall have sixty (60)
days to approve or disapprove the final plans and specifications. If SAWS rejects the proposed
final plans and specifications, it shall describe its reasons for the rejection in the rejection
response to the LCRA. The LCRA shall address the issues raised in SAWS rejection of the final
plans and specifications. Within ninety (90) days of the notice of SAWS' rejection, the LCRA
shall submit revised proposed final plans and specifications to SAWS. The LCRA shall have
four (4) opportunities to obtain SAWS' approval of the final plans and specifications. Once
approved by SAWS, the proposed final plans and specifications shall become the "Final Plans
and Specifications" for the LCRA Transmission Facilities. If Final Plans and Specifications are
not agreed on during (i) the Study Period, or (ii) the Implementation Period using the procedures
set out in this Section 6.1.D., then the Parties shall pursue Mediation as set out in Section 10.5 to
agree on Final Plans and Specifications. If an agreement is not reached through Mediation, then
either Party may implement the arbitration procedures set out in Section 10.6 of this Definitive
Agreement to establish the Final Plans and Specifications.

6.1.E. Construction of LCRA Transmission Facilities. LCRA shall construct the
LCRA Transmission Facilities according to the Final Plans and Specifications for the LCRA
Transmission Facilities and shall bear sole responsibility for completing the LCRA Transmission
Facilities according to these requirements. Construction shall begin once LCRA has obtained, on
behalf of LCRA and SAWS, good title to and ownership of the Transmission Easement and the
Parties have approved the Final Plans and Specifications for the LCRA Transmission Facilities.
The LCRA shall have the responsibility of supervising the construction of the LCRA
Transmission Facilities in accordance with the Final Plans and Specifications of the LCRA
Transmission Facilities. Any change orders issued during construction of the LCRA
Transmission Facilities that impact cost, timing and/or operation costs of the Transmission
Facilities shall be submitted promptly by LCRA to SAWS for SAWS review and approval prior
to the implementation.

Section 6.2. Design and Construction of the SAWS Transmission Facilities. SAWS
shall design and construct the SAWS Transmission Facilities at its sole discretion and expense
and in accordance with whatever schedule it deems appropriate. SAWS shall bear sole
responsibility for constructing the SAWS Transmission Facilities, and LCRA shall have no role,
authority, interest or obligation in the process. SAWS may, at its convenience, choose to report
its progress in constructing the SAWS Transmission Facilities to the Contract Committee and to
LCRA. SAWS may, at its sole and absolute discretion, permit LCRA to participate in the
process of designing and constructing the SAWS Transmission Facilities.
Section 6.3. Ownership and Operation of the Transmission Facilities.

6.3.A. LCRA Transmission Facilities. Following the construction of the LCRA Transmission Facilities, the Parties agree that the ownership and use of the LCRA Transmission Facilities shall be divided between them as follows.

(1) **Title to and Ownership of LCRA Transmission Facilities.** LCRA shall have title to, and ownership of, the LCRA Transmission Facilities. Except as provided under this Section, LCRA shall own the LCRA Transmission Facilities for the duration of their useful life and, except as otherwise provided in this Section, may use them for any lawful purpose that LCRA deems appropriate. LCRA shall operate the LCRA Transmission Facilities and shall maintain them in good repair. The LCRA shall also maintain sufficient property damage and casualty insurance or self-insurance on the LCRA Transmission Facilities to insure that there are sufficient insurance proceeds to repair and/or replace the LCRA Transmission Facilities in the event they are damaged or injured. LCRA’s ownership of the LCRA Transmission Facilities shall survive the termination of this Definitive Agreement. At the end of the useful life of the LCRA Transmission Facilities, title to the Transmission Facilities shall automatically transfer to and vest in SAWS. The “useful life” as used in this Definitive Agreement shall mean the functional life and not the accounting life of the Transmission Facilities.

(2) **Use of Capacity.** SAWS shall have an exclusive right to use all available capacity in the LCRA Transmission Facilities for delivering Committed Purchase Quantities from the Off-Channel Reservoirs to the Delivery Point(s) pursuant to this Definitive Agreement and for delivering any other water which SAWS enjoys a legal right to or ownership of (if such water delivery is consistent with a TWDB approved regional plan). LCRA has no authority or right to deny SAWS the use of the capacity in the LCRA Transmission Facilities at any time to the extent such use is authorized pursuant to this Definitive Agreement. Furthermore, SAWS’ exclusive right to use the capacity of the LCRA Transmission Facilities, to the extent authorized pursuant to this Definitive Agreement, shall survive the termination of this Definitive Agreement and shall continue for the duration of the useful life of the LCRA Transmission Facilities.

(3) SAWS shall pay the LCRA for all reasonable and ordinary costs of operating, maintaining and insuring the LCRA Transmission Facilities for SAWS as provided herein. When determining these costs, the Parties shall include the annual operating and maintenance expenses associated with the LCRA Transmission Facilities and borne by LCRA (including actual general and administrative overhead expenses based on the LCRA’s last available general and administrative overhead cost allocation study but not to exceed fifteen percent (15%) of operation and maintenance charges excluding power costs) as well as actual debt service, debt service coverage, and reserve requirements of Transmission Facilities Bonds. LCRA shall make reasonable efforts to secure the most favorable power supply contracts to minimize costs to SAWS. The provisions of this subsection survive the termination of this Definitive Agreement and shall continue for the duration of the useful life of the LCRA Transmission Facilities.
Power costs shall not be included as basis for any overhead costs.

(4) LCRA shall operate and maintain the LCRA Transmission Facilities in good order and condition with the goal of maintaining unaccounted water losses at less than three percent (3%) per annum.

6.3.B. SAWS’ Transmission Facilities. SAWS shall have sole responsibility for and shall hold title to, ownership of, and responsibility for the SAWS Transmission Facilities following their construction. SAWS shall operate the SAWS Transmission Facilities exclusively and shall bear sole responsibility for all operating and maintenance expenses associated with the SAWS Transmission Facilities. SAWS may use the SAWS Transmission Facilities for any lawful purpose it deems appropriate. Neither LCRA nor any other party shall have any right to demand the use of, any curtailment of the use of, or any ownership share in, the SAWS Transmission Facilities.

Section 6.4. Ownership of the Transmission Easement.

6.4.A. Ownership during Period of Definitive Agreement. During the term of this Definitive Agreement, SAWS and LCRA shall own and hold title to joint, equal and undivided ownership interests in the Transmission Easement. Specifically, LCRA shall own a fifty percent (50%) undivided interest in the Transmission Easement and SAWS shall own the remaining fifty percent (50%) undivided interest in the Transmission Easement. The Parties shall own the Transmission Easement as tenants in common and shall, at the appropriate time or when requested by either Party, execute all appropriate deeds to the Transmission Easement reflecting their joint, equal, undivided ownership interests. The Parties shall continue as tenants in common of the Transmission Easement until the termination of this Definitive Agreement.

6.4.B. Ownership After Termination of Definitive Agreement.

(1) Ownership of Transmission Easement Transferred to SAWS. If this Definitive Agreement is not terminated before the Initial Termination Date, then on the Termination Date of this Definitive Agreement, ownership of the Transmission Easement shall immediately transfer to and vest in SAWS. Thereafter, SAWS shall be the sole owner holding one hundred percent (100%) of the title to the Transmission Easement; provided however, that LCRA shall have the rights described in Section 6.4.B.(2) below for certain limited use of the Transmission Facilities. LCRA agrees to execute, at any time after the date of such vesting, such deeds, transfer agreements or other documents as are necessary to reflect SAWS' exclusive ownership of the Transmission Facilities. If this Definitive Agreement is terminated prior to the Initial Termination Date, LCRA shall retain ownership of its undivided one-half (1/2) interest in the Transmission Easement.

(2) Continued Use of Easement by LCRA. In the event ownership of the Transmission Easement transfers to and vests in SAWS pursuant to Section 6.4.B.(1) above, then, effective as of the date of such vesting, LCRA shall have the continued right to own and, subject to SAWS' exclusive right to use such facilities, operate the LCRA
Transmission Facilities within the Transmission Easement. LCRA shall hold this right to operate within the Transmission Easement for the duration of the useful life of the LCRA Transmission Facilities. At the end of the LCRA Transmission Facilities’ useful life, LCRA’s right to use the Transmission Easement shall be extinguished and LCRA shall have the right to abandon the LCRA Transmission Facilities in place.

(3) **Survival.** The provisions of this Section 6.4.B. shall survive termination of this Definitive Agreement and shall continue for the duration of the useful life of the LCRA Transmission Facilities.

**Section 6.5. Budgeting, Financing and Costs of LCRA Transmission Facilities.**

6.5.A. **Budget Process for LCRA Transmission Facilities.** LCRA shall prepare a “Transmission Facilities Budget” for the LCRA Transmission Facilities for each year the LCRA Transmission Facilities are being either designed, built or operated by the LCRA. The Transmission Facilities Budget shall contain, without limitation, the estimated design, cost, principal, interest, debt service coverage, operation, and maintenance costs and expenses that the LCRA Transmission Facilities are expected to incur during the coming year. The Transmission Facilities Budget shall be prepared in accordance with the following provisions:

(1) **Budget Period.** The budget period for each Transmission Facilities Budget shall be for a single year; provided, however, that the first Transmission Facilities Budget may cover a six (6) to eighteen (18) month period. Thereafter, each Transmission Facilities Budget shall cover a twelve (12) month calendar year period. LCRA shall prepare a new Transmission Facilities Budget for every succeeding year during the LCRA Transmission Facilities’ design, construction and operating life until the termination of this Definitive Agreement, and thereafter during the useful life of the LCRA Transmission Facilities. The Transmission Facilities Budgets shall include the expected costs and expenses associated with constructing, financing, operating, and maintaining the LCRA Transmission Facilities in each budgeted year.

(2) **Budget Elements.** Each Transmission Facilities Budget shall include estimated costs for the following items, as applicable: (i) expected design and capital construction costs in the budgeted year, (ii) operating and maintenance costs for the LCRA Transmission Facilities, (iii) administrative, legal, and planning expenses (including general overhead not to exceed fifteen percent (15%) of operation and maintenance costs, excluding power costs), (iv) any actual principal and interest expenses and debt service coverage on Transmission Facilities Bonds (as defined in Section 6.5.C.(1) below) issued by LCRA, or alternatively, if LCRA has used its own funds, such funds shall be recovered by the LCRA based on a twenty-five (25) year amortization at an assumed interest rate equal to LCRA’s actual cost of similar debt, and (v) any other costs or expenses the Parties expect to incur in the budgeted year because of the LCRA Transmission Facilities. Power costs shall not be included in the expenses for computing overhead costs.
(3) **SAWS' Approval and Comment Phase.** LCRA shall prepare the proposed Transmission Facilities Budget for the budgeted year and submit it to SAWS at least 120 days before the first day of the budgeted year. Upon receipt, SAWS shall review the Transmission Facilities Budget. SAWS must submit any comments on the proposed Transmission Facilities Budget to LCRA within sixty (60) days after receiving the proposed Transmission Facilities Budget. LCRA shall, with reasonable discretion, incorporate any such comments into the proposed Transmission Facilities Budget. SAWS shall not unreasonably withhold its approval of the proposed Transmission Facilities Budget. The proposed Transmission Facilities Budget with SAWS' written approval shall become the Transmission Facilities Budget for the budgeted year. The Parties agree to work diligently in order to complete all approvals before the first day of the budget year. If an agreement is not reached on an annual budget by the beginning of the budget year, the Parties shall use the previous years' actual expenses adjusted for applicable inflation for determining the budget pending application of the mediation and arbitration proceedings described in Sections 10.5 and 10.6 to reach an agreed budget for a particular year.

6.5.B. **Allocation of Separate Transmission Facilities Fee.**

(1) **Separate LCRA Transmission Facilities Fee.** LCRA shall charge SAWS, and SAWS shall pay LCRA, a separate set of fees for the design, construction, operation and maintenance of the LCRA Transmission Facilities (the “Transmission Facilities Fee”). These fees are separate from, and independent of, any of the other fees and charges in other Articles of this Definitive Agreement and the amounts paid by SAWS under this Article VI shall not result in any Credit Entry to the Credit Accounts.

(2) **Approved Budget Determines Fee.** LCRA shall assess the Transmission Facilities Fee, which shall be equal to the amount determined in the Transmission Facilities Budget for that year. The fee shall be paid in monthly installments over the applicable year. SAWS shall pay the Transmission Facilities Fee directly to LCRA. LCRA shall use the Transmission Facilities Fee solely to fund the costs and expenses related to the LCRA Transmission Facilities incurred during the budgeted year.

(3) **SAWS’ Procedures for Payment of Fee.** SAWS may choose to pay the Transmission Facilities Fee in a single cash payment or a through a series of separate monthly payments; provided, however, that SAWS shall pay the capital costs, principal, interest, and debt service coverage and reserve requirement components of the Transmission Facilities Fee in equal monthly installments or otherwise as necessary to enable LCRA to meet all requirements of any special project bonds issued by LCRA for the LCRA Transmission Facilities ("Transmission Facilities Bonds"). SAWS shall pay the operating and maintenance expense component of the Transmission Facilities Fee according to a reasonable, industry-accepted billing practice, such as equal monthly installments or payments based on water volume delivered through the LCRA Transmission Facilities to SAWS as agreed to by the Parties. The Parties shall negotiate a reasonable payment practice before the first Transmission Facilities Fee is assessed.
against SAWS.

(4) **Reconciliation of Budgeted Costs with Actual Costs.** LCRA shall prepare monthly reports of actual expenses incurred by LCRA related to the LCRA Transmission Facilities. These reports shall record and reflect the actual expenses for all cost and expense items (including design, capital construction, financing, operating and maintenance costs) listed in that year’s approved Transmission Facilities Budget. LCRA shall also record the differences between the actual recorded expenses for each month and the budgeted expenses for such month in that year’s approved Transmission Facilities Budget.

LCRA shall provide SAWS a full reconciliation of the actual costs and expenses with that year’s budgeted costs and expenses within sixty (60) days after the end of each fiscal year. LCRA shall bill and SAWS shall pay, or LCRA shall refund, as appropriate, the difference between actual and budgeted costs identified during the reconciliation as an adjustment.

(5) **SAWS’ Right of Inspection.** SAWS shall have the right, at least once per fiscal year, to inspect and evaluate LCRA’s records of actual costs and expenses associated with the LCRA Transmission Facilities for that year. SAWS may, if necessary, request that LCRA correct any errors or other discrepancies, and in particular, those associated with LCRA’s adjustments to that year’s Transmission Facilities Budget for differences between actual and budgeted costs, if any.

6.5.C. **Transmission Facilities Bonds and Funding.** LCRA shall fund the costs and expenses associated with designing, constructing and operating the LCRA Transmission Facilities. LCRA, after consulting with SAWS, may finance the Transmission Facilities with:

(1) **Transmission Facilities Bonds.** LCRA may choose to issue special project bonds ("Transmission Facilities Bonds") to pay for the design and capital construction costs and other costs and expenses associated with the LCRA Transmission Facilities. The Transmission Facilities Bonds shall be payable solely from, and first secured by, a lien on and pledge of SAWS payments under this Article VI. The LCRA Transmission Facilities shall not constitute part of the LCRA Stored Water System nor shall the Transmission Facilities Bonds be subject to LCRA’s regular system bond covenants. Finally, any holders of the Transmission Facilities Bonds payable by LCRA shall constitute third party beneficiaries to Article VI of this Definitive Agreement. The Parties agree to negotiate in good faith any additional agreements or documents reasonably required to enable the LCRA to issue, sell and deliver the Transmission Facilities Bonds in reliance upon SAWS’ obligation to pay the Transmission Facilities Fee.

(2) **LCRA Payments from Available Funds.** Besides using proceeds from the sale of the Transmission Facilities Bonds, LCRA may fund costs and expenses associated with the LCRA Transmission Facilities with available LCRA funds. LCRA has full
discretion whether to fund such costs with LCRA's available funds. If LCRA elects to fund costs of the LCRA Transmission Facilities with its available cash, such cash outlays shall result in a separate debt payable by SAWS to LCRA amortized over a twenty-five (25) year period with imputed interest (from date of advance until paid) at the rate of LCRA’s cost of its first and prior lien bond debt for the LCRA Stored Water System. The amortization shall commence at the end of each month following the expenditure of cash by LCRA for such purposes. LCRA shall treat such payments as a debt service expense and a component of the Transmission Facilities Fee. LCRA shall therefore include them in the yearly Transmission Facilities Budget as an expense.

Any debt service “coverage” payments or charges in excess of actual principal and interest payments shall be used by the LCRA to pay principal or interest of the Transmission Facilities Bonds or other debt obligation for the Transmission Facilities in the next year or, at SAWS' option, to make improvements to the Transmission Facilities.

(3) **SAWS' Funding.** SAWS may, at SAWS' option, notify LCRA at any time up to and including the date SAWS delivers to LCRA the initial Purchase Notice that SAWS desires to directly pay the cost to construct the LCRA Transmission Facilities from SAWS' own funds (including the proceeds of bonds issued by SAWS). If SAWS elects to fully fund the costs of construction, the Transmission Facilities Fee and Transmission Facilities Budget will not include such SAWS provided financing costs. In such event, LCRA shall have no obligation to issue any Transmission Facilities Bonds for the costs of the LCRA Transmission Facilities.

6.5.D. **Survival.** The provisions of Section 6.5 shall survive termination of this Definitive Agreement and shall continue for the duration of the useful life of the LCRA Transmission Facilities.

**Section 6.6. LCRA Transmission Facilities Accounting.** LCRA shall keep separate books and records for the LCRA Transmission Facilities according to the provisions of Article VI. LCRA shall comply in all respects with the provisions of this Article VI in keeping the books and records for the Transmission Facilities. SAWS shall have the right to audit the Transmission Facilities records and Transmission Facilities Fee on the same terms as set forth in Section 5.7 hereof.

**Section 6.7. Other SAWS’ Water Acquisitions.** The Parties acknowledge that SAWS may acquire water rights or supplies from parties other than LCRA. Following the construction of the LCRA Transmission Facilities, SAWS shall have the right to use SAWS’ exclusive capacity rights in the LCRA Transmission Facilities and to instruct LCRA to deliver to SAWS any water available to or owned by SAWS that is consistent with a TWDB-approved regional water plan, so long as such use of SAWS’ capacity rights in the LCRA Transmission Facilities does not interfere with LCRA's ability to meet its obligations to SAWS under this Definitive Agreement and otherwise complies with Applicable Law.
ARTICLE VII

OWNERSHIP OF STUDIES, COMPONENT PROJECT(S) AND OTHER FACILITIES
UNDER DEFINITIVE AGREEMENT

Section 7.1. Study Period Analyses and Supporting Materials.

7.1.A. Ownership by LCRA. LCRA alone shall own and hold exclusive title to all Feasibility Studies.

7.1.B. Right of Use by SAWS. SAWS shall have full access to, and a cost free license to use, the Feasibility Studies, but excluding any Permits; provided, however, that SAWS shall have no access to, or right to use, any material whose use is otherwise restricted by Applicable Law, such as sealed engineering drawings. SAWS’ use of the Feasibility Studies may include, without limitation, the right to copy the Feasibility Studies or use them in a context separate from this Definitive Agreement. SAWS’ rights to use the Feasibility Studies shall survive this Definitive Agreement’s termination. LCRA may not refuse to permit SAWS to lawfully use the Feasibility Studies.

Section 7.2. Component Projects. As between the Parties, LCRA shall own and hold exclusive title to all Component Projects. Furthermore, LCRA shall own, and hold exclusive title to, all Project Plans, Final Plans and Specifications, Permits, technical analyses and any other materials associated with the implementation, construction or operation of the Component Projects. SAWS shall have full access to such materials and shall have the right to copy (at SAWS expense), as well as a cost free license to use all such materials excluding the Permits; provided, however, that SAWS shall have no right to use any material whose use is otherwise restricted by Applicable Law, such as sealed engineering drawings.

Section 7.3. LCRA Transmission Facilities. Except as otherwise provided by Article VI, LCRA shall own, and hold exclusive title to, all LCRA Transmission Facilities. LCRA shall own an undivided fifty percent (50%) interest in the Transmission Easement subject to the terms and conditions set forth in Article VI. Furthermore, LCRA shall own, and hold exclusive title to, all Project Plans, Final Plans and Specifications, technical analyses, Permits and any other materials associated with the implementation, construction or operation of the LCRA Transmission Facilities and Transmission Easement. SAWS shall have full access to and the right to use all such materials pertaining to the Transmission Facilities and Transmission Easement; provided, however, that SAWS shall have no right to use any material whose use is otherwise restricted by Applicable Law, such as sealed engineering drawings.
ARTICLE VIII

TERMINATION OF DEFINITIVE AGREEMENT IN IMPLEMENTATION PERIOD

Section 8.1. Termination of Definitive Agreement. If this Definitive Agreement has entered the Implementation Period, the term of this Definitive Agreement shall terminate on the Initial Termination Date unless SAWS has exercised the Option, in which case, the term of this Definitive Agreement shall terminate on the "Final Termination Date." The initial termination date may be extended by the terms of Section 2.1.B.(1). This Definitive Agreement may be terminated prior to the Initial Termination Date or the Final Termination Date if SAWS exercises its Right of Termination as provided in Section 8.2. Upon termination of this Definitive Agreement, all rights and obligations between LCRA and SAWS based on this Definitive Agreement shall be extinguished and have no legal effect, except for those rights and obligations that explicitly survive Final Termination according to this Article and any other provisions of this Definitive Agreement.

Section 8.2. SAWS’ Right of Termination during Implementation Period.

8.2.A. Right of Termination. SAWS shall have the right to terminate this Definitive Agreement (the “Right of Termination”) on any day following the last day of the Minimum Reserved Period. In the event SAWS desires to exercise its Right of Termination, SAWS shall: (i) give prior written notice (the "Termination Notice") to LCRA of its desire to terminate this Definitive Agreement at least three (3) years before the intended effective date of Final Termination, and (ii) on or before the date of termination, pay to LCRA all amounts outlined in this Section 8.2 (the “Termination Fee”). Termination shall occur on the date for termination specified in the Termination Notice.

8.2.B. Payment of Termination Fee to LCRA. SAWS shall pay to LCRA on or before Final Termination the Termination Fee, which shall be the sum of the following:

1) Unaccounted for Project Costs of Region K Project(s). To the extent known, the Unincurred Capital Costs of the Region K Projects and the Incurred Capital Costs of the Region K Projects, to the extent those Project Costs have not already been accounted with credits to the Credit Accounts.

2) Unaccounted for Project Costs of SAWS Project(s). Project Costs associated with any SAWS Component Projects which SAWS has authorized to be built or constructed pursuant to Section 2.6, which costs have not been accounted for with credits from the SAWS Credit Account and which costs LCRA is obligated to pay.

3) Unpaid Transmission Facilities Fee. The unpaid portion of the LCRA Transmission Facilities Costs, if any, incurred by LCRA in accordance with this Definitive Agreement.
**Section 8.3. Obligations that Survive Termination.** Without limiting or excluding any other obligations under this Definitive Agreement that survive Final Termination as specifically provided in other sections of this Definitive Agreement, the following obligations of the Parties shall specifically survive Final Termination:

8.3.A. **Maintenance of Books and Records.** For each Component Project noticed and/or constructed under this Definitive Agreement as well as the LCRA Transmission Facilities, LCRA shall maintain books and records of account for five (5) years after Final Termination, including the final values for the Region K Credit Account and the SAWS Credit Account, all as required under Article V. Such books and records shall contain, without limitation, records of all Project Costs, LCRA Transmission Facilities costs, and all payments by SAWS to the LCRA.

8.3.B. **Mediation and Arbitration Provisions.** The Parties shall continue to abide and be bound by the Mediation and Arbitration provisions of Sections 10.5 and 10.6 respectively, in order to resolve any disputes that might arise between the Parties regarding their continuing obligations and rights under this Definitive Agreement.
ARTICLE IX

FORMATION AND OPERATION OF CONTRACT COMMITTEE

Section 9.1. Agreement to Establish Contract Committee. LCRA and SAWS hereby agree to establish a Contract Committee. The Contract Committee shall have only those responsibilities assigned to it in this Definitive Agreement or otherwise agreed to in writing by the Parties. In general, the Contract Committee shall determine for the Parties all decisions and actions that the Parties must make by mutual agreement under this Definitive Agreement. The Contract Committee shall have no authority to make a decision(s) for a Party when this Definitive Agreement reserves the unilateral right to make that decision to the Party alone or when any such decision requires the approval of the Party's governing board.


9.2.A. Appointment and Removal of Committee Members. The Contract Committee shall consist of a total of six (6) committee members. LCRA shall appoint three (3) committee members, and SAWS shall appoint three (3) committee members. The Parties shall appoint the initial members on the first day of the Study Period. Every SAWS appointee to the Contract Committee must be an employee or officer of SAWS, and every LCRA appointee must be an employee or officer of LCRA. Each Contract Committee member shall serve at the pleasure of the entity appointing such committee member, and the entity may, in its sole discretion, remove and appoint replacements for any and all of its Contract Committee Members.

9.2.B. Committee Operations.

(1) Regular Committee Meetings. The Contract Committee shall hold at least one (1) meeting per year. The first meeting of the Contract Committee shall be within three (3) months following the first day of the Study Period. By unanimous decision, the members of the Contract Committee may decide to hold regular Contract Committee meetings more often than once every year.

(2) Special Committee Meetings. Either LCRA or SAWS may call special Contract Committee meetings in addition to the Contract Committee’s regular meetings by giving notice to the other Party and to the members of the Contract Committee of a requested special meeting. A Party must give notice at least ten (10) days before the scheduled Contract Committee’s special meeting. Notice of less than ten (10) days shall not be effective without the consent of the other Party and all the members of the Contract Committee.

(3) Committee Administration. LCRA shall establish the agenda for each special or regular meeting of the Contract Committee. In addition, the LCRA shall prepare meeting notes and minutes and otherwise conduct the administrative business of the Contract Committee. LCRA’s reasonable expenses incurred in performing the functions of this Section 9.2.B.(3) shall be Study Period Costs for meetings occurring
during the Study Period and Project Costs of the Region K Projects during the first ten (10) years of the Implementation Period, and thereafter, Project Costs of the SAWS Projects.

9.2.C. Committee Expenses. The Parties shall pay all the expenses incurred directly by their representative members on the Contract Committee. Thereafter, LCRA shall pay the expenses of the LCRA-appointed members and SAWS shall pay the expenses of the SAWS-appointed members. In addition, LCRA shall pay all general administrative and business expenses of the Contract Committee, including, without limitation, costs associated with conducting meetings, preparing meeting minutes, and performing other administrative tasks associated with the Contract Committee’s operations (but excluding the salaries of the Contract Committee members). Once LCRA has paid these committee business expenses, it may include them as Study Period Costs, Projects Costs of the Region K Projects, or SAWS Projects, as appropriate.

9.2.D. Appeal of Committee Decisions. If the Contract Committee cannot reach unanimous agreement on any given issue, then any member of the Contract Committee can request that the decision be appealed to the General Manager of LCRA and the President of SAWS. The General Manager of LCRA and the President of SAWS shall then attempt to reach an agreement on the issue appealed to them.

Section 9.3. Meetings of Parties Outside Contract Committee. Either Party may request a meeting with the other Party by giving notice to the other Party at least ten (10) days in advance of the requested meeting.

Section 9.4. Binding Decisions of Contract Committee. A decision of the Contract Committee can bind the Parties to this Definitive Agreement if: (i) the Contract Committee’s decision was unanimous, or (ii) both the LCRA Board of Directors and the SAWS Board of Trustees have subsequently confirmed any non-unanimous decision of the Contract Committee. A decision binding on the Parties shall have the same force and effect under this Definitive Agreement as if the boards of each of the respective Parties had approved the decision. Notwithstanding the foregoing, any action by the Contract Committee that requires approval by the boards of either SAWS, LCRA or both shall not become a binding decision until the appropriate board(s) have given approval. A Contract Committee decision may require board approval either because of Applicable Law, a particular provision of this Definitive Agreement, SAWS or LCRA policy, or any of the above.
ARTICLE X

NOTICE; DEFAULT; CURE

Section 10.1. Notices. Any notice, payment, demand or communication required or permitted to be given by the provisions of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the Party or to an officer of the Party to whom the same is directed, or if sent by registered or certified mail, postage and charges prepaid, to the address of a Party as shown on the signature page of this Definitive Agreement, or to such other address as shall be furnished in writing by any Party to another. Any such notice shall be deemed to be transmitted as of the date so delivered, if delivered personally, or as of the date on which the same was deposited with adequate postage in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid. All notices hereunder shall be effective on transmittal, except where actual receipt is required by an express provision hereof.

Section 10.2. Notice and Cure. Notwithstanding any other provision hereof, if a Party shall fail to pay any sum of money or perform any obligation hereunder the defaulting Party shall be entitled to notice of such failure and the opportunity to cure such failure ("Notice and Cure") to the extent provided in this Section 10.2.

10.2.A. Failure to Pay. In the event that a Party shall fail to pay any sum of money, either at the time or in the amount provided herein, such Party failing to pay shall be entitled to a period of ten (10) days from the date notice of such failure to pay is given by the other Party in order to cure such failure to pay.

10.2.B. Failure to Perform. In the event that a Party shall fail to perform any obligation (other than a payment obligation) hereunder, either at the time or in the manner provided herein, such Party failing to perform shall be entitled to a period of thirty (30) days from the date notice of such failure to perform is given by the other Party in order to cure such failure to perform; provided that if such failure to perform cannot reasonably be cured within such thirty (30) day period, and such non-performing Party shall commence curative actions within such thirty (30) day period the cure period shall continue for as long as the non-performing Party shall diligently proceed with such curative actions.

10.2.C. Default. If a Party shall fail to timely pay or timely perform all of its obligations under this Definitive Agreement and does not cure such failure after receipt of notice of failure to perform and opportunity to cure to the extent entitled under Section 10.2.A. or B., such nonpaying or non-performing Party shall be deemed to be in "Default" under this Definitive Agreement.

Section 10.3. Default and Remedies. In the event of a Default by either Party under this Definitive Agreement, the non-defaulting Party shall be entitled to any remedy available to such non-defaulting party at law and/or in equity, except as specifically limited in Sections 10.3, 10.4, 10.5, and 10.6 of this Definitive Agreement. Notwithstanding the foregoing, unless the
Parties shall agree in writing to terminate, or a right of termination is specifically provided in this Definitive Agreement, the Definitive Agreement shall not be terminated for a Default or any other reason until a court of competent jurisdiction or a state administrative agency with competent jurisdiction shall rule by final ruling, order, decision or judgment that an uncured default exists under this Definitive Agreement and the non-defaulting Party has the right to terminate this Definitive Agreement and such Default is not cured within thirty (30) days of such judgment becoming final and no longer subject to any continuing appeal.

**Section 10.4. No Right to Withhold Payment or Delivery of Water.** No Party shall have the right to withhold any payment to the other Party hereunder, but may make any such payments under protest. If SAWS is making all payments due under this Agreement, LCRA shall not have the right to withhold delivery of water to SAWS prior to termination of this Definitive Agreement, even if SAWS is then in Default. Notwithstanding the foregoing, in the event that SAWS shall withhold any payment hereunder (after Notice and Cure to the extent entitled) and shall continue to withhold such payment for more than six (6) months after the date due, LCRA shall be entitled to withhold delivery of water to SAWS until the delinquent payment is paid to the LCRA.

**Section 10.5. Mediation.** In the event any controversy arising under this Definitive Agreement is not resolved by informal negotiations between SAWS and LCRA (or among the members of the Contract Committee if the dispute occurs within the Contract Committee) within thirty (30) days after any Party requests negotiations, upon the request of either Party, the controversy shall be referred to the voluntary settlement procedure known as mediation, which process shall be governed by the TEXAS CIVIL PRACTICE & REMEDIES CODE, Section 154.002, et seq. The Parties shall attempt to select a mutually acceptable mediator, who shall be an accountant, lawyer or engineer with the requisite training and accreditation as a mediator, to mediate the dispute between the Parties. Failing identification of a mutually acceptable mediator by the Parties, the Parties shall request the Presiding Judge of the State District Courts of Travis County, Texas, to appoint a mediator or, in the absence of a Presiding Judge, the Judge of the lowest-numbered State District Court in Travis County, Texas. The mediation process shall continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or any Party chooses not to continue further. All costs and expenses of the mediation (including the mediator’s fees), shall be shared equally by the Parties; provided, however, that costs incurred by each Party shall be costs solely of such Party.

**Section 10.6. Arbitration.**

10.6.A. **Agreement to Use Arbitration.** In the event any controversy arising under this Agreement pertaining to either (i) accounting for costs, expenses and credits, or (ii) engineering or design requirements for any part of a Component Project is not resolved by informal negotiations or pursuant to mediation as provided in Section 10.5. hereof, SAWS and LCRA agree that it is their intent that any such dispute not be settled through the judicial system. Rather, the Parties agree to submit any such dispute to binding arbitration. The Parties agree that binding arbitration, as fully described below, is the most effective, prudent and reasonable
manner to resolve disputes relating to or concerning such issues under this Definitive Agreement.

10.6.B. **Procedure for Arbitration.** SAWS and LCRA hereby agree as follows:

SUBJECT TO THE MEDIATION PROVISION IN SECTION 10.5. HEREOF, ANY CONTROVERSIES, DISPUTES, ISSUES, CLAIMS, AND OTHER MATTERS IN QUESTION ARISING OUT OF OR RELATING TO (1) ACCOUNTING FOR COSTS, EXPENSES AND CREDITS, OR (2) ENGINEERING OR DESIGN REQUIREMENTS FOR ANY PART OF A COMPONENT PROJECT OR THE LCRA TRANSMISSION FACILITIES UNDER THIS AGREEMENT AND ANY OTHER INSTRUMENTS EXECUTED IN CONNECTION WITH THIS DEFINITIVE AGREEMENT SHALL BE SETTLED AND DETERMINED IN TRAVIS COUNTY, TEXAS, BY BINDING ARBITRATION ADMINISTERED IN ACCORDANCE WITH THE RULES OF THE TEXAS GENERAL ARBITRATION ACT.

Immediately upon the failure of mediation, any Party may initiate arbitration under this Section 10.6 by giving written notice of demand for arbitration to the other Party of the issues in dispute. Thereafter, each Party shall appoint a single arbitrator and give notice of such appointment to the other within thirty (30) days after the notice of demand. Thereafter, one final neutral arbitrator shall be appointed by the Presiding Judge of the State District Court of Travis County, Texas, or, in the absence of a Presiding Judge, the Judge of the lowest-numbered State District Court in Travis County, Texas. The arbitrators shall hold a hearing within a reasonable time from the date of notice of selection of the neutral arbitrator. The written notice of demand for arbitration must be accompanied by a statement of the issues in dispute. The arbitrators shall be entitled to award attorneys’ fees, expenses and costs to the prevailing Party in any arbitration hereunder; otherwise expenses of the arbitration shall be apportioned equally between the Parties except each Party shall pay its own expenses of the proceedings, including attorneys fees. The arbitration shall take place and be subject to and be governed by the provisions of the Texas General Arbitration Act.

10.6.C. **Powers of Arbitrators.** Those persons selected as arbitrators shall have full power to make such findings and to give such orders and directions as they deem expedient in respect to a determination of issues and damages in the matter and the differences referred to them. The arbitrators shall determine and make their award concerning the matters in controversy within thirty (30) days from the date the hearings on such matters close. No Party shall unreasonably delay or otherwise prevent or impede the arbitration or the making of an award. The Parties further agree that the award made by the arbitrators shall be valid and binding on the Parties, and they agree to keep, observe and perform each of such awards and to have the same made an order of a District Court of Travis County, Texas. An entry of judgment may be made on such award.

10.6.D. **Arbitrators chosen for any specific arbitration proceeding shall be licensed accountants or engineers in the State of Texas experienced in the field of the controversy they are to resolve.**
ARTICLE XI

MISCELLANEOUS

Section 11.1. Section Headings and Recitals. Section and other headings contained in this Definitive Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Definitive Agreement or any provision hereof.

The Recitals set out at the beginning of this Agreement are incorporated in and are a part of this Agreement.

Section 11.2. GOVERNING LAW AND VENUE. THIS DEFINITIVE AGREEMENT, AND THE OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY AND BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. SUBJECT TO THE MEDIATION AND ARBITRATION PROVISIONS IN ARTICLE X, VENUE FOR ALL DISPUTES INVOLVING THIS DEFINITIVE AGREEMENT SHALL BE IN THE APPROPRIATE DISTRICT COURT IN TRAVIS COUNTY, TEXAS.

Section 11.3. Severability. Every provision of this Definitive Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Definitive Agreement. If any term or provision of this Definitive Agreement is found to be void or unenforceable by a court of competent jurisdiction, it is the intention and agreement of these Parties that the contract shall remain in force and effect as to all other terms and purposes and that the court or arbitrator shall reform or modify the void or unenforceable portions of this Definitive Agreement to as closely as possible carry out the original intent of the Parties.

Section 11.4. Counterparts. This Definitive Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement, and the signatures of any Party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

Section 11.5. Entire Agreement and Integration. This Definitive Agreement constitutes the entire agreement between the Parties relative to the subject matter herein. Any prior agreements between the Parties relative to the subject matter of this Definitive Agreement, including but not limited to the MEMORANDUM CONTRACT dated February 7, 2001, are deemed to have been replaced by, integrated into, and merged with this Definitive Agreement.

Section 11.6. Parties in Interest. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the undersigned Parties and the legal representatives, successors and permitted assigns of such Parties. Whenever a reference to any Party is made in this Definitive Agreement such reference shall be deemed to include a reference to the legal representatives, successors and permitted assigns of such Party.
Section 11.7. Gender. All words herein in the male gender shall be deemed to include words in the female gender wherever the context shall so require, and all words in the neuter gender shall be deemed to include words in the male and female gender wherever the context shall so require.

Section 11.8. Time. Time is of the essence in the performance of the Parties' obligations under this Definitive Agreement. This Definitive Agreement is effective as of March 1, 2002.

Section 11.9. Authority to Amend. This Definitive Agreement may be amended only by an official action by the Board of Trustees of SAWS and the Board of Directors of LCRA authorizing the President of SAWS and the General Manager of LCRA to enter a written agreement to amend this Definitive Agreement. Such an amendment will become effective only after such written agreement to amend is executed by individuals acting under the appropriate authority from their respective Party. This Section shall not apply to approval and/or amendment of the Study Period Plan, a Specific Study Plan, the Agreed Implementation Plan, a Project Plan, a Preliminary Design, or any Final Plans and Specifications prepared and to be agreed to pursuant to a specific requirement of this Definitive Agreement that are not in existence on the Effective Date.

Section 11.10. Incorporation of Definitions and Exhibits. All definitions, exhibits, schedules and other documents attached to this Definitive Agreement are fully incorporated into this Definitive Agreement and are made a complete and integrated part of this Definitive Agreement.

Section 11.11. Force Majeure. The term "Force Majeure" as used herein, shall mean those situations or conditions which are beyond the control of LCRA or SAWS and which, after the exercise of due diligence to remedy such situation or condition, render LCRA or SAWS unable, wholly or in part, to carry out the covenants contained herein. Such Force Majeure events are limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government of the United States or of the State of Texas or other civil or military authority, war, terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, storms, droughts worse than Drought of Record, civil disturbances, explosions, breakage of or accidents to machinery, pipelines or dams insofar as each of the foregoing are beyond the reasonable control of the LCRA, or its employees, agents, contractors or subcontractors. Notwithstanding anything herein to the contrary, Force Majeure events do not include occurrences to the extent they result in whole or in part, from the intentional acts, failure to act, or negligence of the LCRA or its employees, agents, contractors or subcontractors. LCRA shall use expedient and diligent efforts to correct or cure any event preventing the delivery of water to SAWS. SAWS shall be released from paying Aggregate Purchase Fees for any water that is not available to SAWS while a Force Majeure event prevents reservation or delivery of the water, however, SAWS shall pay the Aggregate Reservation Fee for the affected water for the duration of the Force Majeure event unless SAWS releases such water pursuant to the following sentence. If, due to a Force Majeure event, any Committed Purchase Quantity or
any Reserved Quantity is no longer available to SAWS (meaning that the Parties reasonably expect the water will be unavailable to SAWS for more than two (2) years), then SAWS may release the related portion of the Reserved Quantity or Committed Purchase Quantity (which shall become Released Water) without the obligation to give the prior notice (and continue payments) otherwise required by Section 2.6.D.(6) of this Definitive Agreement. LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to SAWS due to any Force Majeure event. LCRA and SAWS shall use reasonable and timely diligence to comply with their obligations under this Definitive Agreement.

Notwithstanding anything in Section 11.11 to the contrary, nothing in this Section 11.11 shall limit or affect the obligation of SAWS to pay the Transmission Facilities Fee to the extent such fee is used to pay Transmission Facilities Bonds.

**Section 11.12. No Partnership Created.** Nothing in this Definitive Agreement shall be deemed in any way or for any purpose to constitute the Parties hereto as partners, joint venturers, employers or employees, principals or agents, or as having any other relationship except that of independent Parties to this Definitive Agreement. Neither Party is authorized to make any contract, agreement, warranty, or representation or to create any obligation, express or implied, on behalf of the other except where explicitly indicated in this Definitive Agreement.

**Section 11.13. LCRA's Use of Monies Paid by SAWS.** Notwithstanding any other provision of this Definitive Agreement except as set forth below in this Section, all sums received by LCRA as payments by SAWS under this Definitive Agreement shall be revenues of LCRA which may be used by LCRA for any lawful purpose; provided that (i) the Aggregate Study Period Advances paid hereunder shall be used for the purposes set forth herein, and (ii) the Transmission Facilities Fees paid hereunder shall be considered as revenues and be available for use by LCRA only as permitted by Article VI.

**Section 11.14. Third Party Beneficiary.** No person other than the Parties, a bond trustee, or the holder of bonds issued to finance in whole or in part the Transmission Facilities may rely on or be a beneficiary of this Definitive Agreement.

**Section 11.15. Assignment.** This Definitive Agreement and the rights of the Parties hereunder may not be assigned in whole or in part to any third party without the written consent of the Parties. Neither Party shall unreasonably withhold consent to the assignment of this contract or rights hereunder to a third party lender financing the construction of all or any part of the Component Projects or to a governmental entity (including any corporation or similar entity wholly owned by or affiliated with a governmental entity) succeeding to the assigning Party's rights as appropriate to manage the Lower Colorado River Basin or provide Water Service in Region L. Any such assignment shall not relieve the assigning Party of its obligations hereunder.

**Section 11.16. Consent and/or Approval.** Whenever consent or approval of a Party is required under this Definitive Agreement, such consent shall not be unreasonably withheld or
delayed unless the applicable provision of this Definitive Contract expressly states that the approval is at the sole discretion of the Party. All approvals and/or consents must be in writing signed by the Party giving the consent and/or approval.

Section 11.17. Parties Efforts. The Parties shall use good faith efforts to reach agreement on decisions to be made under this Agreement. All reasonable efforts will be made to facilitate the review and response on requested decisions.

[signatures on next page]
IN WITNESS WHEREOF, the undersigned through their representatives have set their hands effective March 1, 2002.

Addresses:

1001 E. Market Street
San Antonio, Texas 78298

3700 Lake Austin Boulevard
Austin, Texas 78703

PARTIES:

SAN ANTONIO WATER SYSTEM

By:
EUGENE E. HABIGER
PRESIDENT/CHIEF EXECUTIVE OFFICER

LOWER COLORADO RIVER AUTHORITY

By:
JOSEPH J. BEAL, P.E., General Manager
SCHEDULE OF EXHIBITS

Exhibit A – Definition

Exhibit B – LCRA Service Area as of January 1, 2001

Exhibit C – Region L as of January 1, 2001

Exhibit D – Region K as of January 1, 2001

Exhibit E – Lower Colorado River Basin
EXHIBIT A

DEFINITIONS

Acre-Foot. The volume of water covering one acre when the water is one foot deep. An acre-foot of water is equal to approximately 325,851 gallons of water.

Additional Study Period Advances: As defined in Article I, Section 1.5.C.

Agreed Implementation Plan: The master schedule and order of development for all Component Projects, Transmission Facilities and other associated projects negotiated and approved by the Parties during the Study Period, as amended or updated from time to time thereafter and as defined in Article I, Section 1.8.A.

Aggregate Committed Purchase Fee: As defined in Article V, Section 5.8.B.

Aggregate Reservation Fee: As defined in Article V, Section 5.8.A.

Aggregate Study Period Advances: As defined in Section 1.5.C.

Agricultural Users: As defined in Article I, Section 1.3.A.(1)

Amortization Rate: The AAA insured thirty-year tax exempt municipal bond interest rate if the LCRA could finance such costs by issuance of tax exempt bonds or the same uninsured rate if LCRA could not finance such costs by issuance of tax exempt bonds.

Amortized Amount: As defined in Article V, Section 5.5.C.(5).

Amount Credited: As defined in Section 5.5.C.(2).

Annual Study Period Advance: As defined in Article I, Section 1.5.C.

Annual Project Cost Amortization Amount: As defined in Article V, Section 5.8.B.(2)(a).

Applicable Law: As defined in Article I, Section 1.4.A.

Approved Water Sources: As defined in Article II, Section 2.11.A.

Capital Cost(s) or Project Cost(s): All costs associated with the development, construction and implementation of a Component Project, including, without limitation, design, permit, construction, contingency and general and administrative overhead costs as estimated or incurred prior to completion of construction of a Component Project to the extent such costs are not included as a Study Cost.

Committed Purchase Quantity: That portion of the Reserved Quantity that SAWS elects to purchase in accordance with the Agreed Implementation Plan, as described in Article II, Section 2.6.B.

Component Project: Any SAWS Component Project or Region K Component Project identified in the Agreed Implementation Plan.

Conservation Improvements: As identified in Article III, Section 3.8.

Conservation Studies: As defined in Article I, Section 1.3.A.(1).

Conservation Water: As defined in Article II, Section 2.11.A.(1).

Construction Adjustment Surcharge: As defined in Article VI, Section 5.8.B.(2).

Contract Committee: As defined in Article IX, Section 9.1.

Credit Account Interest Rate: The five (5) year Treasury Bill Rate as of January 1 of the year in which it is applied, which rate shall be used until the next January 1.

Credit Accounts: As defined in Article V, Section 5.4.B.

Credit Balance: As defined in Article V, Section 5.5.B.(3).

Credit Entry: As defined in Section 5.5.B.(1).

Debit Balance: As defined in Article V, Section 5.5.B.(4).

Debit Entry: As defined in Section 5.5.B.(2).

Definitive Agreement: This Definitive Agreement Between San Antonio Water System and Lower Colorado River Authority dated March 1, 2002.

Delivery Point(s): The point(s) at which the LCRA Transmission Facilities intersect the westernmost boundary of the LCRA Service Area, as the boundary existed on January 1, 2001, and at which point(s) water will be delivered to SAWS and measured pursuant to this Definitive Agreement. SAWS and LCRA shall determine the Delivery Points by mutual agreement during the Study Period.

Development Studies: As defined in Article I, Section 1.3.A.(2).
**Diversion Points**: The point(s) on the bank of the Colorado River downstream of Mansfield Dam where Run-of-River Flows from the Colorado River and releases from the LCRA Stored Water System shall be diverted to one or more Off-Channel Reservoirs from which Off-Channel Reservoirs water shall be diverted to SAWS all in accordance with this Definitive Agreement.

**Drought of Record**: The hydrological cycle affecting the Lower Colorado River Basin during the years 1947-1956.

**Effective Date**: March 1, 2002.

**Environmental Studies**: As defined in Article I, Section 1.3.A.(4).

**EPA**: United States Environmental Protection Agency and any successor agency.

**Expansive Action Surcharge**: That additional surcharge SAWS must pay when an Expansive Action occurs or otherwise exists, with such surcharge calculated in accordance with Article II, Section 2.9.B.

**Expansive Actions**: Those prohibited acts identified as Expansive Actions and outlined in Article II, Section 2.9.

**Extended SAWS Decision Period**: As defined in Article I, Section 1.10.

**Extended Term**: As defined in Article II, Section 2.1.B.

**Feasibility Studies**: As defined in Article I, Section 1.3. This definition includes the Conservation Studies, the Development Studies, the Groundwater Studies and the Environmental Studies.

**Final Plans and Specifications**: As defined in Article III, Section 3.4.A.

**Final Termination**: The termination of the Definitive Agreement in accordance with the provisions of this Definitive Agreement.

**Final Termination Date**: The date that is the eightieth (80th) anniversary of the Implementation Date.

**Firm Supply**: A quantity of water available without shortage throughout a repeat of the Drought of Record.

**First Notice**: As defined in Article II, Section 2.6.

**Force Majeure**: As defined in Article XI, Section 11.11.

**Groundwater**: Water pumped from any underground aquifer.
Groundwater Studies: As defined in Article I, Section 1.3.A.(3).

Implementation Date: As defined in Article II, Section 2.1.A.

Implementation Period: That portion of the term of this Definitive Agreement from the Implementation Date to the Final Termination of this Definitive Agreement.

Implementation Period Fees: The Aggregate Reservation Fee, the Aggregate Committed Purchase Fee and the Initial Payment as defined in Article II, Section 2.7.A. and as outlined in Article V, Section 5.8.

Incurred Capital Costs of Region K Projects: As defined in Article V, Section 5.4.B.(1).

Incurred Capital Costs of SAWS Projects: As defined in Article V, Section 5.4.B.(2).

Initial Payment: As defined in Article II, Section 2.2.

Initial Termination Date: As defined in Article II, Section 2.1.A.

Interim Purchase Period: The period from SAWS’ delivery of a Purchase Notice to the beginning of a Purchase Phase as set forth in Article II, Section 2.6.C.

LCRA: The Lower Colorado River Authority.

LCRA Act: The Lower Colorado River Authority Act of 1934, as amended.

LCRA Inverted Block Rate: That rate established from time to time by LCRA’s Board of Directors as a penalty rate for any Firm Supply customer exceeding its maximum annual contracted quantity.

LCRA Notice: As defined in Article II, Section 2.1.B.

LCRA Service Area: That area, depicted in Exhibit B, in which the LCRA is authorized as of January 1, 2001, to provide Water Service.

LCRA Stored Water System: That combination of (i) reservoirs and certificates of adjudication owned by LCRA comprising lakes Buchanan and Travis, all as more fully described in the LCRA Water Management Plan, (ii) any Component Project constructed and placed into operation under the terms of this Definitive Agreement, and (iii) any Permits associated with such Component Projects. The LCRA Transmission Facilities are not a part of the LCRA Stored Water System.

LCRA Transmission Facilities: As defined in Article VI, Section 6.1.B.(1).
LCRA Water Management Plan: As defined in Article II, Section 2.6.F.

Lower Colorado River Basin: That certain land area drained by the Colorado River in the State of Texas and consisting of, without limitation, the following Texas counties: San Saba, Llano, Lampasas, Burnet, Blanco, Travis, Bastrop, Fayette, Colorado, Wharton, Matagorda, Taylor, Callahan, Eastland, Coleman, Runnels, Brown, Comanche, Concho, McCulloch, Mills, Schleicher, Menard, Sutton, Kimble, Edwards, Real, Kerr, Gillespie, Hays, Caldwell, Lee, Washington, Williamson, Austin and Mason, being the area shown in Exhibit E.

Meters: Electronic and/or mechanical devices used for measuring volumes or rates of water delivery.

Minimum Reserved Period: As defined in Article II, Section 2.3.A.

Monthly Capital Cost Amortization Figure: As defined in Article V, Section 5.8.B.(2).

Notice and Cure: As defined in Article X, Section 10.2.

Off-Channel Reservoir(s): Water-storage reservoirs constructed away from any river, channel or stream and to which natural rainfall runoff, river flows, and stored water releases are diverted for future delivery to SAWS or other LCRA customers.

Option: As defined in Article II, Section 2.1.B.(1).

Out-of-Service-Area Customers: Any LCRA customers outside of the LCRA Service Area.

Parties: LCRA and SAWS.

Party: LCRA or SAWS.

Permits: As defined in Article I, Section 1.4.B.

Pierce Ranch Agreement: The SUPPLEMENTAL CONSIDERATION AGREEMENT dated May 23, 2000, by and between LCRA and the Testamentary Trusts of Lacy Withers Armor.

Preceding Month: As defined in Article V, Section 5.5.A.

Preliminary Design: Those elements, including a budget and scope of work, necessary to draft a Project Plan, as described in Article III, Section 3.2.

Pre-Option Contract Water: As defined in Article I, Section 1.8.C.(2).

Prior Year Undelivered Quantity Credit: As defined in Article V, Section 5.8.B.
**Project Plan:** As defined in Article III, Section 3.3.A.

**Purchase Notice:** SAWS’ written notice to LCRA of SAWS’ election to purchase any or all of the Reserved Quantity in accordance with Article II, Section 2.6, as defined in Article II, Section 2.6.A.(1).

**Purchase Phase.** As defined in Article II, Section 2.6.C.

**Raw Water:** Untreated water from any source.

**Reduced Water:** Any portion of the Reserved Quantity or the Committed Purchase Quantity that is rendered unavailable for reservation or purchase by SAWS due to any amendment or update to the LCRA Water Management Plan, as described in Article II, Section 2.6.F.

**Region K:** The area designated as Region K by the TWDB pursuant to SB-1, including all or portions of Mills, San Saba, Llano, Burnet, Gillespie, Blanco, Hays, Travis, Bastrop, Fayette, Colorado, Wharton and Matagorda counties being the area shown on Exhibit D.

**Region K Component Project:** Any Component Project included in the Region K Projects.

**Region K Credit Account:** As defined in Article V, Section 5.4.B.(2).

**Region K Projects:** As defined in Article I, Section 1.8.B.

**Region K SB-1 Plan:** The regional water plan for Region K on file with the TWDB pursuant to SB-1 as of January 5, 2001.

**Region L:** The area designated as Region L by the TWDB pursuant to SB-1, including all or portions of Uvalde, Zavala, Dimmit, Medina, Frio, La Salle, Kendall, Bexar, Atascosa, Hays, Comal, Guadalupe, Wilson, Karnes, Caldwell, Gonzales, De Witt, Goliad, Victoria, Refugio, and Calhoun counties and being the area shown on Exhibit C.

**Region L Provider:** Providers of Water Service within Region L, including, but not limited to: The six major Region L Providers as of the date hereof are: 1) SAWS, 2) the BEXAR METROPOLITAN WATER DISTRICT (“Bexar Met”), 3) the CANYON REGIONAL WATER AUTHORITY (“CRWA”), 4) the GUADALUPE-BLANCO RIVER AUTHORITY (“GBRA”), 5) the NEW BRAUNFELS UTILITIES (“NBU”), and 6) the CITY OF SAN MARCOS (“San Marcos”).

**Region L SB-1 Plan:** The regional water plan for Region L on file with the TWDB pursuant to SB-1 as of January 5, 2001.

**Released Water:** Water that SAWS has no further right to reserve or purchase and that LCRA may use in any manner LCRA elects in its sole discretion, including any water that SAWS did not elect to reserve as of the Implementation Date, any water that SAWS has released pursuant to this
Definitive Agreement, and any water that has been automatically released pursuant to this
Definitive Agreement.

Reservation Adjustment Surcharge: As defined in Article V, Section 5.8.A.(3).

Reservation Fee: As defined in Article V, Section 5.8.A.(1).

Reservation Surcharge: As defined in Article V, Section 5.8.A.(2).

Reserved Quantity: As defined in Article II, Section 2.3.A.

Right of First Refusal: As defined in Article II, Section 2.16.

Right of Termination: As defined in Article VIII, Section 8.2.A.

Run-of-River Flows: As defined in Article II, Section 2.11.A.(1).

SAWS: The San Antonio Water System

SAWS Component Project: Any Component Project included in the SAWS Projects.

SAWS Credit Account: As defined in Article V, Section 5.4.B.(2).

SAWS Notice of Extension: As defined in Article II, Section 2.1.B.

SAWS Projects: As defined in Article I, Section 1.8.B.

SAWS Transmission Facilities: As defined in Article VI, Section 6.1.B.

SB-1: Senate Bill 1, 75th Texas Legislature.

Simsboro Project: A water supply project producing groundwater from the Simsboro Aquifer as
described in option number SCTN 3c contained in the Region L SB-1Plan.

Specific Study Plan: As defined in Article I, Section 1.3.

Stored Water Rate: The rate per acre-foot of water fixed from time to time by the LCRA Board of
Directors and charged by the LCRA to all Firm Supply delivery contracts, such as that between
LCRA and the City of Austin.

Study Period: As defined in Article I, Section 1.1.

Study Period Account: As defined in Article I, Section 1.5.C.

Study Period Annual Report: As defined in Article I, Section 1.10.
Study Period Costs: As defined in Article I, Section 1.5.B.

Study Period Expiration Date: As defined in Article I, Section 1.1.

Study Period Extension: As defined in Article I, Section 1.8.A.

Study Period Final Report: As defined in Article I, Section 1.12.B.

Study Period Option Fee: As defined in Article I, Section 1.5.A.

Study Period Plan: As defined in Article I, Section 1.3.

TWDB: The Texas Water Development Board or any successor agency.

TNRCC: The Texas Natural Resource Conservation Commission or any successor agency.

Termination Fee: As defined in Article VIII, Section 8.2.B.

Termination Notice: As defined in Article VIII, Section 8.2.A.

Total Estimated Capital Cost: As defined in Article I, Section 1.8.C.

Transmission Easement: All easements or other real property interests required to accommodate the LCRA Transmission Facilities.


Transmission Facilities Bonds: As defined in Article VI, Section 6.5.(C)(1).

Transmission Facilities Fee: As defined in Article VI, Section 6.5.B.(11).

Transmission Facilities Budget: As defined in Article VI, Section 6.5.A.

Transmission Facilities Plan: As defined in Article VI, Section 6.1.C.

Unincurred Capital Costs of the Region K Projects: As defined in Article V, Section 5.4.B.(1).

Water Service: The provision of water, whether potable or non-potable, retail or wholesale, for any beneficial use to a third party.

Winding Up Period: As defined in Article I, Section 1.12.A.
FIRST AMENDMENT TO
DEFINITIVE AGREEMENT BETWEEN SAN ANTONIO WATER SYSTEM AND
LOWER COLORADO RIVER AUTHORITY DATED MARCH 1, 2002

This First Amendment, executed by and between the San Antonio Water System
("SAWS") and the Lower Colorado River Authority ("LCRA") as of
February 28, 2003, is intended to amend and supplement that certain
DEFINITIVE AGREEMENT BETWEEN SAN ANTONIO WATER SYSTEM AND
LOWER COLORADO RIVER AUTHORITY DATED MARCH 1, 2002 (the
"Definitive Agreement").

WHEREAS, the Definitive Agreement requires LCRA to develop the Study Period Plan
within the first 12 months of the term of the Definitive Agreement and anticipates that
LCRA will submit the Study Period Plan, approved by LCRA's Board of Directors, to
SAWS on or before March 1, 2003; and

WHEREAS, LCRA has developed a draft of the Study Period Plan, in consultation with
SAWS and with a broad public and scientific review process; and

WHEREAS, LCRA and SAWS have agreed that it would be prudent to provide
additional time to review and refine the draft Study Period Plan prior to the submission of
the Study Period Plan to the LCRA Board of Directors and the SAWS Board of Trustees
for approval; and

WHEREAS, Section 27 of the LCRA Act authorizes LCRA to transfer water from the
Colorado River to a place in Williamson County outside the Colorado River watershed
under certain conditions set out therein; and

WHEREAS, Section 27 of the LCRA Act requires that any transfer of surface water
made pursuant thereto must result in "no net loss" of water to the Colorado River watershed; and

WHEREAS, Section 27 of the LCRA Act requires that a surcharge be paid on the
applicable water rates charged for water transferred outside the Colorado River
watershed. The surcharge funds collected by LCRA are required to be deposited into a
separate fund known as the agricultural water conservation fund (the "Conservation
Fund"). Pursuant to Section 27 of the LCRA Act, LCRA may use such funds only for the
development of water resources or other water use strategies to replace or offset the
amount of water transferred to Williamson County outside the Colorado River watershed; and

WHEREAS, water may be transferred to a place in Williamson County outside the
Colorado River watershed as early as 2004, and in order to comply with the "no net loss"
requirement of Section 27 of the LCRA Act, LCRA will replace or offset the amount of
water to be diverted by implementing conservation projects using the funds in the Conservation Fund; and

WHEREAS, if SAWS elects to reserve water under the Definitive Agreement at the end of the Study Period, then SAWS will be obligated to pay to LCRA, through a lump sum payment, water rates, and surcharges, an amount of money that will pay for, among other things, certain water demand reduction projects that are exclusively available to meet the goals of the Definitive Agreement; and

WHEREAS, implementation of certain of the water demand reduction measures that are exclusively available to meet the goals of the Definitive Agreement may be the most cost effective method for offsetting water to be diverted to Williamson County pursuant to Section 27 of the LCRA Act; and

WHEREAS, funding for a portion of the cost of implementing such water demand reduction measures may be available during the Study Period from the United States Department of Agriculture through the Natural Resource Conservation Service (“NRCS”) or from other sources, which funding would reduce the amount of money SAWS would be obligated to pay to LCRA should SAWS elect to reserve water under the Definitive Agreement; and

WHEREAS, SAWS and LCRA agree that implementation of said demand reduction measures to temporarily offset the amount of water to be transferred to Williamson County outside the Colorado River watershed and taking advantage of NRCS and other funding that might not be available after the end of the Study Period, can be beneficial to SAWS, LCRA, Williamson County, ratepayers, the Agricultural Users, and the Colorado River basin; and

WHEREAS, SAWS and LCRA have agreed that it is in the best interest of both Parties to amend and supplement the Definitive Agreement to allow additional time to review and refine the draft Study Period Plan and to provide the parameters for the implementation of certain demand reduction measures to temporarily offset the amount of water to be transferred to Williamson County outside the Colorado River watershed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LCRA and SAWS hereby agree to amend and supplement the Definitive Agreement as follows:

SECTION I
EXTENSION OF STUDY PERIOD PLAN DEADLINE

1.1. The first paragraph of Section 1.3 of the Definitive Agreement is deleted in its entirety and replaced with the following two paragraphs:

Section 1.3. Study Period Analyses. During the Study Period, the Parties shall identify and pursue scientific and engineering analyses and studies to
determine the feasibility of making available an additional 330,000 acre-feet per year of water from the Lower Colorado River Basin while adequately protecting the environment of the Lower Colorado River Basin (the “Feasibility Studies”). During the first 18 months of the Study Period, LCRA, in consultation with SAWS and providing for a broad public and scientific review process, shall develop an overall study plan (the "Study Period Plan"), which shall include (i) the identification and prioritization of individual Feasibility Studies; (ii) a study plan for each specific Feasibility Study, including the specific scope, budget and other parameters of such specific Feasibility Study (“Specific Study Plan”); and (iii) the identification of Permits required to make the additional 330,000 acre-feet of water per year available. LCRA shall submit to SAWS a draft of the Study Period Plan. SAWS may, but shall not be required to, provide comments to LCRA regarding the draft Study Period Plan before the final Study Period Plan is submitted to SAWS for approval.

LCRA shall submit a final proposed Study Period Plan to SAWS no later than September 1, 2003. LCRA’s submission of the final proposed Study Period Plan to SAWS shall confirm the LCRA Board of Directors’ approval of the final proposed Study Period Plan. LCRA shall only implement the Feasibility Studies after the SAWS Board of Trustees has properly approved the Study Period Plan. During the Study Period, the Parties may, as part of the approved Study Period Plan, apply decision science tools and methodologies to aid in the analysis of complex issues and the level of certainty associated with Feasibility Study conclusions.

1.2. The following language is added at the end of Section 1.3.B of the Definitive Agreement:

All changes to the draft proposed Study Period Plan proposed during the Study Period Plan review period shall be subject to such public and scientific review.

1.3. Section 1.3.C. of the Definitive Agreement is deleted in its entirety and replaced with the following language:

1.3.C. Termination for Lack of Board Approval of Study Period Plan. In the event a proposed Study Period Plan has not been submitted to SAWS by LCRA within 30 days after September 1, 2003, SAWS may terminate this Definitive Agreement at any time prior to approval of the Study Period Plan by the SAWS Board of Trustees by giving 30 days written notice to LCRA. In the event the SAWS Board of Trustees has not approved the Study Period Plan within 90 days after the date LCRA submitted the proposed Study Period Plan to SAWS, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party, and in the event of such termination the Study Period Option Fee for the year of termination shall be prorated on a daily basis to the date of termination.
1.4. The following language is added to the Definitive Agreement as a new Section 1.5.C.(3):

(3) Notwithstanding anything in this Definitive Agreement to the contrary, LCRA shall have the right to expend up to $125,000 out of the Study Period Account for Study Period Costs incurred during the period from March 1, 2003, to September 1, 2003, in accordance with the budget dated February 6, 2003, and approved by SAWS, without further approval. Expenditures from the Study Period Account for Study Period Costs in excess of $125,000, if any, for such period shall be subject to approval by SAWS as required in this Definitive Agreement.

SECTION II
WATER DEMAND REDUCTION MEASURES

2.1. In the event LCRA elects to transfer surface water to a place in Williamson County under a water sale contract pursuant to Section 27 of the LCRA Act, whether such contract exists as of the date of this First Amendment or not, at any time prior to the end of the Study Period, and LCRA, in accordance with the procedures established in Section 27 of the LCRA Act, determines that the most cost effective method of offsetting such transferred water is the implementation of one or more of the water demand reduction methods identified in the Region K SB-1 Plan, then notwithstanding the provisions of Section 1.7 of the Definitive Agreement, LCRA may implement such water demand reduction methods to the extent necessary to offset the water transferred to Williamson pursuant to Section 27 of the LCRA Act, subject to the provisions set out in this First Amendment.

2.2. Each such water demand reduction measure implemented by LCRA to offset water transferred to Williamson County (“Offset Project”) shall be a Region K Component Project under the Definitive Agreement, and LCRA shall include each such Offset Project in the Agreed Implementation Plan. The actual Capital Costs of each Offset Project, when implemented, adjusted in accordance with the provisions of Section 1.8.C(1) and (3) of the Definitive Agreement (but excluding operation and maintenance costs) shall be included in the Total Estimated Capital Cost.

2.3. LCRA will make reasonable efforts to obtain grant funds that can be applied directly to the cost of designing and implementing the Offset Projects. In particular, LCRA will pursue grant funding under applicable NRCS programs including, without limitation, the Environmental Quality Incentive Program. SAWS shall have no liability for repayment of net grant funds or for the administration and operation of the grant programs.

2.4. The cost of design and implementation of any Offset Project, net of grant proceeds and other applicable contributions, shall be paid for with funds from the Conservation Fund.
2.5. In the event SAWS elects to reserve water in accordance with the provisions of the Definitive Agreement, then the total of the Capital Costs of the Offset Projects, (net of grant proceeds and cash or in-kind contributions to LCRA applied directly to such Capital Costs of the Offset Projects) shall be deemed to be Incurred Capital Costs of Region K Projects as of the date that is the first day of the Minimum Reserved Period for all purposes under the Definitive Agreement, and LCRA shall debit the Region K Credit Account accordingly pursuant to Section 5.5.C(4) of the Definitive Agreement.

2.6. Effective as of the date the Region K Credit Account is debited for the Incurred Capital Cost as described in the preceding paragraph, LCRA will reimburse the Conservation Fund by the amount of such debit; however, the water conserved through implementation of the Offset Projects shall continue to be available as an offset to the water transferred to Williamson County until the commencement of the Purchase Phase associated with the first Purchase Notice provided to LCRA from SAWS, at which time the water conserved by implementation of the Offset Projects shall be available to meet the goals of the Definitive Agreement.

2.7. For purposes of determining the quantity of water conservation for meeting the planning objectives under the Definitive Agreement, the projected water conservation based on the studies shall be used and not the actual water savings based on implementation of the Offset Projects. It is recognized that actual water conservation may vary from year to year based on project implementation and maintenance, and it is the Parties’ agreement to use estimated savings based on engineering data assuming consistent implementation for determining whether sufficient water conservation is available to implement the Definitive Agreement.

SECTION III
MISCELLANEOUS

3.1. Each capitalized term used herein has the definition given to it in the Definitive Agreement, unless it is otherwise specifically defined herein.

3.2. The terms and provisions of the Definitive Agreement not specifically amended hereby are ratified and confirmed and shall remain in full force and effect as supplemented hereby.
IN WITNESS WHEREOF, this First Amendment has been executed on behalf of the San Antonio Water System and the Lower Colorado River Authority by their duly authorized representatives.

SAN ANTONIO WATER SYSTEM

By: [Signature]
   Eugene Hubiger
   President/Chief Executive Officer

LOWER COLORADO RIVER AUTHORITY

By: [Signature]
   Joseph J. Burt, P.E.
   General Manager
This First Amendment, executed by and between the San Antonio Water System ("SAWS") and the Lower Colorado River Authority ("LCRA") as of February 28, 2003, is intended to amend and supplement that certain DEFINITIVE AGREEMENT BETWEEN SAN ANTONIO WATER SYSTEM AND LOWER COLORADO RIVER AUTHORITY DATED MARCH 1, 2002 (the "Definitive Agreement").

WHEREAS, the Definitive Agreement requires LCRA to develop the Study Period Plan within the first 12 months of the term of the Definitive Agreement and anticipates that LCRA will submit the Study Period Plan, approved by LCRA's Board of Directors, to SAWS on or before March 1, 2003; and

WHEREAS, LCRA has developed a draft of the Study Period Plan, in consultation with SAWS and with a broad public and scientific review process; and

WHEREAS, LCRA and SAWS have agreed that it would be prudent to provide additional time to review and refine the draft Study Period Plan prior to the submission of the Study Period Plan to the LCRA Board of Directors and the SAWS Board of Trustees for approval; and

WHEREAS, Section 27 of the LCRA Act authorizes LCRA to transfer water from the Colorado River to a place in Williamson County outside the Colorado River watershed under certain conditions set out therein; and

WHEREAS, Section 27 of the LCRA Act requires that any transfer of surface water made pursuant thereto must result in "no net loss" of water to the Colorado River watershed; and

WHEREAS, Section 27 of the LCRA Act requires that a surcharge be paid on the applicable water rates charged for water transferred outside the Colorado River watershed. The surcharge funds collected by LCRA are required to be deposited into a separate fund known as the agricultural water conservation fund (the "Conservation Fund"). Pursuant to Section 27 of the LCRA Act, LCRA may use such funds only for the development of water resources or other water use strategies to replace or offset the amount of water transferred to Williamson County outside the Colorado River watershed; and

WHEREAS, water may be transferred to a place in Williamson County outside the Colorado River watershed as early as 2004, and in order to comply with the "no net loss" requirements of Section 27 of the LCRA Act, LCRA will replace or offset the amount of
water to be diverted by implementing conservation projects using the funds in the Conservation Fund; and

WHEREAS, if SAWS elects to reserve water under the Definitive Agreement at the end of the Study Period, then SAWS will be obligated to pay to LCRA, through a lump sum payment, water rates, and surcharges, an amount of money that will pay for, among other things, certain water demand reduction projects that are exclusively available to meet the goals of the Definitive Agreement; and

WHEREAS, implementation of certain of the water demand reduction measures that are exclusively available to meet the goals of the Definitive Agreement may be the most cost effective method for offsetting water to be diverted to Williamson County pursuant to Section 27 of the LCRA Act; and

WHEREAS, funding for a portion of the cost of implementing such water demand reduction measures may be available during the Study Period from the United States Department of Agriculture through the Natural Resource Conservation Service ("NRCS") or from other sources, which funding would reduce the amount of money SAWS would be obligated to pay to LCRA should SAWS elect to reserve water under the Definitive Agreement; and

WHEREAS, SAWS and LCRA agree that implementation of said demand reduction measures to temporarily offset the amount of water to be transferred to Williamson County outside the Colorado River watershed and taking advantage of NRCS and other funding that might not be available after the end of the Study Period, can be beneficial to SAWS, LCRA, Williamson County, ratepayers, the Agricultural Users, and the Colorado River basin; and

WHEREAS, SAWS and LCRA have agreed that it is in the best interest of both Parties to amend and supplement the Definitive Agreement to allow additional time to review and refine the draft Study Period Plan and to provide the parameters for the implementation of certain demand reduction measures to temporarily offset the amount of water to be transferred to Williamson County outside the Colorado River watershed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LCRA and SAWS hereby agree to amend and supplement the Definitive Agreement as follows:

SECTION I
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1.1. The first paragraph of Section 1.3 of the Definitive Agreement is deleted in its entirety and replaced with the following two paragraphs:

Section 1.3. **Study Period Analyses.** During the Study Period, the Parties shall identify and pursue scientific and engineering analyses and studies to
determine the feasibility of making available an additional 330,060 acre-feet per year of water from the Lower Colorado River Basin while adequately protecting the environment of the Lower Colorado River Basin (the “Feasibility Studies”). During the first 18 months of the Study Period, LCRA, in consultation with SAWS and providing for a broad public and scientific review process, shall develop an overall study plan (the “Study Period Plan”), which shall include (i) the identification and prioritization of individual Feasibility Studies; (ii) a study plan for each specific Feasibility Study, including the specific scope, budget and other parameters of such specific Feasibility Study (“Specific Study Plan”); and (iii) the identification of Permits required to make the additional 330,000 acre-feet of water per year available. LCRA shall submit to SAWS a draft of the Study Period Plan. SAWS may, but shall not be required to, provide comments to LCRA regarding the draft Study Period Plan before the final Study Period Plan is submitted to SAWS for approval.

LCRA shall submit a final proposed Study Period Plan to SAWS no later than September 1, 2003. LCRA’s submission of the final proposed Study Period Plan to SAWS shall confirm the LCRA Board of Directors’ approval of the final proposed Study Period Plan. LCRA shall only implement the Feasibility Studies after the SAWS Board of Trustees has properly approved the Study Period Plan. During the Study Period, the Parties may, as part of the approved Study Period Plan, apply decision science tools and methodologies to aid in the analysis of complex issues and the level of certainty associated with Feasibility Study conclusions.

1.2. The following language is added at the end of Section 1.3.B of the Definitive Agreement:

All changes to the draft proposed Study Period Plan proposed during the Study Period Plan review period shall be subject to such public and scientific review.

1.3. Section 1.3.C. of the Definitive Agreement is deleted in its entirety and replaced with the following language:

1.3.C. Termination for Lack of Board Approval of Study Period Plan. In the event a proposed Study Period Plan has not been submitted to SAWS by LCRA within 30 days after September 1, 2003, SAWS may terminate this Definitive Agreement at any time prior to approval of the Study Period Plan by the SAWS Board of Trustees by giving 30 days written notice to LCRA. In the event the SAWS Board of Trustees has not approved the Study Period Plan within 90 days after the date LCRA submitted the proposed Study Period Plan to SAWS, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party, and in the event of such termination the Study Period Option Fee for the year of termination shall be prorated on a daily basis to the date of termination.
1.4. The following language is added to the Definitive Agreement as a new Section 1.5.C.(3):

(3) Notwithstanding anything in this Definitive Agreement to the contrary, LCRA shall have the right to expend up to $125,000 out of the Study Period Account for Study Period Costs incurred during the period from March 1, 2003, to September 1, 2003, in accordance with the budget dated February 6, 2003, and approved by SAWS, without further approval. Expenditures from the Study Period Account for Study Period Costs in excess of $125,000, if any, for such period shall be subject to approval by SAWS as required in this Definitive Agreement.

SECTION II
WATER DEMAND REDUCTION MEASURES

2.1. In the event LCRA elects to transfer surface water to a place in Williamson County under a water sale contract pursuant to Section 27 of the LCRA Act, whether such contract exists as of the date of this First Amendment or not, at any time prior to the end of the Study Period, and LCRA, in accordance with the procedures established in Section 27 of the LCRA Act, determines that the most cost effective method of offsetting such transferred water is the implementation of one or more of the water demand reduction methods identified in the Region K SB-1 Plan, then notwithstanding the provisions of Section 1.7 of the Definitive Agreement, LCRA may implement such water demand reduction methods to the extent necessary to offset the water transferred to Williamson pursuant to Section 27 of the LCRA Act, subject to the provisions set out in this First Amendment.

2.2. Each such water demand reduction measure implemented by LCRA to offset water transferred to Williamson County ("Offset Project") shall be a Region K Component Project under the Definitive Agreement, and LCRA shall include each such Offset Project in the Agreed Implementation Plan. The actual Capital Costs of each Offset Project, when implemented, adjusted in accordance with the provisions of Section 1.8.C.(1) and (3) of the Definitive Agreement (but excluding operation and maintenance costs) shall be included in the Total Estimated Capital Cost.

2.3. LCRA will make reasonable efforts to obtain grant funds that can be applied directly to the cost of designing and implementing the Offset Projects. In particular, LCRA will pursue grant funding under applicable NRCS programs including, without limitation, the Environmental Quality Incentive Program. SAWS shall have no liability for repayment of net grant funds or for the administration and operation of the grant programs.

2.4. The cost of design and implementation of any Offset Project, net of grant proceeds and other applicable contributions, shall be paid for with funds from the Conservation Fund.
2.5. In the event SAWS elects to reserve water in accordance with the provisions of the Definitive Agreement, then the total of the Capital Costs of the Offset Projects, (net of grant proceeds and cash or in-kind contributions to LCRA applied directly to such Capital Costs of the Offset Projects) shall be deemed to be Incurred Capital Costs of Region K Projects as of the date that is the first day of the Minimum Reserved Period for all purposes under the Definitive Agreement, and LCRA shall debit the Region K Credit Account accordingly pursuant to Section 5.5.C(4) of the Definitive Agreement.

2.6. Effective as of the date the Region K Credit Account is debited for the Incurred Capital Cost as described in the preceding paragraph, LCRA will reimburse the Conservation Fund by the amount of such debit; however, the water conserved through implementation of the Offset Projects shall continue to be available as an offset to the water transferred to Williamson County until the commencement of the Purchase Phase associated with the first Purchase Notice provided to LCRA from SAWS, at which time the water conserved by implementation of the Offset Projects shall be available to meet the goals of the Definitive Agreement.

2.7. For purposes of determining the quantity of water conservation for meeting the planning objectives under the Definitive Agreement, the projected water conservation based on the studies shall be used and not the actual water savings based on implementation of the Offset Projects. It is recognized that actual water conservation may vary from year to year based on project implementation and maintenance, and it is the Parties’ agreement to use estimated savings based on engineering data assuming consistent implementation for determining whether sufficient water conservation is available to implement the Definitive Agreement.

SECTION III
MISCELLANEOUS

3.1. Each capitalized term used herein has the definition given to it in the Definitive Agreement, unless it is otherwise specifically defined herein.

3.2. The terms and provisions of the Definitive Agreement not specifically amended hereby are ratified and confirmed and shall remain in full force and effect as supplemented hereby.
IN WITNESS WHEREOF, this First Amendment has been executed on behalf of the San Antonio Water System and the Lower Colorado River Authority by their duly authorized representatives.

SAN ANTONIO WATER SYSTEM

By: 
Eugene Eubinger
President, Chief Executive Officer

LOWER COLORADO RIVER AUTHORITY

By: 
Joseph J. Beal, P.E.
General Manager

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SECOND AMENDMENT TO DEFINITIVE AGREEMENT BETWEEN SAN ANTONIO WATER SYSTEM AND LOWER COLORADO RIVER AUTHORITY DATED MARCH 1, 2002

This Second Amendment, executed by and between the San Antonio Water System ("SAWS") and the Lower Colorado River Authority ("LCRA") as of November 40, 2003, is intended to amend and supplement that certain DEFINITIVE AGREEMENT BETWEEN SAN ANTONIO WATER SYSTEM AND LOWER COLORADO RIVER AUTHORITY DATED MARCH 1, 2002, as amended by that certain First Amendment dated as of February 28, 2003 (the "Definitive Agreement").

For good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged by each Party, LCRA and SAWS hereby amend the Definitive Agreement as follows:

SECTION I

EXTENSION OF STUDY PERIOD PLAN APPROVAL DEADLINE

1.1. The last sentence of Section 1.3.C. of the Definitive Agreement is hereby deleted in its entirety and is hereby replaced with the following:

In the event the SAWS Board of Trustees has not approved the Study Period Plan on or before February 28, 2004, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party, and in the event of such termination the Study Period Option Fee for the year of termination shall be prorated on a daily basis to the date of termination.

1.2. The following is hereby added to the Definitive Agreement as new Section 1.5.C.(4) and Section 1.5.C.(5):

(4) Notwithstanding anything in this Definitive Agreement to the contrary, LCRA shall have the right to expend up to $135,000 out of the Study Period Account for Study Period Costs incurred during the period from September 1, 2003, to February 28, 2004, without further approval. Expenditures from the Study Period Account for Study Period Costs in excess of $135,000, if any, for such period shall be subject to approval by SAWS as required in this Definitive Agreement.

(5) SAWS’ approval of the Study Period Plan with projected or estimated annual expenditures for Study Period Costs for each year of the Study Period shall not constitute SAWS’ approval of each annual budget for Study Period Costs. During the Study Period, LCRA shall submit annual budgets to SAWS for approval, which approval shall be SAWS’ agreement to fund such approved Study Period Costs. During any year of the Study Period that LCRA anticipates that Study
Period Costs will be higher than the amount approved by SAWS, then LCRA shall submit a budget addendum to SAWS for approval, which approval shall be SAWS' agreement to fund such higher Study Period Costs. If SAWS does not approve any annual budget or any budget addendum within 60 days after submission by LCRA, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party.

1.3. The date “February 28, 2009” in the first sentence of Section 1.1. of the Definitive Agreement is hereby deleted and is hereby replaced by the date “February 28, 2010.”

1.4 Notwithstanding any provision of this Section I to the contrary, the dates for payment of the Option Payments and all other dates for performance or payment under the Definitive Agreement are not extended or affected by the extensions granted in this Section I.

SECTION II
PERMITS AND LICENSES

2.1 Section 1.4.B of the Definitive Agreement is hereby deleted and is hereby replaced by the following:

1.4.B Permitting and Licensing Obligations of LCRA. LCRA shall pursue, seek to obtain and seek to maintain in effect all permits, licenses or approvals required by Applicable Law necessary to meet the obligations of LCRA pursuant to this Definitive Agreement (the “Permits”) during the Term of the Definitive Agreement. LCRA shall own all Permits. Neither LCRA nor SAWS represents, warrants or guarantees to the other Party that any of the Permits can be obtained; the actual date that any of the Permits will be issued or that any of the Permits, once obtained, will continue in effect without expiration for the entire Term.

During the Study Period, the LCRA shall pursue the following Permits in final and non-appealable form (collectively the “Final Essential Permits”) to the extent then available and obtainable: (i) water rights and/or amendments to water rights as governed by Chapter 11 of the Texas Water Code necessary to meet the requirements of this Definitive Agreement; (ii) any permit, license, or authorization required by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act for the Component Projects and the LCRA Transmission Facilities; and (iii) permits, licenses or authorizations, if any, governed by Chapter 36 of the Texas Water Code that are necessary to develop and use ground water resources as contemplated by this Definitive Agreement. For purposes of this Section 1.4.B., “final and non-appealable form” shall be that any permit applied for by LCRA shall have been granted, issued or published in conformance with the then applicable procedural requirements of the issuer and no appeal or proceeding is pending or available under applicable procedural rules that, if successful, could result in either a denial of the permit or a judicial reversal of the agency decision to issue the permit.

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In the event that any approval authority requires the combining of any of the applications for Permits with any of the applications for the SAWS Permits, LCRA agrees to timely provide all necessary information and cooperation necessary to apply for and obtain such combined permit, license or approval.

2.2 Section 1.4.C of the Definitive Agreement is hereby deleted and is hereby replaced by the following:

1.4.C. Participation and Cooperation by SAWS. SAWS will have the right, but not the obligation, to participate in the acquisition of the Permits. SAWS will cooperate with LCRA in obtaining, and will not oppose, any application for a Final Essential Permit or any other Permits that are required for or relate to any of the following: (i) the Study Period; (ii) the design or creation of a Feasibility Study; (iii) the implementation of an approved Feasibility Study; or (iv) the construction or implementation of Component Projects during the Implementation Period. As used herein “oppose” or “opposition” shall mean that SAWS is taking an active position contrary or in opposition to the position being taken by LCRA on any application for a Permit, but shall not include any position of SAWS in a proceeding (a) on the side of LCRA or (b) simply as a neutral party to the proceeding in which SAWS does not actively oppose the LCRA position. SAWS may at any time request written confirmation from the LCRA, which confirmation will not be unreasonably withheld or delayed, that SAWS’ (i) opposition of a permit, license or other right sought by the LCRA or (ii) support of a permit, license or other right sought by a third party which is opposed by the LCRA, is not opposition of a Final Essential Permit or a Permit which would constitute a breach by SAWS of covenants in this Section 1.4.C. SAWS may rely on a written determination from the General Manager of LCRA that states that a proposed action by SAWS does not fall under the definition of “oppose” or “opposition” of a Final Essential Permit or Permit.

2.3 The following is hereby added as new Section 1.4.D of the Definitive Agreement:

1.4.D. SAWS Permits. SAWS shall be solely responsible for obtaining and shall bear all costs of obtaining all licenses, permits and approvals for the SAWS Transmission Facilities and any other licenses, permits or approvals for SAWS’ related facilities located outside of the LCRA Service Area (“SAWS Permits”). SAWS shall own all SAWS Permits. In the event that any applications for any of the Permits described in Section 1.4.B. require information or studies regarding any of the SAWS Transmission Facilities or SAWS Permits, SAWS agrees to timely complete such studies and to timely provide to LCRA all of such information. In the event that any approval authority requires the combining of any of the applications for Permits with any of the applications for the SAWS Permits, SAWS agrees to timely provide all necessary information and cooperation necessary to apply for and obtain such combined permit, license or approval.

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SECTION III

ESSENTIAL PERMIT EXTENSION

3.1 The following is hereby added to the Definitive Agreement as Section 1.8.D.:

1.8.D. Essential Permit Extension. In the event that all of the Final Essential Permits have not been obtained as of February 28, 2010, then the Study Period Expiration Date shall automatically be extended (such extension period being referred to as the “Essential Permit Extension Period”) until the earlier to occur of the following: (i) the thirtieth (30th) day after all of the Final Essential Permits have been obtained, or (ii) February 28, 2015. Notwithstanding any provision of this Definitive Agreement to the contrary, in the event some or all of the Final Essential Permits have not been obtained as of February 28, 2015, then either Party may terminate this Definitive Agreement by giving the other Party thirty (30) days written notice. All costs incurred by LCRA during the Essential Permit Extension Period in seeking the Final Essential Permits, including without limitation any litigation regarding the issuance, final status and/or conditions of any Permits during such period, shall be Study Period Costs payable by SAWS in accordance with Section 1.5.B of this Definitive Agreement, subject to SAWS’ approval rights set out in Sections 1.5 and 1.6 of this Definitive Agreement. Except as otherwise provided herein, all Study Period Costs paid by SAWS during the Essential Permit Extension Period shall be included as Aggregate Study Period Advances subject to the reimbursement provision of Section 1.12.B. All time periods tied to the Study Period Expiration Date as such date may be extended by the Essential Permit Extension Period are extended automatically by the length of such Essential Permit Extension Period.

3.2 The following is hereby added to the Definitive Agreement as Section 1.8.E.:

1.8.E. Agreed Conditional Implementation Plan. During the term of any Essential Permit Extension Period, LCRA shall have the right, in its sole discretion, to submit to SAWS the Agreed Implementation Plan if the obligations of the parties under such plan (the “Agreed Conditional Implementation Plan”) are expressly conditioned upon obtaining the outstanding Final Essential Permits on or before February 28, 2015 ("Final Essential Permit Condition"). The Final Essential Permit Condition shall be specifically defined in the Agreed Conditional Implementation Plan with respect to water quantity, related costs, and delivery time. The Agreed Conditional Implementation Plan shall, in respects other than the Final Essential Permit Condition, be prepared and approved in accordance with Section 1.8 except that if the SAWS Board of Trustees has not approved the Agreed Conditional Implementation Plan within six (6) months after submittal, LCRA shall have the right, exercisable by written notice to SAWS, to terminate this Definitive Agreement. If the Agreed Conditional Implementation Plan shall have been approved by both
Parties in the manner provided in Section 1.8, neither Party shall thereafter have the right to terminate this Definitive Agreement except for failure to obtain the outstanding Final Essential Permits on or before February 28, 2015, except as otherwise provided herein. After the Agreed Conditional Implementation Plan has been approved by both the LCRA Board of Directors and the SAWS Board of Trustees in the manner provided in Section 1.8, and all Final Essential Permits have been obtained without material variance from the Final Essential Permit Condition, then the Agreed Conditional Implementation Plan shall become effective as the Agreed Implementation Plan for all purposes on the date that is the thirtieth (30th) day after the last remaining outstanding Final Essential Permit is obtained by LCRA. If the Final Essential Permits contain one or more material variances from the Final Essential Permit Condition, then the SAWS Board of Trustees shall have 180 days after the date the last remaining outstanding Final Essential Permit is obtained by LCRA within which to either accept or reject the material variance. In the event SAWS has not accepted the material variance within said 180-day period, then either Party may terminate this Definitive Agreement by giving 30 days written notice to the other Party.

3.3 The first sentence of Section 1.5.A of the Definitive Agreement is hereby deleted and is hereby replaced by the following sentence:

SAWS shall pay LCRA a Study Period Option Fee of Five Hundred Thousand and No/100 Dollars ($500,000.00) per year beginning March 1, 2002, and on the first (1st) day of March each year thereafter for the duration of the Study Period, including any extension of the Study Period as provided in Section 1.8.A and any Essential Permit Extension Period provided in Section 1.8.D. (the "Study Period Option Fee").

3.4 The first sentence of Section 1.5.C of the Definitive Agreement is hereby deleted and is hereby replaced by the following two sentences:

On March 1, 2002, and the first (1st) day of March each year thereafter for the duration of the Study Period, including any extension of the Study Period as provided in Section 1.8.A., SAWS shall pay the additional sum of Five Hundred Thousand and No/100 Dollars ($500,000.00) to the LCRA as a deposit for Study Period Costs (the "Annual Study Period Advance"). On the first day of March of each year during any Essential Permit Extension Period provided in Section 1.8.D., the Annual Study Period Advance payable by SAWS shall be $500,000 less the balance in the Study Period Account as of March first of that year.

3.5 The first sentence of Section 1.5.C (1) of the Definitive Agreement is hereby deleted and is hereby replaced by the following sentence:

If, at any time during the Study Period, including any extension of the Study Period as provided in Section 1.8.A. or Section 1.8.D., LCRA reasonably believes that the cumulative Study Period Costs exceed the cumulative amount of the Aggregate Annual Study Period Advances (as defined below in this Subsection), then
the LCRA shall notify SAWS in writing (together with reasonable explanation or supporting material) of the amount of additional funds required to pay that year's then-estimated Study Period Costs.

3.6 The last sentence of Section 1.5.C of the Definitive Agreement is hereby deleted and is hereby replaced with the following sentence:

Within one hundred twenty (120) days following the end of the Study Period, including any extension of the Study Period as provided in Section 1.8.A. or 1.8.D., the amount of the cumulative Annual Study Period Advances, Additional Study Period Advances, and accrued interest (together, the "Aggregate Study Period Advances") in excess of the cumulative Study Period Costs shall be returned to SAWS.

3.7 The phrase "Study Period Extension Date" at the end of the first sentence of Section 1.11.C. of the Definitive Agreement is hereby deleted and is hereby replaced by the phrase "Study Period Expiration Date."

3.8. The first sentence of the second paragraph of Section 1.8.A. is hereby deleted and is hereby replaced by the following:

The LCRA shall develop the proposed Agreed Implementation Plan and shall submit it to SAWS for SAWS' approval after all the Final Essential Permits have been obtained.

SECTION IV

CONSULTANT TERMINATION RIGHTS

4.1 The following is hereby added to the end of Section 1.6 of the Definitive Agreement as Subsection 1.6.D:

1.6.D Termination of Consultants. To the extent allowed by law, all contracts and agreements entered into with consultants and other professionals during the Study Period in conjunction with any of the Study Plans or Feasibility Studies shall contain a termination provision that allows termination of the contract and the prompt cessation of services in the event that SAWS elects to terminate the Definitive Agreement pursuant to the terms herein.

SECTION V

SAWS PERSONNEL SERVICES DURING STUDY PERIOD

5.1 The following is hereby added to the end of Section 1.5 of the Definitive Agreement:
To the extent that SAWS is requested and assigned by LCRA to provide services for the development and completion of one or more Feasibility Studies (the "SAWS Feasibility Services") which services may otherwise be provided by third party consultants, and SAWS agrees to provide such services, SAWS shall maintain records of its expenses incurred in providing the SAWS Feasibility Services. SAWS shall furnish such cost data to LCRA quarterly on the same dates as LCRA’s accounting of the Study Period Account to SAWS. SAWS’ costs of providing SAWS Feasibility Services shall be treated as Study Period Costs subject to the fifty percent (50%) reimbursement by LCRA to SAWS as provided in Section 1.12.B.

SECTION VI

INTEREST ON DELINQUENT PAYMENTS

6.1 The following is hereby added as Section 11.18 of the Definitive Agreement:

Section 11.18. Interest on Delinquent Payments. In the event that either party fails to make any payment due to the other party when due and payable, such delinquent payment (or the portion thereof not paid) shall accrue interest from the eleventh (11th) day after such payment is due and payable until paid at the lower of the following rates: (i) the Credit Account Interest Rate as defined in Section 11.18 of the Definitive Agreement plus five percent or (ii) the highest applicable legal rate of interest then allowed by law.

SECTION VII

MISCELLANEOUS

7.1. Each capitalized term used herein has the definition given to it in the Definitive Agreement, unless it is otherwise specifically defined herein.

7.2. The terms and provisions of the Definitive Agreement are ratified and confirmed and shall remain in full force and effect as amended hereby.

7.3 The Parties confirm that The Board of Trustees of SAWS has authorized the President of SAWS and the Board of Directors of LCRA has authorized the General Manager of LCRA, without further approval of such Boards, to execute an Amended and Restated Definitive Agreement incorporating the amendments made by this and all prior amendments to the Definitive Agreement in an amended and restated document. The Parties agree to execute an Amended and Restated Definitive Agreement on or before October 1, 2004.

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IN WITNESS WHEREOF, this Second Amendment has been executed on behalf of the San Antonio Water System and the Lower Colorado River Authority by their duly authorized representatives.

SAN ANTONIO WATER SYSTEM

By: Eugene Habiger
President, Chief Executive Officer

LOWER COLORADO RIVER AUTHORITY

By: Joseph J. Beal, P.E.
General Manager