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2015-0139

**SECOND SUPPLEMENT TO WATER SUPPLY CONTRACT BETWEEN THE CITY OF HOUSTON, TEXAS AND THE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY**

**FOR THE NORTHEAST WATER PURIFICATION PLANT EXPANSION**

**THIS SECOND SUPPLEMENT TO WATER SUPPLY CONTRACT** (this "Second Supplement") is by and between the **CITY OF HOUSTON** ("Houston") and **NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY** (the "Authority"), and is for the purpose of providing for the expansion of the Northeast Water Purification Plant located at 12121 North Sam Houston Parkway East, Humble, Texas 77396 ("NEWPP"). This Second Supplement is effective on the date of countersignature hereof by the Houston Controller ("Second Supplement Effective Date"). For and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

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## ARTICLE I

### *RECITALS*

- Section 1.1 Houston and the Authority entered into a Water Supply Contract effective as of December 16, 2002 (the "Original Contract"), under which Houston provides treated water to the Authority and the Authority pays costs for treatment and conveyance of the water by certain treated and untreated water facilities necessary to provide water to the Authority.
- Section 1.2 Pursuant to Ordinance 2009-0052 (January 28, 2009), Houston executed a First Supplement to Water Supply Contract with the Authority ("First Supplement") to provide for the permitting, engineering, surveying, construction, and right-of-way and site acquisition necessary for the Luce Bayou Interbasin Transfer Project ("Luce Bayou") to convey untreated water from the Trinity River to Lake Houston.
- Section 1.3 Houston and the Authority, along with the Other Authorities, further amended the Original Contract through a First Amendment to the First Supplement ("First Amendment") adopted pursuant to Ordinance No. 2013-0044 and effective as of January 22, 2013, in order to clarify certain funding for Luce Bayou.
- Section 1.4 Houston has entered into agreements with West Harris County Regional Water Authority, North Fort Bend Water Authority, and Central Harris County Regional Water Authority ("Other Authorities") that are substantially similar to the Original Contract, First Supplement, and First Amendment.
- Section 1.5 The Authority and each of the Other Authorities seek to increase their Treated Water Facilities Demand Allocation and Houston does not currently have sufficient capacity available in the Existing Treated Water Facilities to serve such increases, and Houston seeks to increase its own treated water capacity.
- Section 1.6 Houston and the Authority now desire to clarify and agree to terms for sharing the cost of the Expansion Project in order to provide additional treated water capacity from the NEWPP of 320 million gallons per day ("MGD") and to potentially provide certain oversizing of facilities.
- Section 1.7 Houston and the Authority believe that using design/build as the method of delivery of the Expansion Project, in accordance with Texas Government Code Chapter 2269, Subchapter H, is appropriate given the priorities of the Parties.

- Section 1.8 This Second Supplement provides for all Costs and Work associated with the Expansion Project. This Second Supplement does not include any work associated with rehabilitation or repair of the NEWPP's existing facilities, and this Second Supplement does not create any new obligation for the Authority to pay for rehabilitation or repair of the NEWPP's existing facilities.
- Section 1.9 Contingent upon the Project Parties timely satisfying their Cash Calls required by the Second Supplement and the Other Second Supplements, Houston and the Authority intend for Houston to cause the Expansion Project to be substantially complete as described in this Second Supplement in two phases with one delivery date not later than August 31, 2021 for 80 MGD of treated water capacity ("Phase 1") and another delivery date not later than June 30, 2024 for 240 MGD of treated water capacity ("Phase 2").
- Section 1.10 Houston shall use good faith efforts to timely complete Phase 1 and Phase 2; provided, however, Houston's undertaking to administer and oversee the Work shall not be deemed or construed as a guarantee of the cost of the Work or of the timely or successful completion of the Work.

## ARTICLE II DEFINITIONS

- Section 2.1 Unless otherwise defined in this Second Supplement, the capitalized terms used in this Second Supplement have the meaning provided in the Contract. In addition to the terms defined elsewhere in this Second Supplement, the following terms have the definitions provided below.
- Section 2.2 *Acquisition Costs* means the portion of the Costs associated with acquiring the Expansion Project Property, if any, whether by purchase or condemnation, including all reasonable costs related to title examination and title policies, due diligence, property surveying, payments to property owners, closing costs, environmental mitigation, litigation and court costs, permitting necessary for acquisition or environmental mitigation, court costs, and any other related costs arising out of the acquisition of the Expansion Project Property.
- Section 2.3 *Agreed Upon Procedures Report or AUP Report* means a report and associated findings produced by an independent accounting firm engaged by Houston under an Agreed-Upon Procedures Engagement conducted in accordance with (i) Section 8.6 of this Second Supplement, and (ii) the Statements on Standards for

Attestation Engagements published by the American Institute of Certified Public Accountants.

Section 2.4 *Annual Financial Report* is defined in Section 8.2.

Section 2.5 *Appropriate(d) Houston Funds or Appropriation of Houston Funds* means when both of the following have occurred with respect to Houston's funds (as opposed to funds from the Authority or Other Authorities): (i) Houston's City Controller has certified that a certain dollar amount of Cash or Cash Equivalent is available for the Expansion Project, and (ii) Houston's City Council has approved appropriating such dollar amount for the Expansion Project.

Section 2.6 *Authority Fund* means a segregated fund established and controlled by Houston for the receipt and disbursement of the funds of the Authority and the Other Authorities, and used by Houston to pay for the pro-rata share of the Costs of the Authority and the Other Authorities, as set forth herein.

Section 2.7 *Authority Meeting* is defined in Section 6.4.1.

Section 2.8 *Authorized Investments* means investment pool(s): (i) that comply with the requirements of Houston's investment policy and Texas Government Code Chapter 2256, and (ii) in which Houston's funds (in addition to funds from the Authority) are invested.

Section 2.9 *Budget* means the chart attached as Exhibit "B", which (a) reflects the estimated Costs for each Work Item and cumulative total thereof, and (b) will be revised in accordance with this Second Supplement to reflect the updated estimated Costs and the actual Costs for each Work Item and cumulative total thereof.

Section 2.10 *Cash* means currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America.

Section 2.11 *Cash Call* means one of a series of demands for funds from the Project Parties sent by the Project Director to pay for Costs in accordance with the requirements set forth in Section 3.7 of this Second Supplement.

Section 2.12 *Cash Call Due Date* means the date specified in a Cash Call that either Cash or Cash Equivalent, at the option of each Project Party, is required from the Project Parties.

- Section 2.13 *Cash Equivalent* means one or more line(s) of credit or letter(s) of credit obtained by a Party from one or more financial institution(s). For Houston, in addition to line of credit and letter of credit, Cash Equivalent shall also include, as certified in writing by Houston's Controller, capacity in Houston's commercial paper program that is available for payment of Houston's pro-rata share of Costs, based on Houston's applicable Cost Share, and that is not committed for other use. The Project Director and the Representatives may collectively agree in writing to add to the items included in the term *Cash Equivalent*.
- Section 2.14 *Consensus Item* is defined in Section 6.3.
- Section 2.15 *Consensus Process* is defined in Section 6.1.
- Section 2.16 *Consensus Vote* is defined in Section 6.2.
- Section 2.17 *Construction Costs* means the costs associated with the construction of the Expansion Project, including all reasonable costs for labor, equipment, materials, electricity, fuel, and Consultant(s) (including construction management, inspection, and materials testing).
- Section 2.18 *Consultant(s)* means professional or legal service provider(s), whether a firm or an individual, engaged by Houston to assist in the planning, design, acquisition, and other Work.
- Section 2.19 *Contract* means the Original Contract, as supplemented by the First Supplement, and as amended by the First Amendment.
- Section 2.20 *Contract Price* means all or any portion of the Costs that Houston is obligated to pay: (i) to the Design/Builder, Contractor(s), or Consultant(s), including any guaranteed maximum prices, lump sum amount, maximum contract prices, and (ii) for the Acquisition Costs. No Costs shall be included in Contract Price unless the Costs have been approved in accordance with Section 6.3.
- Section 2.21 *Contract Non-Oversized Price* is defined in Section 3.14.4.
- Section 2.22 *Contract Oversized Price* means a dollar amount equal to the Costs included in a Contract Price for any and all Work Items for the Oversized Facilities to produce the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking.

- Section 2.23 *Contractor* means the Design/Builder; provided, however, in the event a delivery method other than design/build, pursuant to Texas Government Code Chapter 2269, Subchapter H, is employed by Houston, in accordance with this Second Supplement, Contractor shall instead mean the prime contractor for the Expansion Project.
- Section 2.24 *Cost Recovery Amounts* means the portion of the costs of Houston's employees' salaries, associated benefits, overhead, and itemized costs paid from the cost recovery fund (Houston's Fund 1001), that are allocated and attributable to the Expansion Project for the period beginning on December 1, 2014, and concluding as of the date of the Final Accounting, calculated in accordance with Section 3.13.
- Section 2.25 *Cost Share* means each Project Party's pro-rata share of the Costs for Phase 1, Phase 2, and Multi-Phase Work, which the Parties agree are set forth in the Participation Table, and may be adjusted in accordance with Section 3.2.
- Section 2.26 *Costs* means all or any portion of the costs for the Work, including the Engineering Costs, Construction Costs, Acquisition Costs, Cost Recovery Amounts, and any other costs the Parties are obligated to pay in accordance with this Second Supplement.
- Section 2.27 *Day* means calendar day, unless otherwise noted.
- Section 2.28 *Design/Builder* means the firm or firms selected pursuant to this Second Supplement to design and build the Expansion Project, in accordance with Texas Government Code Chapter 2269, Subchapter H.
- Section 2.29 *Direct Employee* shall have the meaning assigned in Section 3.13.
- Section 2.30 *Director* means Houston's Director of Public Works and Engineering.
- Section 2.31 *Downsizing Costs* is defined in Section 7.2.2.
- Section 2.32 *Engineering Costs* means the costs for engineering Work associated with the Expansion Project, including all reasonable costs for the planning, management, oversight, inspection, basis of design, engineering design, geotechnical investigations, surveys, estimates, pilot plant testing, materials testing, plans, specifications, investigations, and necessary permitting.
- Section 2.33 *Escrow Account* means an escrow account held by the Escrow Agent for the receipt of Cash or Cash Equivalent from the Authority to satisfy Cash Call(s) and

for the distribution of funds to Houston out of such account, for payment of the Authority's pro-rata share of Costs, based on the Authority's applicable Cost Share, all as set forth in this Second Supplement.

- Section 2.34 *Escrow Agent* means an authorized financial institution of the Authority's choice, which may be changed from time to time, in accordance with good money management practices, to transfer funds from one financial institution to another, provided the funds are not released to the Authority until the conditions stated in the Escrow Agreement are met.
- Section 2.35 *Escrow Agreement* means the escrow & pay agent agreement, in the form substantially similar to the form attached hereto as Exhibit "D," executed by the Authority, the Project Director (on behalf of Houston) and the Escrow Agent; provided, however, the Project Director, the Authority, and the Other Authorities may collectively agree in writing to modifications of the Escrow Agreement.
- Section 2.36 *Estimated Non-Oversized Price* is defined in Section 3.14.
- Section 2.37 *Estimated Oversized Price* is defined in Section 3.14.
- Section 2.38 *Exempt Item* is defined in Section 6.5.
- Section 2.39 *Expansion Project* means the undertaking that is the subject of this Second Supplement to be overseen by Houston in two Phases to design, permit, and construct the additional Treated Water Facilities to add 320 MGD of treated water capacity to the NEWPP. Provided, however, the Oversized Facilities may be oversized as described herein. Expansion Project does not include any rehabilitation or repair of the NEWPP's existing facilities.
- Section 2.40 *Expansion Project Property* is defined in Section 5.4.
- Section 2.41 *Expansion Project Reservation* means the Phase 1 Expansion Project Reservation and the Phase 2 Expansion Project Reservation.
- Section 2.42 *Expansion Project Team* means the Project Director and other Houston employees and agents, authorized to manage the Work performed by Contractor and Consultant(s).
- Section 2.43 *Final Accounting* is defined in Section 8.7.
- Section 2.44 *Final Non-Oversized Price* is defined in Section 3.14.5.

- Section 2.45 *Final Oversized Price* is defined in Section 3.14.5.
- Section 2.46 *Material* shall have the meaning of such word as used under federal securities laws.
- Section 2.47 *MSRB* is defined in Section 10.16.
- Section 2.48 *Multi-Phase Work* means Work Items that benefit both Phase 1 and Phase 2, including without limitation, the new intake structure with pumping and conveyance facilities to provide untreated water from Lake Houston, the electrical substation, the high service pump station, Consultants' services, clearing and grubbing, drainage, any separate operation facility for the Expansion Project, permitting, environmental Work, Expansion Project Property (if any), fencing, security facilities, SCADA (supervisory control and data acquisition) system, access roads and/or paving, ground storage tanks, on-site conveyance facilities, office/control building, chemical facilities, sludge dewatering facilities, yard lighting, yard piping, maintenance or shop building, any rail spur, backwash facilities, and related appurtenances.
- Section 2.49 *Non-Payment Default* means any default described in Sections 3.9.4 or 3.9.5.
- Section 2.50 *Notice of Upcoming Cash Call* is defined in Section 3.7.1.
- Section 2.51 *Original Contract* is defined in Section 1.1.
- Section 2.52 *Other Authorities* is defined in Section 1.4.
- Section 2.53 *Other Representatives* means the individuals authorized under Other Second Supplements to act as on behalf of the Other Authorities regarding the Expansion Project.
- Section 2.54 *Other Second Supplements* means written agreements between Houston and the Other Authorities that are substantially similar to this Second Supplement.
- Section 2.55 *Overhead* is defined in Section 3.13.
- Section 2.56 *Overhead Factor* is defined in Section 3.13.2.
- Section 2.57 *Oversized Facilities* means certain Multi-Phase Work items that, pursuant to Section 3.14, may be oversized so that such facilities are capable of producing the Oversized Facilities Design Capacity and/or meeting Houston's seasonal demands for peaking. Oversized Facilities include, without limitation: the new



intake structure with pumping and conveyance facilities to provide untreated water from Lake Houston, the electrical substation, and the high service pump station. The Project Director and the Representatives may collectively agree in writing to revise the definition of Oversized Facilities.

Section 2.58 *Oversized Facilities Contribution* is defined in Section 3.15.1.

Section 2.59 *Oversized Facilities Design Capacity* means the amount of treated water, measured in MGD, that the Project Director reasonably determines that the Oversized Facilities are able to produce based on the Contractor's or a Consultant's analysis and Houston's available water rights that may be diverted from Lake Houston. The Oversized Facilities Design Capacity shall be an MGD amount that exceeds 320 MGD.

Section 2.60 *Oversized Facilities Option* means the Authority's unrestricted right to an Oversized Facilities Reservation of 15 MGD which is further described in Section 3.15. The sum of the Oversized Facilities Option of the Authority plus the Oversized Facilities Options of the Other Authorities (under Other Second Supplements) equals 43 MGD.

Section 2.61 *Oversized Facilities Reservation* means a Reservation in the Treated Water Demand Allocation limited to the Oversized Facilities, which the Authority may obtain as provided in Section 3.15.

Section 2.62 *Oversizing Costs* means a dollar amount equal to the Costs included in the " $(W^B - W^A)$ " portion of the formula in Section 3.7.3, as revised by Section 3.7.4.

Section 2.63 *Participation Table* means the table attached as Exhibit "A", detailing the Expansion Project Reservation and Cost Share of the Authority, the Expansion Project Reservations and Cost Shares of the Other Authorities, Houston's capacity and Cost Share in the Expansion Project, and the Oversized Facilities Design Capacity. The Participation Table may be revised in accordance with this Second Supplement.

Section 2.64 *Party or Parties* means all or any of the following entities, as applicable: Houston and the Authority.

Section 2.65 *Phase(s)* means Phase 1, Phase 2, or both.

Section 2.66 *Phase 1 Expansion Project Reservation* is defined in Section 3.1.

- Section 2.67 *Phase 2 Expansion Project Reservation* is defined in Section 3.1.
- Section 2.68 *Phase AUP Report* is defined in Section 8.6.1.
- Section 2.69 *Phase Financial Report* is defined in Section 8.3.
- Section 2.70 *Presentation* is defined in Section 6.3.1.
- Section 2.71 *Project Director* means an individual designated by the Director and authorized to act on behalf of Houston in the manner described in this Second Supplement, which individual may be changed by the Director from time to time.
- Section 2.72 *Project Party* or *Project Parties* means all or any of the following entities, as applicable: Houston, the Authority, and the Other Authorities.
- Section 2.73 *Proposed Solution* is defined in Section 6.4.
- Section 2.74 *Representation* is defined in Section 3.6.
- Section 2.75 *Representative* means the individual authorized in writing by the Authority to act on behalf of an Authority in the manner described in this Second Supplement, or an alternate individual approved by the Authority, which individuals may be changed by the Authority from time to time.
- Section 2.76 *Representatives* mean the Representative and the Other Representatives.
- Section 2.77 *Representatives Issue* is defined in Section 6.4.
- Section 2.78 *Rule* is defined in Section 10.16.
- Section 2.79 *Schedule* means a chart attached as Exhibit "C," accurately reflecting the estimated and actual timing of Work Items, Cash Calls, and projected Substantial Completion Dates, which Schedule will be revised in accordance with this Second Supplement.
- Section 2.80 *Selection Reviewer* means an individual designated in writing by the Authority who is responsible to perform the functions of Selection Reviewer under Section 5.2 and who has provided the Project Parties with a written certification that he or she is not an employee or paid consultant of a firm involved in the submission of a proposal to Houston to serve as the Contractor.

- Section 2.81 *Substantial Completion* means the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the contract between Houston and the Contractor so Houston can occupy and utilize the Work for its intended use, as evidenced by a certificate of Substantial Completion issued by Houston.
- Section 2.82 *Substantial Completion Date* means, for each Phase, the date of Substantial Completion shown on the certificate of Substantial Completion issued by Houston.
- Section 2.83 *True-Up* means the process described in Section 8.8.
- Section 2.84 *True-Up Statement* is defined in Section 8.8.
- Section 2.85 *TWDB* is defined in Section 3.12.
- Section 2.86 *TWDB Expansion Funding* is defined in Section 3.12.
- Section 2.87 *Unpaid Reservation* is defined in Section 7.2.1.
- Section 2.88 *Unpaid Capacity* is defined in Section 7.4.1.
- Section 2.89 *Weighted Vote* is defined in Section 6.2.
- Section 2.90 *Withdrawal Request and Certificate* means, as further described in the Escrow Agreement, a written instrument that is signed by the Project Director and addressed to the Escrow Agent, for the purpose of withdrawing funds from the Escrow Account to pay the Authority's pro-rata share of Costs, based on the Authority's applicable Cost Share, pursuant to this Second Supplement.
- Section 2.91 *Work* means any of the labor, materials, equipment, administration, and other similar efforts and items necessary for the completion of the Expansion Project.
- Section 2.92 *Work Management System* means a remotely-accessible system or systems Houston uses to share information with the Expansion Project Team and Representatives, as further described in Section 4.4.
- Section 2.93 *Work Item* means a discrete portion of the Work that is attributable to Phase(s) of the Expansion Project and included in a Contract Price.

## ARTICLE III

### *COST SHARING & FUNDING*

Section 3.1. *Cost Sharing and Reservation.* The Authority seeks to increase its Treated Water Facilities Demand Allocation from 31 MGD to 144 MGD. Accordingly, the Authority hereby makes a Reservation request for 51.05 MGD in Phase 1 of the Expansion Project (the "Phase 1 Expansion Project Reservation") and 61.95 MGD in Phase 2 of the Expansion Project (the "Phase 2 Expansion Project Reservation"). For Phase 1, the Authority's Phase 1 Expansion Project Reservation shall be deemed approved on the Substantial Completion Date of Phase 1 if the Authority is not then in Non-Payment Default. For Phase 2, the Authority's Phase 2 Expansion Project Reservation shall be deemed approved on the Substantial Completion Date of Phase 2 if the Authority is not then in Non-Payment Default.

Section 3.2. *The Participation Table & Cost Share.* The Participation Table shall show (i) the Expansion Project Reservation and Cost Share of the Authority, the Expansion Project Reservations and Cost Shares of the Other Authorities, and Houston's capacity and Cost Share in the Expansion Project, and (ii) the Oversized Facilities Design Capacity.

3.2.1 The Participation Table and Costs Shares shall not change, unless (i) one or more of the Project Parties fails to timely satisfy any of its Cash Call obligations and any of the remedies in Sections 7.2, 7.3, or 7.4 are initiated, or (ii) one or more of the Project Parties assigns, in writing, a portion of its Expansion Project Reservation to another of the Project Parties.

3.2.2 Without the need for consent from any Project Party, any Project Party may assign to another Project Party, in writing, any portion of its Expansion Project Reservation, provided the assignee agrees in writing that the assignee assumes all of assignor's outstanding and future rights and obligations related to same. The price for such assignment may be as mutually agreed upon by the seller and buyer.

3.2.3 In the event the Costs Shares change pursuant to Section 3.2.1 or 3.2.2, and when the Oversized Facilities Design Capacity is determined as provided in Section 3.14, the Project Director shall cause the (i) prompt preparation of an updated Participation Table and posting of same on the Work Management System, and (ii) concurrent provision of an email (or other written notice) to the Representative notifying the Representative that the updated Participation Table has been posted to the Work Management System.

Section 3.3 *The Budget.* The Budget shall itemize the Cost of each Work Item and aggregate Costs for each Phase, for Multi-Phase Work, and for the Oversized Facilities. The

Project Director shall cause the: (i) prompt preparation and maintenance of an accurate Budget and posting of same on the Work Management System, and (ii) concurrent provision of an email (or other written notice) to the Representative notifying the Representative when an updated Budget has been posted to the Work Management System.

Section 3.4 *Houston's Previously Incurred Costs.* The Parties acknowledge that Houston has incurred Costs for the Expansion Project prior to the Second Supplement Effective Date. As a pre-condition to entering this Second Supplement, the Authority hereby agrees to pay for its pro-rata share of the Costs, based on its applicable Cost Share, incurred by Houston prior to December 1, 2014, which the Parties hereby agree is estimated to be \$645,768.52 subject to the provisions of Article VIII. The Authority agrees to pay Houston such \$645,768.52 within ninety (90) days of the Second Supplement Effective Date. All Costs incurred by Houston on or after December 1, 2014, shall be included in a Cash Call pursuant to Section 3.7 or 3.8. Subject to the provisions of Article VIII, the Authority is not responsible for any Costs incurred by Houston prior to December 1, 2014, other than such \$645,768.52 which amount includes the Cost Recovery Amounts incurred prior to December 1, 2014.

Section 3.5 *Rates.* Each Party represents and certifies that it will have on hand and lawfully available sufficient funds to make its payments due hereunder. Each Party recognizes its duty to, and covenants and agrees, that at all times it will establish and maintain, and from time to time adjust, the rates, fees, and charges for the services it provides to its customers to the end that the revenue therefrom, together with funds received from any other lawful source will be sufficient at all times to pay all of its obligations under this Second Supplement.

Section 3.6 *The Representative.* The Representative shall have the right to participate in the day-to-day Expansion Project activities and shall enjoy the same privileges of access as a member of the Expansion Project Team, including access to the Work Management System, Expansion Project-related activities, equipment, and workspace ("Representation").

3.6.1 No individual shall be qualified to serve as the Representative if he or she (i) is performing Work on the Expansion Project in his or her individual capacity or (ii) is an employee or owner of an entity that is performing Work on the Expansion Project.

3.6.2 Prior to or contemporaneous with the Authority authorizing an individual to serve as the Representative, the individual shall be required to provide the Project Parties with a written certification that confirms that the individual is in compliance with Section 3.6.1 and that the individual will remain in compliance with same during the period of time that the individual remains the Representative.

- 3.6.3 The Authority shall pay for the Representative's equipment and workspace to the extent such equipment and workspace is requested by the Representative and provided for the exclusive use of the Representative. The Project Director and the Representative may agree to purchase or lease terms for such equipment and/or work space as part of the Contract Price(s).
- 3.6.4 Notwithstanding the provisions above and consistent with this Second Supplement, the Project Director and the Representatives may further collectively agree on the manner in which they collaborate on Work, the Schedule, and the Budget.

Section 3.7 *Cash Calls in General.* The Project Director shall send Cash Calls to the Project Parties from time to time as necessary to fund the Expansion Project, and shall send each individual Cash Call to all the Project Parties on the same date; provided, however, no Cash Call shall be sent to the Project Parties after the date of the Final Accounting.

- 3.7.1 The Project Director shall provide all Project Parties with written notice ("Notice of Upcoming Cash Call") of: (i) the estimated Costs and Work Items to be paid with proceeds of the upcoming Cash Call, (ii) the estimated dollar amount due from each Project Party pursuant to the upcoming Cash Call and the calculation thereof, and (iii) the estimated Cash Call Due Date (which shall be no earlier than 180 days after the date the Project Director sends the Notice of Upcoming Cash Call to the Project Parties), all as reasonably estimated by the Project Director. Each Notice of Upcoming Cash Call shall include a certification that the Project Director reasonably expects to spend all of the proceeds of the Cash Call within 3 years of the Authority's Cash Call Due Date. The phrase "3 years" in the preceding sentence shall be changed to "5 years" for that Cash Call if the Project Director provides the Representatives a written certification from a licensed engineer that a period of at least 5 years is necessary to complete the Work included in the Cash Call.
- 3.7.2 Except as may be agreed to in writing otherwise by the Project Director, the Authority, and the Other Authorities, collectively, each Cash Call Due Date shall be (i) for the Authority, no earlier than the later of (A) 60 days after the date the Authority receives that particular Cash Call or (B) the estimated Cash Call Due Date provided in the Notice of Upcoming Cash Call, and (ii) for Houston, 30 days after the Authority's Cash Call Due Date. In no event shall a Cash Call Due Date be any later than 18 months after the date the Project Director sends the Notice of Upcoming Cash Call to the Project Parties.

3.7.3 Unless and until Houston, as set forth in Section 3.14.3, chooses to design and construct the Oversized Facilities to produce the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking, the Project Director shall use the formulas below to calculate each Project Party's Cash Call amount, the amount of the Authority's funds to be drawn from the Escrow Account, the amount of the Authority's funds to be drawn out of the Authority Fund, and the amount of Houston's funds to be drawn out of the Appropriation of Houston Funds:

**For the Authority and the Other Authorities:**

$$C = (P^1 * W^1) + (P^2 * W^2) + (P^M * W^M) + Z$$

**For Houston:**

$$C = (P^1 * W^1) + (P^2 * W^2) + (P^M * W^M) + Z$$

Where:

- C = Dollar amount of Cash (or for Cash Calls, the dollar amount of Cash or Cash Equivalent) due from the Project Party.
- P = The Project Party's Cost Share for the applicable Work as listed in the Participation Table, where: P<sup>1</sup> = Phase 1 Cost Share; P<sup>2</sup> = Phase 2 Cost Share; P<sup>M</sup> = Multi-Phase Work Cost Share.
- W = The Costs to be paid, where: W<sup>1</sup> = dollar amount of Costs for Phase 1; W<sup>2</sup> = dollar amount of Costs for Phase 2; W<sup>M</sup> = dollar amount of Costs for Multi-Phase Work.
- Z = Costs that a Project Party is obligated to pay at 100% pursuant to Section 3.6.3 of this Second Supplement or of Other Second Supplements.

3.7.4 If, as set forth in Section 3.14.3, Houston chooses to design and construct the Oversized Facilities to produce the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking, then the formulas in Section 3.7.3 above shall be revised as follows: (i) "W<sup>M</sup>" shall be revised to mean the dollar amount of Costs for Multi-Phase Work excluding all Costs of the Oversized Facilities, (ii) the Authority's formula above shall be modified to add after "Z", "+ (P<sup>M</sup> \* W<sup>A</sup>)", (iii) Houston's formula above shall be modified to add after "Z", "+ (P<sup>M</sup> \* W<sup>A</sup>)" and "+ (W<sup>B</sup> - W<sup>A</sup>)", and (iv) W<sup>A</sup> shall be the dollar amount of Costs for the approved Contract Non-Oversized Price and W<sup>B</sup> shall be the dollar amount of Costs for the approved Contract Oversized Price. (In

item "(iv)" of the preceding sentence, the term "approved" means approved in accordance with Section 6.3.). If the formulas are revised as described in the first sentence of this paragraph, then such revisions shall occur as of the effective date of the notice to proceed issued by Houston for the final design of the Oversized Facilities, which Houston shall issue in order to commence final design. Any reference to Section 3.7.3 in this Second Supplement shall be interpreted to include, if applicable, the revisions provided in this Section 3.7.4.

3.7.5 Each Cash Call shall include a written statement providing: (i) the actual dollar amount due from each Project Party pursuant to the Cash Call, but this actual dollar amount (A) shall not exceed the estimated dollar amount for that Project Party provided in the Notice of Upcoming Cash Call and (B) shall only be for Costs that have been approved in accordance with Section 6.3, for Exempt Item(s), or for Cost Recovery Amounts; (ii) the calculation of the amount of each Project Party's portion of the Cash Call; (iii) the Cash Call Due Date; (iv) the Costs and Work Items to be paid with the proceeds of the Cash Call; and (v) each Project Party's amount of surplus from previous Cash Calls, if any, as reasonably determined by the Project Director. At the time of sending a Cash Call to any Project Party, the Project Director shall provide a copy of that Cash Call to the other Project Parties via the Work Management System.

3.8 *Cash Call No. 1.* By the Parties' execution of this Second Supplement, Houston will be deemed to have issued to the Project Parties Cash Call No. 1 in the amount of \$6,975,173, as described in the attached Exhibit "E." Notwithstanding the provisions of Section 3.7 and Section 6.3: (i) the Authority's Cash Call Due Date for Cash Call No. 1 shall be 120 days after the Second Supplement Effective Date, and (ii) the Costs of such \$6,975,173 are deemed to be included in a Contract Price and are deemed to have obtained a Consensus Vote. Houston represents that it has already performed an Appropriation of Houston Funds in an amount equal to or greater than Houston's pro-rata share of Costs, based on Houston's applicable Cost Share for such Cash Call.

3.9 *Paying Cash Calls.* Houston shall pay Cash Calls in accordance with this Second Supplement, and the Authority shall pay Cash Calls in accordance with this Second Supplement and the Escrow Agreement.

3.9.1 In paying a Cash Call, and in accordance with the Escrow Agreement, the Authority shall, by its Cash Call Due Date, provide the Escrow Agent with Cash or Cash Equivalent, at the option of the Authority, in the amount of the funds required from the Authority by such Cash Call, which at the Authority's



option may include the application of any or all of the surplus identified in the Cash Call. In paying a Cash Call, Houston shall Appropriate Houston Funds by its Cash Call Due Date in the amount of the funds required from Houston by such Cash Call, which at Houston's option may include the application of any or all of the surplus identified in the Cash Call.

- 3.9.2 If the Authority satisfies a Cash Call with Cash, then the Authority shall be in default if any loss in investments made with such Cash in the Escrow Account causes insufficient Cash or Cash Equivalent to be available such that Houston is unable to timely draw the undrawn portion of the Cash Call that was satisfied with Cash. Provided, however, if the Authority promptly provides additional Cash or Cash Equivalent to replace such loss so that Houston is able to timely draw the undrawn portion of the Cash Call that was satisfied with Cash, then the Authority is deemed to not have been in default. If Houston presents a Withdrawal Request and Certificate to the Escrow Agent and Houston is unable to draw funds from the Escrow Account because of default described above in this Section 3.9.2, then the Authority shall pay Houston interest on the amount that Houston was unable to draw. Such interest shall be calculated at the interest rate described in Section 7.5 and shall accrue from the date Houston presents the Withdrawal Request and Certificate to the Escrow Agent until the date the Authority makes the funds available to Houston.
- 3.9.3 If an Appropriation of Houston Funds is comprised of Cash and if any loss in investments made with such Cash causes a reduction in such Cash so that Houston is unable to timely draw the undrawn portion of the Cash Call that was satisfied with Cash, then Houston shall promptly seek to Appropriate Houston Funds to replace such loss. If Houston fails to Appropriate Houston Funds to replace such loss, then Houston shall be in default, and Houston shall replace such loss prior to spending Cash from the Authority Fund.
- 3.9.4 If the Authority fails to provide Cash or Cash Equivalent or Houston fails to Appropriate Houston Funds by any Cash Call Due Date, as required by Section 3.9.1, then that Party shall be in default. In satisfying some or all of any Cash Call, if the Authority provides the Escrow Agent with Cash Equivalent or if Houston's Appropriation of Houston Funds is derived from Cash Equivalent, then the Authority or Houston, as applicable, shall be in default if it fails to both: (i) maintain the Cash Equivalent in place such that Houston is unable to timely draw the undrawn portion of the Cash Call that was satisfied with Cash Equivalent, and (ii) re-establish the Cash Equivalent (within 10 business days of receiving written notice) such that Houston is able to timely draw the undrawn portion of the Cash Call that was satisfied with the Cash Equivalent. (The phrase "written notice" in

the preceding sentence means a written notice (a) stating that the Cash Equivalent was not maintained, and (b) that is issued by the Project Director (if the notice is to the Authority) or issued by the Project Director or the Authority (if the notice is to Houston ).) If Houston fails to spend funds out of the Appropriation of Houston Funds as required by Section 3.11.1, then Houston shall be in default. As described in Section 2.49, default under this Section 3.9.4 shall be considered Non-Payment Default.

3.9.5 Cash Equivalent that is in the form of a line of credit may only be obtained from a financial institution which at the time of obtaining the Cash Equivalent has long term credit ratings in one of the three highest generic rating categories from at least two nationally recognized rating services. If at any time after the date a Party obtains a line of credit, the financial institution fails to meet the credit ratings requirement of the preceding sentence, then the Party shall (within 60 days after the date the financial institution failed to meet the credit ratings requirement) either replace the line of credit with: (i) Cash Equivalent that satisfies the credit ratings requirement, or (ii) Cash. After the expiration of such 60 days, a Party shall be in default if it fails (within 10 business days after receiving written notice from the Project Director or Authority (if the Party is Houston) or from the Project Director (if the Party is the Authority)) to replace the line of credit as described in the preceding sentence. As described in Section 2.49, default under this Section 3.9.5 shall be considered Non-Payment Default.

3.9.6 Cash or Cash Equivalent provided for any particular Cash Call shall only be used to pay for the Cash Call for which it was provided, unless it is determined to be surplus as provided in Section 3.7.5.

3.10 *The Escrow Account; Withdrawal of Funds.* Requests for disbursements from the Escrow Account shall be made in accordance with this Second Supplement and the Escrow Agreement. At such times as the Project Director reasonably determines that payments will be due to pay for the Work pursuant to this Second Supplement and Other Second Supplements, the Project Director shall provide to the Authority a written notice of its intent to draw from the Escrow Account along with a calculation of how each Project Party's draw amount has been calculated under Section 3.7.3.

3.10.1 No earlier than 5 days after providing such notice to the Authority, Houston, through the Project Director, shall deliver to the Escrow Agent a Withdrawal Request and Certificate that complies with the requirements of the Escrow Agreement (with a copy contemporaneously sent to Houston's Controller and the Representatives) in order to draw Cash from the Escrow Account.

3.10.2 Through the Work Management System, the Project Director shall notify the Project Parties of the following: (A) with respect to the Project Parties (other than Houston) the amount of Cash that Houston (via the Project Director) withdraws out of a Project Party's Escrow Account and the date of such withdrawals; and (B) with respect to Houston: (i) each date when Houston has Appropriated Houston Funds and the dollar amount of same, (ii) the dollar amount of all funds that Houston (via the Project Director) withdraws out of the Appropriation of Houston Funds and the date of such withdrawals.

3.10.3 The Authority shall maintain an Escrow Account meeting the requirements of this Section 3.10 until (i) the Authority receives a True-Up Statement calculated pursuant to Section 8.8 which indicates that the Authority no longer owes Houston any amounts related to the Expansion Project, or (ii) the Authority pays Houston the amount, if any, due from the Authority under such True-Up Statement.

3.11 *The Authority Fund.* All Authority funds withdrawn from the Escrow Account shall be immediately deposited into the Authority Fund and held in the Authority Fund until payment is made for the Costs. All Authority funds held in the Authority Fund shall be held by Houston in trust for the benefit of the Authority.

3.11.1 Houston, through the Project Director, shall spend funds in the Authority Fund only for (i) Costs that have been approved in accordance with Section 6.3 (or for Exempt Item(s)) for which Houston's Controller certified the availability of funds, and (ii) Cost Recovery Amounts. For each and every payment made by Houston out of the Authority Fund, Houston shall: (i) with respect to the Authority's funds held in the Authority Fund, withdraw an amount equal to the Authority's pro-rata share of the Costs to be paid for same, which shall be determined in accordance with the formula applicable to the Authority stated in Section 3.7.3; and (ii) contemporaneous with Houston's withdrawal of Authority funds for the payment, Houston shall spend funds out of the Appropriation of Houston Funds in an amount equal to Houston's pro-rata share of the Costs to be paid for same, which shall be determined in accordance with the formula applicable to Houston stated in Section 3.7.3.

3.11.2 For the pro-rata benefit of the Authority and Other Authorities, Houston's Controller shall invest the funds on hand in the Authority Fund in the Authorized Investments. All earnings and interest that are attributable to the Authority's funds on deposit in the Authority Fund shall inure to the benefit of the Authority.

3.11.3 The Project Director shall calculate the accrued interest and earnings in the Authority Fund and distribute the remaining proceeds from such interest and

earnings as part of the True-Up. Provided, however, if requested in writing by the Representative, the Project Director shall reduce the size of subsequent draw(s) from the Escrow Account by the amount of such interest and earnings.

3.12 *TWDB Funding.* The Project Parties shall endeavor to work in good faith to file applications with the Texas Water Development Board ("TWDB") for financing assistance for the Expansion Project on terms acceptable to each Project Party ("TWDB Expansion Funding").

3.12.1 The Director and the Authority's Board President shall be authorized to sign an amendment to this Second Supplement for the specific and limited purpose of accommodating TWDB Expansion Funding, without further approval from the governing bodies.

3.12.2 Nothing in this Second Supplement shall be construed to limit the Authority's right or Houston's right to independently seek TWDB funding for projects other than the Expansion Project.

3.12.3 No Project Party shall request funding for any portion of the Expansion Project from any TWDB funding program that would impose more stringent requirements on the Expansion Project than the requirements applicable to the State Water Implementation Fund, without first obtaining a Consensus Vote in favor of such requested funding. In connection with, and prior to, such Consensus Vote, the requesting Project Party shall provide each of the Project Parties with the draft funding application to be submitted to the TWDB.

3.13 *Cost Recovery Amounts.* Cost Recovery Amounts shall include a portion of the salary and associated benefits for each of Houston's employees who track their hours worked on Houston's construction projects (each a "Direct Employee"), plus a portion of the costs in Houston's Fund 1001 that are not associated with salaries and benefits for Direct Employees ("Overhead"), both of which shall be calculated in the manner described below.

3.13.1 Cost Recovery Amounts for Direct Employees shall be determined by multiplying (i) the cost to Houston of the salary and benefits of each Direct Employee, expressed as an hourly rate, by (ii) the hours each Direct Employee recorded as spent working on the Expansion Project.

3.13.2 The Cost Recovery Amounts for Overhead shall be calculated by multiplying (i) the percentage that Cost Recovery Amounts for Direct Employees (calculated pursuant to 3.13.1) bears to Houston's total cost of salaries and benefits for all

Direct Employees (the "Overhead Factor"), by (ii) the costs in Houston's Fund 1001 that are not associated with the salary and benefits for Direct Employees.

3.14 *Oversized Facilities Determination & Administration.* Prior to commencement of final design of the Oversized Facilities, the Project Director shall (a) reasonably determine the amount (in MGD) of the Oversized Facilities Design Capacity; and (b) obtain from the Contractor: (i) an estimate of the dollar amount of the cost to design and construct the Oversized Facilities to produce 320 MGD of treated water ("Estimated Non-Oversized Price"), and (ii) an estimate of the dollar amount of the cost to design and construct the Oversized Facilities to produce the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking ("Estimated Oversized Price").

3.14.1 Within 5 days of the Project Director receiving the Estimated Non-Oversized Price and the Estimated Oversized Price, the Project Director shall (i) post the Estimated Non-Oversized Price and the Estimated Oversized Price, and all related documents, including the technical specifications and estimated price for all Work Items on the Work Management System, and (ii) concurrently provide an email (or other written notice) to the Representative of such posting.

3.14.2 The Project Director shall present the Estimated Non-Oversized Price and the Estimated Oversized Price as Consensus Items in accordance with Section 6.3. The Project Director shall include in such presentation the technical specifications and estimated price of all Work Items that are included in the Oversized Facilities in both the Estimated Non-Oversized Price and the Estimated Oversized Price.

3.14.3 Houston may choose to construct the Oversized Facilities to produce the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking only if (a) the Estimated Non-Oversized Price and Estimated Oversized Price are approved by Consensus Vote; and (b) the Project Director revises the Cash Call Formula as provided in Section 3.7.4.

3.14.4 If Houston chooses to design and construct the Oversized Facilities to provide the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking, then the Project Director shall also be required, as part of the applicable presentation for the Costs to be included in a Contract Price for such Work Items, to adjust the Estimated Non-Oversized Price for each Work Item ("Contract Non-Oversized Price") by multiplying (a) the Estimated Non-Oversized Price of the Work Item by (b) the quotient of the Contract Oversized

Price (numerator) and the Estimated Oversized Price (denominator) of the same Work Item.

- 3.14.5 If Houston has constructed the Oversized Facilities to provide the Oversized Facilities Design Capacity and/or to meet Houston's seasonal demands for peaking, then the Project Director will update the Budget to reflect all actual and final Costs for each Work Item included in a Contract Oversized Price ("Final Oversized Price"). Subject to True-Up, the Project Director shall also update the Budget to show an adjustment to the Contract Non-Oversized Price ("Final Non-Oversized Price"), which is the result of multiplying (a) the Contract Non-Oversized Price of the Work Item by (b) the quotient of the Final Oversized Price (numerator) and the Contract Oversized Price (denominator) of the same Work Item. If the Contract Non-Oversized Price exceeds the Final Non-Oversized Price, then as documented in an Annual Financial Report, the excess shall be deemed surplus for purposes of Section 3.7.5. The Final Oversized Price and the Final Non-Oversized Price are subject to True-Up under Article VIII.

3.15 *Oversized Facilities Options & Reservations.* This Section 3.15 shall be applicable only if Houston chooses to design and construct the Oversized Facilities to produce the Oversized Facilities Design Capacity. After the last Phase AUP Report is prepared pursuant to Article VIII, and at any time prior to December 31, 2045, the Authority shall have the unrestricted right to an Oversized Facilities Reservation up to the Authority's Oversized Facilities Option. Houston shall be obligated to approve such Oversized Facilities Reservation within 60 days of receipt of (a) the Authority's request for the Oversized Facilities Reservation; and (b) the cost due from the Authority for the Oversized Facilities Contribution, in accordance with the formula below (instead of the cost-sharing formula for Treated Water Facilities Capital Contribution set forth in Section 3.03 of the Contract).

- 3.15.1 Within 60 days after receiving a request from the Authority for a calculation of the cost that may be due under the formula below ("Oversized Facilities Contribution"), Houston shall provide such calculation to the Authority.

[(Oversizing Costs as reflected in the Final Accounting + Houston's related borrowing costs)/Oversized Facilities Design Capacity in MGD] \* the Authority's Oversized Facilities Reservation in MGD. In the formula above, the phrase "Houston's related borrowing costs" shall mean the portion of Houston's actual interest and issuance costs then-incurred by Houston on its bonds and other financial instruments to the extent they are attributable to the Oversizing Costs, after taking into account any actual savings from any refundings or defeasances of such bonds or other financial instruments.

For each issue of Houston's bonds and other financial instruments described above, Houston shall include in the Final Accounting: (i) the name and principal amount issued, (ii) a summary of costs of the projects financed, including issuance costs, (iii) the calculation of "Houston's related borrowing costs" (as of the Final Accounting) as described in the preceding paragraph, and (iv) a debt service schedule showing all interest and principal payments due from Houston. At the time of calculation of any payment pursuant to the formula in the preceding paragraph, the items listed in the preceding sentence will be updated to take into account any actual savings from any refundings or defeasances of such bonds or other financial instruments.

3.15.2 If the Authority has not requested an Oversized Facilities Reservation in amounts up to its Oversized Facilities Option, then starting on December 31, 2045 and continuing through the term of this Second Supplement, Houston shall not sell, use, or transfer capacity in the amount remaining in the Authority's Oversized Facilities Option such that the Authority would be unable to obtain its remaining Oversized Facility Option unless Houston first provides the Authority with written notice of same and a 90 day opportunity to make an Oversized Facilities Reservation for an amount up to the Authority's remaining Oversized Facilities Option. Houston shall be obligated to approve such Oversized Facilities Reservation within 60 days of receipt of (a) the Authority's request for the Oversized Facilities Reservation; and (b) the cost due from the Authority's Oversized Facilities Contribution.

3.15.3 After the last Phase AUP Report is prepared pursuant to Article VIII, and at any time prior to December 31, 2045, the Authority shall have the unrestricted right to increase its Untreated Water Facilities Demand Allocation by an amount up to its Oversized Facilities Option, by submitting a request for a Reservation to Houston for such increase. Houston shall be obligated to approve such Reservation within 60 days of receipt of the Authority's request. Thereafter, the Authority shall hereby be obligated to make all payments for such increase in Untreated Water Facilities Demand Allocation in accordance with the due dates and calculations set forth in the provisions of the Contract. Within 60 days after receiving a request from the Authority for a calculation of the payments due for an increase in Untreated Water Facilities Demand Allocation, Houston shall provide such calculation to the Authority. The Authority may only obtain an Untreated Water Facilities Demand Allocation under this paragraph in an amount of MGD that does not exceed the Oversized Facilities Reservation that it previously or concurrently obtained; provided,

however, this sentence shall not be construed to limit the Authority's right to increase its Untreated Water Facilities Demand Allocation under the terms of the Contract.

3.15.4 If, prior to December 31, 2045, the Authority has not increased its Untreated Water Facilities Demand Allocation by the entire Oversized Facilities Option, then starting on December 31, 2045 and continuing through the term of this Second Supplement, Houston shall not sell, use, or transfer untreated water such that the Authority would be unable to obtain its remaining Oversized Facilities Option unless Houston first provides the Authority with written notice of same and a 90 day opportunity to make a request for a Reservation for such increase. Houston shall be obligated to approve such Reservation within 60 days of receipt of the Authority's request. Thereafter, the Authority shall hereby be obligated to make all payments for such increase in Untreated Water Facilities Demand Allocation in accordance with the due dates and calculations set forth in the provisions of the Contract.

3.15.5 After completion of the Expansion Project, the Authority may utilize any portion of its Oversized Facilities Reservation (for which it has paid its Oversized Facilities Contribution) at such time as the Authority increases (by an equal amount of MGD) its Untreated Water Facilities Demand Allocation and Treated Water Facilities Demand Allocation in the NEWPP (but no additional payment will be required for Oversized Facilities).

3.15.6 Any Project Party may in whole or in part assign, in the same manner as provided in Section 3.2.2 for Expansion Project Reservations, the Oversized Facilities Reservation and any Reservation that increases its Untreated Water Facilities Demand Allocation under this Section 3.15.

#### **ARTICLE IV**

#### ***WORK & SCHEDULE***

Section 4.1 *Control of the Work.* Houston, through the Project Director, shall manage the Work, including design, acquisition of the Expansion Project Property, and construction of the Expansion Project, in accordance with the Budget, Schedule, applicable laws and regulations, and this Second Supplement. Subject to the terms of this Second Supplement, Houston shall control and supervise the detailed manner or method of execution of all Work items and be responsible for the management and compensation of all personnel performing the Work. Houston's control of the Work and the Representative's involvement in



the Work described under this Second Supplement shall not change the nature of the relationship established in contracts between Houston and the Contractor or Consultants.

Section 4.2 *The Schedule.* The Project Director shall cause the prompt: (i) preparation and maintenance of an accurate Schedule and posting of same on the Work Management System, and (ii) concurrent provision of an email (or other written notice) to the Representative notifying the Representative when an updated Schedule has been posted to the Work Management System.

Section 4.3 *Bonds, Indemnity, and Insurance.* In order to meet applicable legal requirements and protect the Parties from reasonably foreseeable risks associated with the Work, Houston shall require: (i) any Contractor to provide adequate insurance coverage and payment and performance bonds, and (ii) any Consultant providing engineering services (and any other Consultant as reasonably determined by Houston) to provide adequate insurance coverage. Houston shall require any written contract with a Contractor and each Consultant engaged by Houston after the Second Supplement Effective Date to name the Authority: (a) as an additional insured (including waivers of subrogation by insurance carriers) to the extent permitted by law and to the extent that such Contractor or Consultant provides same in favor of Houston, and (b) as a party included under indemnity, hold harmless, release, and defense provisions to the extent permitted by law and to the extent that such Contractor or Consultant provides same in favor of Houston. With respect to Consultants providing Engineering Services contracted with Houston prior to the Second Supplement Effective Date, Houston shall accomplish the provisions of the previous sentence no later than 30 days after the Second Supplement Effective Date. The Project Director shall post copies of all such contracts and applicable insurance policies on the Work Management System. The Project Director and the Representatives collectively may agree to revisions to this paragraph.

- 4.3.1 The Project Director shall reasonably determine whether to make a claim under any first party insurance policy (such as a property insurance policy) or bond in connection with the Expansion Project. If the Project Director makes such a claim, the Project Director shall promptly distribute proceeds from the claim or bond in proportion to the Authority's applicable Cost Share related to the subject of the claim as follows: (i) to the Authority Fund for the benefit of the Authority, or (ii) to the Authority if the Project Director reasonably determines that such proceeds are surplus. In the event a Party makes a claim on an insurance policy or Houston makes a claim on a bond, such Party shall provide written notice to all Project Parties.

Section 4.4 *Work Management System.* To the fullest extent practicable, Houston shall cause all information and documents related to the Expansion Project to be accessible to the Expansion Project Team and the Representative through the Work Management System.

- 4.4.1 In order to protect information and documents in the Work Management System, the Project Director may require the Representative to agree to reasonable access conditions and non-disclosure terms.
- 4.4.2 The Project Director and Representative may agree on additional or different accessibility and contents of the Work Management System in order to facilitate collaboration and timely completion of the Work.
- 4.4.3 The Authority does not by way of this Second Supplement acquire any title, ownership interest, copyright or any other ownership right, to any information, document, or intellectual property, of any kind, stored or visible on the Work Management System. To the extent that any information, document, or intellectual property is not produced for the exclusive use of the Authority, the Authority shall not claim ownership of any intellectual property, or other ownership interest in the Work Management System, or related services, information, documents, charts, diagrams, specifications, and other tangible or intangible material of any nature whatsoever contained on the Work Management System. All patents, copyrights, and other proprietary rights related to the Work Management System and its components, shall be the sole and exclusive property of Houston, Contractor or Consultant(s). However, the Authority shall be entitled to use the Work Management System and all of its contents in order to achieve the purposes provided for in this Second Supplement.

## ARTICLE V

### PROJECT DELIVERY

Section 5.1 *Procurement Generally.* In accordance with this Second Supplement, Houston shall develop all documents and forms, such as solicitations and contracts, for procurement of all Work, Expansion Project Property, equipment, and materials necessary or desirable for completion of the Expansion Project. The Project Director shall place such documents and forms on the Work Management System prior to any public use of these documents.

Section 5.2 *Selection of Contractor.* In accordance with applicable law, Houston shall prepare and publish the request for qualifications of the Contractor. After Houston receives statements of qualifications from firms interested in submitting proposals for the Expansion Project, Houston shall provide said statements to the Selection Reviewer if the Selection Reviewer has

agreed in writing to reasonable non-disclosure terms provided by the Project Director. No firm shall be qualified for final selection under Section 2269.359(c), Texas Government Code, unless Houston and at least two of the Selection Reviewers of the following four governmental entities agree in writing that such firm is qualified: Central Harris County Regional Water Authority, North Fort Bend Water Authority, North Harris County Regional Water Authority, and West Harris County Regional Water Authority.

- 5.2.1 Thereafter, Houston shall provide a draft of the request for proposals, including a draft of the contract to be entered into between Houston and the Contractor, to the public, including qualified firms and the Selection Reviewer, for comments. After considering the comments provided and publishing to the public the comments and how they were addressed, Houston shall, in accordance with applicable law, publish the final request for proposals. The Project Director and the Selection Reviewer of all Project Parties (other than Houston) may collectively agree in writing to modifications of this paragraph.
- 5.2.2 In accordance with applicable law, including Texas Government Code Chapter 2269, Subchapter H, Houston shall (i) decide the firm with which it will negotiate a contract and provide notice to the Selection Reviewer of its decision; and (ii) after successful negotiations between Houston and a firm and after receipt of a Consensus Vote in favor of the final contract to be entered into between Houston and the firm, enter into a contract with the firm. In connection with, and prior to, such Consensus Vote, Houston shall provide the Selection Reviewer with the technical proposal and cost proposal that such firm provided to Houston, subject to the Selection Reviewer agreeing to reasonable non-disclosure terms provided by the Project Director.
- 5.2.3 If the Representative does not meet the eligibility qualifications required of the Selection Reviewer, as provided in Section 2.80, then the Selection Reviewer shall (i) assume all of the Representative's responsibilities related to the Consensus Vote described in Sections 5.2.2(ii) and 6.3(5), and (ii) provide written notice of such assumption to the Project Parties prior to such assumption occurring.
- 5.2.4 Pursuant to Section 2269.053, Texas Government Code, and only to the extent of the terms and conditions of this Section 5.2 and Section 6.3, Houston hereby delegates certain of its authority under Texas Government Code Chapter 2269 to the Selection Reviewers of the following four governmental entities: Central Harris County Regional Water Authority, North Fort Bend Water Authority, North Harris County Regional Water Authority, and West Harris County

Regional Water Authority. Houston shall provide notice of this delegation as required by Section 2269.053(b), Texas Government Code.

Section 5.3 *Design.* After entering into a contract with the Contractor, the Project Director shall cause the Contractor to promptly proceed with the design of the Expansion Project.

Section 5.4 *Expansion Project Property.* This Section shall not be effective unless the Project Director (i) reasonably determines that rights of way and other interests in real property adjacent to or in the immediate vicinity of the existing NEWPP site are necessary for the Expansion Project ("Expansion Project Property"), and (ii) provides written notice to the Representative of the Expansion Project Property to be acquired. In accordance with the Schedule and Consensus Process, Houston shall acquire the Expansion Project Property for a Contract Price. The Project Director shall reasonably determine the method and form that Houston uses to acquire the Expansion Project Property and may hire Consultants to acquire or assist in acquisition of the Expansion Project Property on Houston's behalf. Payments made by the Authority pursuant to this Second Supplement do not give the Authority an ownership interest in the Expansion Project Property.

Section 5.5 *Engineering and Construction Contract Price.* In accordance with the Schedule, Consensus Process, and other terms of this Second Supplement, the Project Director shall negotiate, on behalf of the Project Parties, Contract Prices for the Work associated with the Engineering Costs and Construction Costs.

Section 5.6 *Construction.* After obtaining the necessary design for the applicable portion of the Expansion Project, necessary permits and approvals, and a Contract Price for all or part of the Work, Houston shall cause the performance of the Work related to such Contract Price in accordance with the terms of this Second Supplement.

Section 5.7 *Contractor Schedule.* Houston shall include in the final request for proposals and in any contract with the Contractor a requirement that the Contractor achieve substantial completion of Phase 1 no later than August 31, 2021 and Phase 2 no later than June 30, 2024, subject to Houston's customary terms and provisions within such contracts regarding extension of time. The Project Director and the Representatives may collectively agree in writing to modifications of this paragraph.

Section 5.8 *Dispute Arising from the Work.* In the event that Houston is in a dispute with the Contractor or Consultants regarding the Work that results in settlement, litigation or other formal or informal dispute resolution, then the reasonable costs of same (including, without limitation, legal fees, court costs, expert witness fees, filing fees, and judgment payments or settlement payments paid to the Contractor or Consultants) shall be treated as a Cost such that each Project Party will be responsible for its applicable Cost Share related to the subject of the payment.

5.8.1 Any settlement agreement related to such a dispute shall be treated as a Consensus Item subject to the Consensus Process, and the settlement agreement shall also be subject to approval by Houston's City Council if required by law. Any judgment payments or settlement payments received by Houston shall inure to the benefit of the Project Parties in proportion to each Project Party's applicable Cost Share related to the subject of the payment.

5.8.2 Notwithstanding any provision of this Second Supplement and to the fullest extent permitted by law, including Houston's Charter and Code of Ordinances (to the extent the Ordinances are not inconsistent with this Second Supplement), any Project Parties that collectively comprise more than 63% of the Multi-Phase Cost Shares, as provided in the Participation Table, shall have the right by written instrument delivered to Houston, to direct the method and manner of conducting all proceedings related to such litigation or other dispute resolution or for any remedy available to Houston under the contracts with the Contractor or Consultants; provided, however, that such direction shall not be contrary to law or the provisions of this Second Supplement.

Section 5.9 *Miscellaneous Services.* As part of a Contract Price, Houston may engage various Consultants to provide miscellaneous Work.

## ARTICLE VI

### CONSENSUS PROCESS

Section 6.1 *Consensus Process.* Notwithstanding any other provision of this Second Supplement, the Project Parties shall use and be bound to the process provided in Sections 6.2 through 6.6 below for Work-related items and issues that may arise during the Expansion Project under Article III through VI of this Second Supplement ("Consensus Process"). The Project Parties shall endeavor to work in good faith to attempt to resolve issues without resorting to the process described in Section 6.4.

Section 6.2 *Weighted Vote; Consensus Vote.* The Project Director, Representative, and the Other Representatives shall each have a vote on a Consensus Item or a Representatives' Issue, as such terms are defined below, weighted equal to the respective Project Party's Multi-Phase Cost Share provided in the Participation Table ("Weighted Vote"). Any total Weighted Vote of the Project Parties that exceeds 63% in favor of a particular option voted upon ("Consensus Vote") shall be binding on all Project Parties to the fullest extent permitted by law.

Section 6.3 *Consensus Items.* At any time during the Expansion Project, a Consensus Vote shall be required to approve the following items (each, a "Consensus Item"): (1) the Costs that

Houston proposes to include in the Contract Price(s), plus any related contingency costs; (2) the Estimated Non-Oversized Price, Contract Non-Oversized Price, Estimated Oversized Price and Contract Oversized Price; (3) any change(s) to the contract with a Contractor that change either date reflected in Section 5.7 by more than 60 cumulative days; (4) any emergency purchase order under Section 6.6; and (5) the final contract to be entered into between Houston and the firm described in Section 5.2.2(ii).

- 6.3.1 The Project Director shall present Consensus Items to the Representative and the Other Representatives via the Work Management System (the "Presentation"); provided, however, the Presentation for an emergency purchase order under Section 6.6 shall also be provided directly to the Representative. The Presentation shall provide the Representative with: (i) a technical overview, cost breakdown, action required by the Project Parties, and the alternatives considered for the Consensus Item, as applicable, and (ii) for Consensus Items involving Contract Price(s), an updated Budget.
- 6.3.2 The Representative shall provide to the Project Director in writing the official vote on behalf of the Authority within seven (7) business days of the date the Presentation is posted to the Work Management System (or, for any emergency purchase order under Section 6.6, within two (2) business days of the date the Presentation is posted to the Work Management System), otherwise the Authority shall be deemed to have voted in favor of the Consensus Item. (For purposes of the preceding sentence, "the date the Presentation is posted to the Work Management System" shall be the later of: (i) the date the Presentation is placed on the Work Management System, or (ii) the date an email (or other written notice) is received by the Representative from the Project Director notifying the Representative that the Presentation has been placed on the Work Management System.) The Representative shall include with any vote against a Consensus Item a brief summary of the reasons the Authority does not support the Consensus Item. If the vote fails to result in a Consensus Vote in favor of the Consensus Item, then the Consensus Item is not approved. Provided, however, if the failed vote relates to Costs that Houston proposed to include in a Contract Price (or relates to Estimated Non-Oversized Price, Contract Non-Oversized Price, Estimated Oversized Price, or Contract Oversized Price), then the Project Director shall continue thereafter, with all due haste, to provide the Project Parties with modified proposal(s) regarding such items in order to attempt to obtain a Consensus Vote. Absent a written statement to the contrary by the Project Director provided to the Representatives prior to the vote, the Project Director is deemed to cast Houston's vote in favor of the Consensus Item.

Section 6.4 *Representatives' Issues.* At any time during the Expansion Project, two or more Representatives may submit a written request to the Project Director with a copy to the Project Parties to require additional discussion of an issue concerning Representation, or design, construction, progress, or manner of execution of the Expansion Project ("Representatives' Issue(s)") if: (1) The requesting Representatives have previously notified the Project Director of the issue and a proposed solution or alternative course of action (collectively, "Proposed Solution(s)"); and (2) The written request includes a summary of the Representatives' Issue and the Proposed Solution, and is sent not later than five (5) business days after a decision by the Project Director on the subject matter of the Representatives' Issue is posted to the Work Management System. (Item (2) of the preceding sentence shall not be construed to preclude a Representative Issue from being sent prior to the decision being posted to the Work Management System.)

- 6.4.1 Within five (5) business days of receiving written notice of the Representatives' Issue, the Project Director shall convene a meeting ("Authority Meeting") with the Representative and the Other Representatives to discuss the Representatives' Issue and the Proposed Solution unless the Representatives' Issue is withdrawn in writing prior to the Authority Meeting.
- 6.4.2 If by 11:59 p.m. on the day of the Authority Meeting, any Representative requests a Weighted Vote regarding the Proposed Solution, then the Project Director, the Representative, and the Other Representatives shall provide to the Project Parties in writing the official vote on behalf of each respective Project Party within five (5) business days of the Authority Meeting. If the Representative fails to cast its vote timely, the Representative shall be deemed to have voted the same way as the Project Director. If the Proposed Solution receives a Consensus Vote, then such vote shall be binding on the Project Parties to the fullest extent permitted by law. As set forth in Section 6.5 below, no Consensus Vote shall occur on Exempt Items, but Exempt Items may become Representatives' Issues and may be the subject of an Authority Meeting, as set forth in this Section.
- 6.4.3 If a vote on the Proposed Solution fails to result in a Consensus Vote in favor of the Proposed Solution, one or more Representative(s) comprising at least 20% of the Weighted Vote may appeal to the Director by sending written notice of appeal to the Project Parties and the Director within 3 business days of such vote. Within 5 business days of receiving notice of an appeal, the Director may choose to change the vote cast on behalf of Houston. If the Director chooses to change Houston's vote, and such change results in a Consensus Vote in favor of the Proposed Solution, then that Consensus Vote shall be binding on the Project Parties to the fullest extent permitted by law. If (i) a notice of appeal is not sent, (ii) the Director does not change Houston's vote within 5 business days, or (iii)

any such change does not result in a Consensus Vote, then the decision by the Project Director on the subject matter of the Representatives' Issue (referred to in Section 6.4) shall be binding on the Project Parties to the fullest extent permitted by law.

- 6.4.4 The process set forth in this Section 6.4 is not intended to cause an amendment to the express provisions of this Second Supplement without a written instrument being executed by the governing bodies of Houston and the Authority pursuant to Section 10.4; provided, however, such process is intended to cause implementation of any Proposed Solutions that receive Consensus Vote.

Section 6.5 *Exempt Items.* The Project Parties agree that any items shall not be subject to a Consensus Vote if the Director, in his or her reasonable discretion, determines the items are necessary to comply with any applicable regulatory requirements related to workplace safety, public safety, operations, or regulatory compliance, including environmental compliance, related to the Expansion Project or the existing NEWPP (collectively, the "Exempt Item(s)"). If the Director determines, in his or her reasonable discretion, that a matter constitutes an Exempt Item, then the Director shall (i) provide the Authority with written notice of such determination, and (ii) in good faith consider any comments or input provided by the Authority related to the Exempt Item(s).

Section 6.6 *Emergency Purchase Order.* The Project Director may reasonably determine that a Houston emergency purchase order is necessary for the continuation of the Expansion Project if (i) due to an emergency, (a) the Project Director reasonably determines that immediate Work is needed to prevent unanticipated damage to the property that comprises the Expansion Project (as opposed to property that comprises the existing NEWPP) and (b) the requirements for emergency purchase orders under State law and Houston's written manuals and procedures are met, and (ii) Appropriated Houston Funds do not have adequate contingency funds available to pay for the immediate Work. In that event, the Project Director shall provide the Representative, as soon as practicable, with written notice (i) including a copy of the emergency purchase order and a description of the emergency and damage to be prevented, and (ii) an estimate of the portion of funds from the emergency purchase order directly benefiting the Expansion Project and the Authority's pro-rata share, based on the Authority's applicable Cost Share, of such estimate. If the emergency purchase order is an Exempt Item or receives a Consensus Vote, then the Authority shall pay Houston its applicable Cost Share of the emergency purchase order within 60 days of receiving an invoice for same from Houston.



**ARTICLE VII**  
**NON-PAYMENT**

Section 7.1. *Non-Payment Default Generally.* The Project Director shall promptly provide written notice (such as email or other written notice) to all Project Parties of any Non-Payment Default by the Authority or Houston.

Section 7.2. *Authority's Non-Payment Default.* If it is the Authority that is in Non-Payment Default, then, beginning on the 16<sup>th</sup> and ending on the 45<sup>th</sup> day after the date the Authority receives written notice of the Authority's Non-Payment Default from the Project Director, Houston shall have the remedies set forth in this Section 7.2. If the Authority cures the Non-Payment Default prior to the 16<sup>th</sup> day described in the preceding sentence, then the remedies set forth in this Section 7.2 shall not apply.

- 7.2.1 Houston may assume some or all of the portion (in MGD) of the Expansion Project Reservation for which the Authority has not already provided Cash or provided and maintained Cash Equivalent ("Unpaid Reservation"). Any such assumption by Houston shall be accomplished by Houston providing written notice to all Project Parties that Houston has assumed all of the Authority's outstanding and future rights and obligations in and to the Unpaid Reservation. Thereafter, Houston may retain or sell all or a portion of the Unpaid Reservation;
- 7.2.2 Houston may modify the Expansion Project to reduce the capacity of the Expansion Project to eliminate some or all of the Unpaid Reservation. The additional Costs resulting therefrom that are incurred by the other Project Parties, including, without limitation, Engineering Costs for re-design Work, (collectively "Downsizing Costs") shall be due from the Authority, as described below. Any Project Party not then in Non-Payment Default may demand payment of the Downsizing Costs, which payment shall be made within 90 days thereafter by the Authority, pro-rata, to the other Project Parties;
- 7.2.3 Houston may assign some or all of the Unpaid Reservation to one or more of the Other Authorities in accordance with Section 3.2.2 if the one or more Other Authority(ies) to whom it is assigned agree, in writing, to the assignment; and
- 7.2.4 Houston may refuse any requests for Reservations from the Authority received by Houston prior to December 31, 2025.

Section 7.3. *Remaining Unpaid Reservation.* In the event some portion of Unpaid Reservation is remaining after Houston exercises its options pursuant to Section 7.2, or if the 45-day period described in Section 7.2 expires and any portion of the Unpaid Reservation is still remaining, then the Authority that is in Non-Payment Default shall be deemed to have assigned to the Project Parties that are not then in Non-Payment Default (and such Project Parties are deemed to have assumed), pro-rata, the outstanding and future rights and obligations in and to the Unpaid Reservation.

Section 7.4. *Houston's Non-Payment Default.* If it is Houston that is in Non-Payment Default, then the Authority shall have the remedies set forth in this Section 7.4, beginning on the 16<sup>th</sup> and ending on the 45<sup>th</sup> day after the earlier of: (i) the date the Authority receives written notice of Houston's Non-Payment Default from the Project Director, or (ii) the date Houston receives written notice of Houston's Non-Payment Default from the Authority. If the Authority provides notice to Houston pursuant to the preceding sentence, the Authority, contemporaneous with its sending such notice to Houston, shall provide a copy of same to the other Project Parties. If Houston cures the Non-Payment Default prior to the 16<sup>th</sup> day described in the first sentence of this paragraph, then the remedies set forth in this Section 7.4 shall not apply.

7.4.1 Pursuant to Section 7.4, the Authority and the Other Authorities (if they are not then in Non-Payment Default) may agree among themselves to assume all of the portion (in MGD) of Houston's capacity in the Expansion Project for which Houston has not already Appropriated Houston Funds ("Unpaid Capacity"). Any such assumption by the Authority and such Other Authorities shall be accomplished by the Authority and such Other Authorities providing written notice to all Project Parties that they have assumed all of Houston's outstanding and future rights and obligations in and to the Unpaid Capacity.

7.4.2 In the event the 45-day period described in this Section 7.4 expires and any portion of the Unpaid Capacity is still remaining, then Houston shall be deemed to have assigned to the Project Parties (other than Houston) that are not then in Non-Payment Default (and such Project Parties are deemed to have assumed), pro-rata, the outstanding and future rights and obligations in and to the Unpaid Capacity.

7.4.3 In the event of Houston's Non-Payment Default, Houston shall continue with its obligations under this Second Supplement to complete the Expansion Project.

Section 7.5. *Late Interest.* For the first 45 days following the date a Party enters into Non-Payment Default or following the date that a Party is delinquent in paying Downsizing Costs pursuant to Section 7.2.2, late interest shall accrue on the delinquent amount at an interest

rate equal to (i) one percent, plus (ii) the prime rate as published in the Wall Street Journal on the first business day of July of the preceding calendar year. Any Project Party not then in Non-Payment Default may demand payment of such late interest, which payment shall be made within 60 days thereafter by the Party in Non-Payment Default, pro-rata, to the other Project Parties. Thereafter, any interest shall accrue as may be required by law.

Section 7.6. *Preservation of Remedies.* Exercise of the options and remedies set forth in this Article VII does not waive any other remedies (including, without limitation, remedies for damages) that may be available at law or in equity against the Project Party that is in Non-Payment Default.

Section 7.7. *Modification of Time Periods.* The Project Director, the Authority, and the Other Authorities may collectively agree in writing to modify any of the time-periods set forth in this Article VII.

Section 7.8. *Agreement Not Required if in Non-Payment Default.* Certain provisions of this Second Supplement allow for revisions to this Second Supplement if the Project Director, the Authority, and the Other Authorities (or the Project Director and the Representatives) collectively agree in writing. In the event a Project Party is then in Non-Payment Default, agreement from such Project Party shall not be required for the other Project Parties to be able revise the Second Supplement as described in the preceding sentence.

## ARTICLE VIII

### ACCOUNTING & FINAL STATEMENT

Section 8.1. *Payment for Work.* As the Project Director receives invoices for the Work and Acquisition Costs, the Project Director shall review and approve or disapprove such invoices and shall pay for same as provided herein. The Project Director shall post this payment information and the other documents described in this Article to the Work Management System.

Section 8.2. *Annual Financial Report.* Each year until the Final Accounting and by no later than October 1 of each year, the Project Director shall post to the Work Management System an interim, unaudited financial report ("Annual Financial Report") of the (i) funds credited to and debited from the Escrow Account, (ii) sources and uses of funds credited to and debited from (and the dates of such credits and debits) the Authority Fund, (iii) the amount(s) of funds paid (and date(s) paid) by Houston out of the Appropriation of Houston Funds, (iv) earnings and interest accrued in the Authority Fund for the benefit of the Authority and Other Authorities, (v) the Cost Recovery Amounts and calculation thereof, and (vi) for the initial Annual Financial Report, the Costs incurred by Houston prior to December 1, 2014, in accordance with

Section 3.4. The reporting period for Annual Financial Reports shall include all transactions from July 1 of the previous calendar year through June 30 of the current year.

Section 8.3. *Phase Financial Report.* Within 90 days of completion of the Work for any Phase, the Multi-Phase Work, or the Oversized Facilities, the Project Director shall post to the Work Management System a final, unaudited financial report of all Costs for that Phase, Multi-Phase Work, or Oversized Facilities ("Phase Financial Report"). The Phase Financial Report shall provide the same type of information and formatting as the Annual Financial Report and shall identify the remaining Cash and Cash Equivalent in the Escrow Account and the Cash in the Authority Fund and anticipated refunds and shortfalls, based upon the most-current Budget and Participation Table.

Section 8.4. *Semi-Annual Cost Recovery Amounts Report.* Semi-Annually, Houston shall provide to the Authority a report showing all Cost Recovery Amounts Houston charged to the Expansion Project during the period from January 1<sup>st</sup> to June 30<sup>th</sup> and from July 1<sup>st</sup> to December 31<sup>st</sup> of each year. Reports for the period ending December 31<sup>st</sup> shall be due by the following February 28<sup>th</sup> and reports for the period ending on June 30<sup>th</sup> shall be due by August 31<sup>st</sup>. Notwithstanding the foregoing, the first report shall cover the period from December 1, 2014 to June 30, 2015 and be due by August 31, 2015.

Each report shall include for the applicable period: (i) for each Direct Employee recording hours worked on the Expansion Project (a) the total cost to Houston for the employee's salary and associated benefits, expressed as an annual amount and as an hourly rate, (b) the total hours worked, and (c) the totals hours worked on the Expansion Project; (ii) the total of all amounts determined pursuant to (i); (iii) the total costs of salaries and associated benefits for all Direct Employees, whether each employee recorded hours worked on the Expansion Project or not; (iv) the Overhead Factor; (v) an itemized list and backup for all costs included as Overhead; (vi) the total Cost Recovery Amount.

Section 8.5. *Review and Comment.* The Representative shall have the opportunity to review and comment on Annual Financial Reports, Phase Financial Reports, Final Accounting, and the True-Up Statement within 30 days of the later of: (i) the date the applicable document is posted to the Work Management System, or (ii) the date an email (or other written notice) is received by the Representative from the Project Director notifying the Representative that the applicable document has been posted to the Work Management System. The Project Director shall address any of the Representative's comments within 30 days of receiving the comment(s). The Project Director and Representative may agree in writing to a longer period for comments and to address such comments.

Section 8.6. *Agreed Upon Procedures.* No later than the first anniversary of the Second Supplement Effective Date, Project Parties that collectively comprise more than 63% of the

Multi-Phase Cost Shares, as provided in the Participation Table, shall agree on standard procedures and questions for AUP Reports. The cost incurred by Houston to obtain each AUP Report shall be considered a Work Item shared by the Project Parties according to their respective Cost Shares for Multi-Phase Work.

- 8.6.1 Within 90 days after the end of the time-period for the Representative to provide comments to a Phase Financial Report under Section 8.5, the Project Director shall cause an AUP Report to be prepared and posted on the Work Management System ("Phase AUP Report"). A Phase AUP Report shall review, test, and verify the associated Phase Financial Report.
- 8.6.2 The Representative shall have the opportunity to review the Phase AUP Report and provide comments to the Project Director for 30 days following the later of: (i) the date the Phase AUP is posted to the Work Management System, or (ii) the date an email (or other written notice) is received by the Representative from the Project Director notifying the Representative that the Phase AUP has been posted to the Work Management System. The Project Director shall consider and respond to said comments and may provide an addendum to the Phase AUP Report.

Section 8.7. *Final Accounting.* The last Phase AUP Report shall include a final accounting for all Phases, Multi-Phase Work, and Oversized Facilities ("Final Accounting") that includes: (a) a list of all Costs paid from the Authority Fund and from Appropriations of Houston Funds; (b) the cumulative amount of Cash withdrawn by Houston from the Escrow Account and from escrow accounts created under the Other Second Supplements; (c) the earnings and interest earned on the Authority's funds and the Other Authorities' funds in the Authority Fund; (d) the amount of funds, if any, remaining in the Authority Fund after all Costs have been paid; (e) the Authority's and the Other Authorities' pro-rata share shown as a percentage and dollar amount, based on the applicable Cost Share, of any remaining funds described in (d) above; (f) the amount of funds, if any, the Authority owes for the Work, Cost Recovery Amounts, and Acquisition Costs based on its applicable Cost Share that was not already paid by the Authority pursuant to this Second Supplement; and (g) the Costs incurred by Houston prior to December 1, 2014, in accordance with Section 3.4. In accordance with this Second Supplement, the Final Accounting shall state for each Project Party the amounts, if any, due or owing to or from such Project Party for the items calculated using items (a) through (g) above. The Final Accounting shall also include (i) the Oversizing Costs based on the Final Oversized Price and the Final Non-Oversized Price of each applicable Work Item pursuant to Section 3.14 and (ii) the items listed in the third paragraph of Section 3.15.1.

Section 8.8. *True-Up.* Consistent with the Final Accounting, and within 60 days after the Final Accounting has been posted to the Work Management System, the Project Director shall prepare a True-Up Statement (the "True-Up Statement") reflecting the amount, if any, due to or owed from the Authority pursuant to this Second Supplement, and shall post same on the Work Management System. After the comment period provided for in Section 8.5, the Project Director shall issue the Authority the True-Up Statement, including any revisions made by the Project Director based on comments received. If the True-Up Statement provides that the Authority owes Houston a payment, the Authority shall pay any such amount to Houston within 180 days of the date the True-Up Statement is received by the Authority and the Authority shall be in default if it fails to do so. If the True-Up Statement provides that Houston owes the Authority a payment, Houston shall pay any such amount to the Authority within 90 days of the date the True-Up Statement is issued and Houston shall be in default if it fails to do so. Nothing in this Section prohibits a Party from challenging the calculation of the Annual Financial Reports, Phase Financial Reports, Final Accounting, or the True-Up Statement, as not being in compliance with this Second Supplement.

## ARTICLE IX

### *TERM*

Section 9.1 *Term.* Section 15 of the First Supplement is amended to read as follows:

"The Contract and the Second Supplement shall expire at noon on January 1, 2080. At such time as the Contract and the Second Supplement are no longer in force and effect, if requested in writing by the Authority, Houston agrees to continue to provide water services to the Authority upon the payment of reasonable rates and charges therefor which take into account the capital payments paid by the Authority to Houston pursuant to the Contract (and any supplements, including the Second Supplement, or amendments thereto) and the Authority's equitable interest described below. Upon the date that the Contract and the Second Supplement are no longer in force and effect, the Authority will own the right to use the capacity of the Untreated Water Facilities and Treated Water Facilities proportionate to the amount of its Water Demand Allocation as it existed immediately prior to such date. The immediately preceding two (2) sentences shall survive the expiration or termination of the Contract and the Second Supplement."

The term "Contract" in the above paragraph, and throughout this Second Supplement, has the meaning given in Section 2.19 of this Second Supplement.

**ARTICLE X**  
**MISCELLANEOUS**

Section 10.1 *Time; Force Majeure.* Time is of the essence with respect to performance of all obligations set forth in this Second Supplement. The Force Majeure provisions of the Original Contract apply to this Second Supplement; provided, however, Force Majeure does not excuse a failure to timely satisfy Cash Call obligations.

Section 10.2 *Severability.* If any part of this Second Supplement is for any reason found to be unenforceable, all other parts remain enforceable.

Section 10.3 *Recitals.* The recitals contained in Article I are true and correct, accurately represent the understandings and intent of the parties, and are incorporated into this Second Supplement by reference.

Section 10.4 *Written Amendment.* Unless otherwise specified elsewhere in this Second Supplement, this Second Supplement may be amended only by written instrument executed by the governing bodies of Houston and the Authority and, if the amendment is to a provision in Article III through VIII, then the written consent of all Project Parties shall be required.

Section 10.5 *Applicable Laws.* This Second Supplement is subject to the laws of the State of Texas, the Houston's Charter and Ordinances (to the extent the Ordinances are not inconsistent with this Second Supplement), the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Second Supplement is Harris County, Texas.

Section 10.6 *Notices.* All notices required or permitted by this Second Supplement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (a) deposit in a United State Postal Service post office or receptacle; (b) with proper postage (certified mail, return receipt requested); and (c) addressed to the other party at the address provided in the Original Contract.

Section 10.7 *Captions.* Captions contained in this Second Supplement are for reference only, and therefore, have no effect in construing this Second Supplement. The captions are not restrictive of the subject matter of any section in this Second Supplement.

Section 10.8 *Non-Waiver.* If any Party fails to require another Party to perform a term of this Second Supplement, that failure does not prevent the Party from later enforcing that term and all other terms. If any Party waives another Party's breach of a term, that waiver does not waive a later breach of this Second Supplement.

Section 10.9 *Enforcement*. The City Attorney, or his or her designee, may enforce all of Houston's legal rights and obligations under this Second Supplement without further authorization.

Section 10.10 *Ambiguities*. If any term of this Second Supplement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

Section 10.11 *Remedies Cumulative*. Unless otherwise specified elsewhere in this Second Supplement, the rights and remedies contained in this Second Supplement are not exclusive, but are cumulative of all rights and remedies that exist now or in the future at law or in equity (including, without limitation, specific performance, mandamus, and injunctive relief). No Party may terminate its duties under this Second Supplement except as may be specifically provided for in this Second Supplement.

Section 10.12 *Third Party Beneficiaries*. The terms of this Second Supplement will be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. The Parties hereby expressly acknowledge and stipulate their intent that each of the Project Parties not included within the definition of the Parties shall be a third party beneficiary of this Second Supplement, and shall have the right and legal standing to enforce the respective obligations of the Parties hereunder to the full extent allowed at law or in equity; provided, however, that in no event shall the Project Parties have the right to bring suit for money damages against any Party to this Second Supplement in any case or cause of action in which a direct Party to this Second Supplement would have no right to bring suit for money damages under the terms of this Second Supplement. Except as described in the preceding sentence, this Second Supplement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any rights upon any third party.

Section 10.13 *Waiver of Immunity*. The Project Parties expressly acknowledge and agree that this Second Supplement constitutes a contract by which each Project Party is providing goods and/or services to all other Project Parties and that this Second Supplement is subject to the provisions of Subchapter I, Chapter 271, of the Texas Local Government Code.

Section 10.14 *Reserved*.

Section 10.15 *Assignability*. Unless otherwise specified elsewhere in this Second Supplement, this Second Supplement shall not be assignable by either Party without the prior written consent of the other Project Parties.

Section 10.16 *Additional Information*. The provisions of this Section shall terminate 180 days after the Authority receives a True-Up Statement calculated pursuant to Section 8.8. The



Authority shall provide the Project Director with the following documents no later than the time the Authority submits such documents to the Municipal Securities Rulemaking Board ("MSRB") via the Electronic Municipal Market Access system established by the MSRB: (i) the Authority's annual audited financial statements, and (ii) notice of these specified events with respect to outstanding Authority bonds:

- A. Principal and interest payment delinquencies;
- B. Non-payment related defaults, if Material;
- C. Unscheduled draws on debt service reserves reflecting financial difficulties;
- D. Unscheduled draws on credit enhancements reflecting financial difficulties;
- E. Substitution of credit or liquidity providers, or their failure to perform;
- F. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Authority's outstanding bonds, or other Material events affecting the tax-exempt status of the Authority's outstanding bonds;
- G. Modifications to rights of holders of the Authority's outstanding bonds, if Material;
- H. Release, substitution, or sale of property securing repayment of the Authority's outstanding bonds, if Material;
- I. Rating downgrades (other than bond insurance company rating downgrades);
- J. Bankruptcy, insolvency, receivership or similar event of the Authority or other obligated person within the meaning of the United States Securities and Exchange Commission Rule 15c2-12, as amended from time to time (the "Rule"); and
- K. Consummation of a merger, consolidation, or acquisition involving the Authority or other obligated person within the meaning of the Rule, or the sale of all or substantially all of the assets of the Authority or other obligated person within the meaning of the Rule, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if Material.

Upon discovery of an event of default under any agreement by which the Authority obtained a line of credit or letter of credit (if any) as Cash Equivalent under this Second Supplement, the Authority shall deliver to the Project Parties (via the Work Management System or other means of delivery) a certificate specifying the nature of such event of default, the period of existence of such default, and the action that the Authority has taken and will take to remedy such default.

## ARTICLE XI

### *EFFECT ON AND AMENDMENTS TO THE ORIGINAL CONTRACT*

Section 11.1 *Entire Agreement.* This Second Supplement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties in relation to the Expansion Project, the Work, the Costs, the Expansion Project Reservation, and the Oversized Facilities Option. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding the Expansion Project, the Work, the Costs, the Expansion Project Reservation, and the Oversized Facilities Option contemplated in this Second Supplement.

Section 11.2 *Authority's Payment of O&M Expenses; Amendments to Original Contract.*

11.2.1 The term "Plant Facilities" is currently defined in the Contract as the facilities identified in Exhibit "B" attached thereto and such exhibit describes the Northeast Water Purification Plant as it exists prior to the Second Supplement Effective Date. For all purposes under the Contract, after the Authority begins receiving Water from the Expansion Project, the term "Plant Facilities" shall be expanded to also include the Expansion Project.

11.2.2 For purposes of calculating the O&M Expenses for the Authority (except for purposes of item "F", which is provided for in Section 11.2.3 below), the parties agree to treat the portion of the Plant Facilities existing on the Second Supplement Effective Date and the portion of the Plant Facilities constructed as part of the Expansion Project as a single water plant. As a result, after the Authority begins receiving water out of the Expansion Project, the calculation stated in Section 4.02 of the Original Contract for calculating the Authority's O&M Expenses shall be amended by (i) adding "less the amount (in millions of gallons) of Water taken from the Plant Facilities during such year by the West Harris County Regional Water Authority and the North Fort Bend Water Authority, combined. The amounts taken from the Plant Facilities by the other aforementioned water authorities shall be determined by the amount of Water measured by the measuring equipment pursuant to Article VII of their respective Water Supply Contracts with Houston." to the end of the current description of "B;" and (ii) adding "less the amount of all such costs and expenses paid by the West Harris County Regional Water Authority and the North Fort Bend Water Authority, combined." to the end of the first sentence of the description of "C."

11.2.3 In addition, the second sentence of item "F" is amended to read as follows: "As used in this definition, the ratio for determining the share of the cost borne by the

Authority is a fraction, the numerator of which is the Authority's then-current Treated Water Facilities Demand Allocation in the applicable facility and the denominator of which is the total capacity (in MGD) of the ~~entire~~ applicable facility subject to the Major Rehabilitation, repair or replacement. For purposes of this calculation, the Plant Facilities, existing at the expansion date of this Second Supplement) and the Expansion Project shall be treated as two separate facilities after the Authority begins receiving water out of the Expansion Project.”

Section 11.3 *Reserved.*

Section 11.4 *Conflicts.* This Second Supplement shall control over the Contract with respect to the matters addressed in this Second Supplement, including, without limitation: (i) the Expansion Project and all payments from the Authority related to the same, (ii) the Phase 1 Expansion Project Reservation, Phase 2 Expansion Project Reservation, Oversized Facilities Option, and all payments related to the same, and (iii) calculation of O&M Expenses with respect to the Expansion Project. Except to the extent inconsistent with this Second Supplement, all terms of the Contract remain in full force and effect.

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ARTICLE XII

SIGNATURES

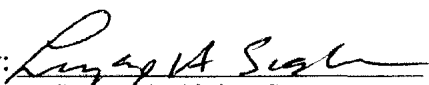
IN WITNESS WHEREOF, Participants have executed this Second Supplement in multiple copies, each of which shall be deemed to be an original, as of the date of countersignature by the City Controller of Houston.

NORTH HARRIS COUNTY  
REGIONAL WATER AUTHORITY

By:   
Alan J. Rendy, President


ATTEST:

DATE APPROVED:

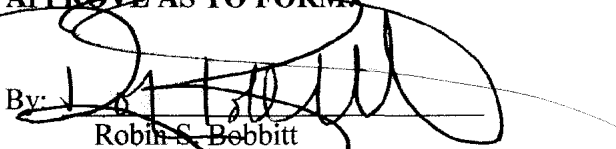
By:   
Lenox A. Sigler, Secretary

02-12-15

APPROVED:

By:   
Jimmie Schindewolf, P.E.  
General Manager

APPROVE AS TO FORM:

By:   
Robin S. Bobbitt  
General Counsel



CITY OF HOUSTON, TEXAS

Annise D. Parker  
Annise D. Parker  
Mayor

ATTEST/SEAL:

Anna Russell  
Anna Russell  
City Secretary

DATE COUNTERSIGNED:

2-25-15  
("Second Supplement Effective Date")

APPROVED:

Dale A. Rudick  
Director, Public Works & Eng.  
Department

APPROVED AS TO FORM:

A. G. Bell  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

COUNTERSIGNED BY:

Ronald C. Green  
Ronald C. Green  
City Controller

**EXHIBIT "A"**  
**PARTICIPATION TABLE**

Exhibit A: Participation Table

|        | NEWPP Expansion Project Reservation in Million Gallons per Day (MGD) |         |         |
|--------|----------------------------------------------------------------------|---------|---------|
|        | Total                                                                | Phase 1 | Phase 2 |
| NHCRWA | 113.00                                                               | 51.05   | 61.95   |
| CHCRWA | 4.88                                                                 | 0.46    | 4.42    |
| NFBWA  | 68.50                                                                | 11.46   | 57.04   |
| WHCRWA | 82.42                                                                | 17.03   | 65.39   |
| COH*   | 51.20                                                                | 0.00    | 51.20   |
| TOTAL  | 320.00                                                               | 80.00   | 240.00  |

|        | NEWPP Expansion Project – Cost Share |             |             |
|--------|--------------------------------------|-------------|-------------|
|        | Multi-Phase (%)                      | Phase 1 (%) | Phase 2 (%) |
| NHCRWA | 35.313%                              | 63.813%     | 25.813%     |
| CHCRWA | 1.525%                               | 0.575%      | 1.842%      |
| NFBWA  | 21.406%                              | 14.325%     | 23.767%     |
| WHCRWA | 25.756%                              | 21.288%     | 27.246%     |
| COH    | 16.000%                              | 0.000%      | 21.333%     |
| TOTAL  | 100.00%                              | 100.000%    | 100.000%    |

\* Represents Houston's additional capacity in the Expansion Project, as Houston does not have an Expansion Project Reservation.

\*\* Exhibit A shall be updated to reflect that the Over-Sized Facilities Design Capacity is \_\_\_\_ MGD, to be determined in accordance with Section 3.14 of the Second Supplement.

**EXHIBIT "B"**  
**BUDGET**



**EXHIBIT B**

CITY OF HOUSTON - Department of Public Works and Engineering - Combined Utility System  
**NEWPP EXPANSION ONLY ESTIMATED PROJECT COST**  
 ESTIMATED PROJECT COST ALLOCATED TO PARTICIPANTS \*  
 COH ESTIMATED APPROPRIATION DATES

COH Fiscal Year (FY): July 1 - June 30  
 NOTE: TOTAL PROJECT COST DOES NOT BREAK OUT POSSIBLE PROJECT OVERSIZING DOLLAR AMOUNTS

| Project Mgmt. / Administration / Management & Legal / Engineering, Design, GMPs, & Construction Services / Construction Water supply intake & piping, plumbing, mechanical & electrical / Construction Electrical / Substation Improvements | Percent Participation | Before       |              |              |               |               |                |               |               |               |               |               |              | TOTAL          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------|--------------|--------------|---------------|---------------|----------------|---------------|---------------|---------------|---------------|---------------|--------------|----------------|
|                                                                                                                                                                                                                                             |                       | FY2015       | FY2015       | FY2016       | FY2017        | FY2018        | FY2019         | FY2020        | FY2021        | FY2022        | FY2023        | FY2024        | FY2025       |                |
| <b>Project Mgmt. / Administration / Management &amp; Legal</b>                                                                                                                                                                              |                       | \$ 2,703,898 | \$ 6,100,000 | \$ 9,342,000 | \$ 12,456,000 | \$ 7,786,000  | \$ 10,320,000  | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 14,681,000 | \$ 7,785,000 | \$ 112,457,898 |
| NHCRWA 35.313%                                                                                                                                                                                                                              |                       | 954,814      | 2,154,063    | 3,298,894    | 4,398,525     | 2,749,431     | 3,644,250      | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 5,184,228     | 2,749,078    | 39,711,695     |
| CHCRWA 1.525%                                                                                                                                                                                                                               |                       | 41,234       | 93,025       | 142,466      | 189,954       | 118,737       | 157,380        | 157,395       | 157,395       | 157,395       | 157,395       | 223,885       | 118,721      | 1,714,983      |
| NFBWA 21.406%                                                                                                                                                                                                                               |                       | 578,803      | 1,305,781    | 1,999,772    | 2,666,363     | 1,666,691     | 2,209,115      | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 3,142,652     | 1,666,477    | 24,073,019     |
| WHCRWA 25.756%                                                                                                                                                                                                                              |                       | 696,423      | 1,571,131    | 2,406,149    | 3,208,199     | 2,005,382     | 2,658,045      | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 3,781,275     | 2,005,124    | 28,964,937     |
| COH 16.000%                                                                                                                                                                                                                                 |                       | 432,624      | 976,000      | 1,494,720    | 1,992,960     | 1,243,760     | 1,651,200      | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 2,348,960     | 1,245,600    | 17,993,264     |
| <b>Engineering, Design, GMPs, &amp; Construction Services</b>                                                                                                                                                                               |                       | \$ -         | \$ -         | \$ 960,000   | \$ 90,667,000 | \$ 24,038,000 | \$ -           | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ -         | \$ 115,665,000 |
| NHCRWA 35.313%                                                                                                                                                                                                                              |                       | -            | -            | 339,000      | 32,016,784    | 8,488,419     | -              | -             | -             | -             | -             | -             | -            | 40,844,203     |
| CHCRWA 1.525%                                                                                                                                                                                                                               |                       | -            | -            | 14,640       | 1,382,672     | 366,580       | -              | -             | -             | -             | -             | -             | -            | 1,763,891      |
| NFBWA 21.406%                                                                                                                                                                                                                               |                       | -            | -            | 205,500      | 19,408,405    | 5,145,634     | -              | -             | -             | -             | -             | -             | -            | 24,759,539     |
| WHCRWA 25.756%                                                                                                                                                                                                                              |                       | -            | -            | 247,260      | 23,352,419    | 6,191,287     | -              | -             | -             | -             | -             | -             | -            | 29,790,967     |
| COH 16.000%                                                                                                                                                                                                                                 |                       | -            | -            | 153,600      | 14,506,720    | 3,846,080     | -              | -             | -             | -             | -             | -             | -            | 18,506,400     |
| <b>Construction Water supply intake &amp; piping, plumbing, mechanical &amp; electrical</b>                                                                                                                                                 |                       | \$ -         | \$ -         | \$ -         | \$ -          | \$ -          | \$ 107,664,000 | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ -         | \$ 107,664,000 |
| NHCRWA 35.313%                                                                                                                                                                                                                              |                       | -            | -            | -            | -             | -             | 38,018,850     | -             | -             | -             | -             | -             | -            | 38,018,850     |
| CHCRWA 1.525%                                                                                                                                                                                                                               |                       | -            | -            | -            | -             | -             | 1,641,876      | -             | -             | -             | -             | -             | -            | 1,641,876      |
| NFBWA 21.406%                                                                                                                                                                                                                               |                       | -            | -            | -            | -             | -             | 23,046,825     | -             | -             | -             | -             | -             | -            | 23,046,825     |
| WHCRWA 25.756%                                                                                                                                                                                                                              |                       | -            | -            | -            | -             | -             | 27,730,209     | -             | -             | -             | -             | -             | -            | 27,730,209     |
| COH 16.000%                                                                                                                                                                                                                                 |                       | -            | -            | -            | -             | -             | 17,226,240     | -             | -             | -             | -             | -             | -            | 17,226,240     |
| <b>Construction Electrical / Substation Improvements</b>                                                                                                                                                                                    |                       | \$ -         | \$ -         | \$ -         | \$ -          | \$ 56,740,000 | \$ -           | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ -         | \$ 56,740,000  |
| NHCRWA 35.313%                                                                                                                                                                                                                              |                       | -            | -            | -            | -             | 20,036,313    | -              | -             | -             | -             | -             | -             | -            | 20,036,313     |
| CHCRWA 1.525%                                                                                                                                                                                                                               |                       | -            | -            | -            | -             | 865,285       | -              | -             | -             | -             | -             | -             | -            | 865,285        |
| NFBWA 21.406%                                                                                                                                                                                                                               |                       | -            | -            | -            | -             | 12,145,906    | -              | -             | -             | -             | -             | -             | -            | 12,145,906     |
| WHCRWA 25.756%                                                                                                                                                                                                                              |                       | -            | -            | -            | -             | 14,614,096    | -              | -             | -             | -             | -             | -             | -            | 14,614,096     |
| COH 16.000%                                                                                                                                                                                                                                 |                       | -            | -            | -            | -             | 9,078,400     | -              | -             | -             | -             | -             | -             | -            | 9,078,400      |

Demand Allocation for Project

**CITY OF HOUSTON - Department of Public Works and Engineering - Combined Utility System  
 NEWPP EXPANSION ONLY ESTIMATED PROJECT COST  
 ESTIMATED PROJECT COST ALLOCATED TO PARTICIPANTS \*  
 COH ESTIMATED APPROPRIATION DATES**

**EXHIBIT B**

COH Fiscal Year (FY): July 1 - June 30

NOTE: TOTAL PROJECT COST DOES NOT BREAK OUT POSSIBLE PROJECT OVERSIZING DOLLAR AMOUNTS

| Phase I        | Construction WTP First Delivery (Module 1 - Initial 80 MGD) |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  |                |
|----------------|-------------------------------------------------------------|--------------|--------------|---------------|----------------|----------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|------------------|----------------|
|                | NHCRWA 63.813%                                              |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | \$ 266,192,000 |
|                | CHCRWA 0.575%                                               |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 169,863,770    |
|                | NFBWA 14.325%                                               |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 1,530,604      |
|                | WHCRWA 21.288%                                              |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 38,132,004     |
|                | COH 0.000%                                                  |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 56,665,622     |
| Phase II       | Construction WTP Second Delivery (Modules 2, 3 & 4 240 MGD) |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | \$ 621,121,000 |
|                | NHCRWA 25.813%                                              |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 160,326,858    |
|                | CHCRWA 1.842%                                               |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 11,438,978     |
|                | NFBWA 23.767%                                               |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 147,619,758    |
|                | WHCRWA 27.246%                                              |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 169,229,592    |
|                | COH 21.333%                                                 |              |              |               |                |                |                |               |               |               |               |               |               |               |               |               |               |              |                  | 132,505,813    |
|                | Total 100.000%                                              | \$ 2,703,898 | \$ 6,100,000 | \$ 10,302,000 | \$ 103,123,000 | \$ 354,756,000 | \$ 739,105,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 14,681,000 | \$ 7,785,000 | \$ 1,279,839,898 |                |
| Total Combined | Total Contributions for NEWPP Expansion                     | \$ 2,703,898 | \$ 6,100,000 | \$ 10,302,000 | \$ 103,123,000 | \$ 354,756,000 | \$ 739,105,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 10,321,000 | \$ 14,681,000 | \$ 7,785,000 | \$ 1,279,839,898 |                |
|                | NHCRWA:                                                     | 954,814      | 2,154,063    | 3,637,894     | 36,415,309     | 201,137,933    | 201,989,958    | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 3,644,603     | 5,184,228     | 2,749,078    | 468,801,689      |                |
|                | CHCRWA:                                                     | 41,234       | 93,025       | 157,106       | 1,572,626      | 2,881,205      | 13,238,234     | 157,395       | 157,395       | 157,395       | 157,395       | 157,395       | 157,395       | 157,395       | 157,395       | 157,395       | 223,885       | 118,721      | 38,955,618       |                |
|                | NFBWA:                                                      | 578,803      | 1,305,781    | 2,205,272     | 22,074,767     | 57,090,235     | 172,875,708    | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 2,209,339     | 3,142,652     | 1,666,477    | 269,777,051      |                |
|                | WHCRWA:                                                     | 696,423      | 1,571,131    | 2,653,409     | 26,560,618     | 79,476,387     | 199,617,846    | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 2,658,303     | 3,781,275     | 2,005,124    | 326,995,424      |                |
|                | COH:                                                        | 432,624      | 976,000      | 1,648,320     | 16,499,680     | 14,170,240     | 151,383,253    | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 1,651,360     | 2,348,960     | 1,245,600    | 195,310,117      |                |

\* The allocation of the estimated costs to the Project Parties as reflected herein are for illustration only. The terms of the Second Supplement and not the Exhibit is shall control the allocation of costs among the Project Parties.

**EXHIBIT "C"**  
**SCHEDULE**



**EXHIBIT "D"**  
**ESCROW AGREEMENT**

## ESCROW & PAY AGENT AGREEMENT

This Escrow & Pay Agent Agreement (the "Escrow Agreement") is entered into as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ Water Authority, a conservation and reclamation district organized and operating under the provisions of \_\_\_\_\_ (the "Authority"), \_\_\_\_\_ (the "Escrow Agent"), and \_\_\_\_\_, as beneficiary under this Escrow Agreement, the City of Houston ("Houston").

The Authority entered into that certain Second Supplement to Water Supply Contract (the "Second Supplement"), effective as of \_\_\_\_\_.

The Second Supplement, attached as **Exhibit A**, contains provisions regarding the Authority's and Houston's respective responsibilities and obligations related to the funding of the design and construction of the Expansion Project, which involves the expansion of the Northeast Water Purification Plant located at 12121 North Sam Houston Parkway East, Humble, Texas 77396 (the "NEWPP").

Pursuant to the Second Supplement and this Escrow Agreement, the Authority shall deposit into the Escrow Account (as defined below) Cash or Cash Equivalent (as defined in the Second Supplement), representing the Authority's pro-rata share of a portion of the costs of the Expansion Project.

Pursuant to the terms of this Escrow Agreement, the Escrow Agent has agreed to hold such Cash or Cash Equivalent in a separately segregated trust account ("Escrow Account") and disburse funds from the Escrow Account, as set forth this Escrow Agreement.

Pursuant to, and subject to the terms and conditions of, the Second Supplement and this Escrow Agreement, Houston shall draw funds from the Escrow Account to be used to pay for the Authority's pro-rata share of a portion of the costs of the Expansion Project; Now, Therefore,

FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, the Authority, Houston, and Escrow Agent do mutually agree as follows:

Section 1: The recitals above are true and correct and are incorporated into this Escrow Agreement by reference. All capitalized terms used in this Escrow Agreement not otherwise defined herein shall have the meanings assigned to such terms in the Second Supplement.

Section 2: The Parties hereby appoint Escrow Agent to serve as Escrow Agent as set forth herein, and the Escrow Agent hereby accepts and agrees to perform its obligations hereunder.

Section 3: Pursuant to the Second Supplement, and for each Cash Call issued to the Authority by Houston, the Authority shall deposit Cash into the Escrow Account from time to time in the amounts, and within the time-periods, required by the Second Supplement. The Escrow Agent shall separately account for the Cash deposited by the Authority for each of the

Cash Calls. Notwithstanding the other provisions of this paragraph, pursuant to the Second Supplement, in lieu of Cash, the Authority may provide the Escrow Agent with Cash Equivalent(s) that satisfy individual or multiple Cash Calls. Each Cash Equivalent will be payable to the Escrow Agent for the benefit of the Escrow Account. The Authority may at any time replace Cash Equivalent with Cash. Each time the Authority provides Cash or Cash Equivalent to the Escrow Agent, the Authority shall provide a written notice to the Escrow Agent (with a contemporaneous copy to all Project Parties) that identifies the particular Cash Call to which the Cash or Cash Equivalent applies.

Section 4: The Cash and Cash Equivalent provided by the Authority hereunder to the Escrow Agent are owned by the Authority. Subject to the terms of this Escrow Agreement, and once Houston's City Controller has certified in writing to the Escrow Agent that the Cash or Cash Equivalent has been appropriated by Houston's City Council for a Cash Call, such Cash and Cash Equivalent shall be held by the Escrow Agent until the Termination Date (defined below). The Project Director shall from time to time submit to the Escrow Agent Withdrawal Request and Certificates, substantially in the form attached hereto as **Exhibit B**, which describe the Project Director's request for funds, identify from which Cash Call funds are being withdrawn, and certify the following: (i) that the request for funds is solely to pay for the Authority's pro-rata share of Costs, based on the Authority's applicable Cost Share, funded by the Cash Call that the Project Director has identified in the Withdrawal Request and Certificate; (ii) that, for Costs that are for Engineering Costs or Construction Costs, the Project Director has reasonably determined that a certain amount of funds are needed to pay for such Costs and that such Costs are reasonably estimated by the Project Director to be due from Houston to pay Consultants or the Contractor within 90 calendar days after the date the Project Director signs the Withdrawal Request and Certificate, and (iii) that, for Costs that are for Cost Recovery Amounts, Houston has already paid such amounts, or reasonably expects to pay such amounts within 90 calendar days after the Project Director signs the Withdrawal Request and Certificate, and has documented or will document such amounts in a Semi-Annual Cost Recovery Amounts Report. All earnings and interest attributable to Cash and Cash Equivalent in the Escrow Account are owned by the Authority, and, upon written request from the Authority, shall be released by the Escrow Agent to the Authority or allocated by the Escrow Agent to a particular Cash Call.

Section 5: The Escrow Agent shall pay Houston the funds that are requested by the Project Director in the Withdrawal Request and Certificate within 5 business days of the date the Escrow Agent receives the Withdrawal Request and Certificate. The Escrow Agent shall make each of such payments according to the following procedure: (i) first, it shall draw funds from any Cash that has been deposited for that particular Cash Call, and (ii) second, if there is no such Cash attributable to that Cash Call, then the Escrow Agent shall draw upon the Cash Equivalent attributable to that Cash Call to the extent necessary to pay the funds requested by the applicable Withdrawal Request and Certificate.

Section 6: The Escrow Agent shall deposit all Cash, and hold any Cash Equivalent, received from the Authority in the Escrow Account to be held by the Escrow Agent in a fiduciary capacity for the benefit of the Project Parties for the Expansion Project in accordance with the terms and conditions of the Second Supplement. All moneys in the Escrow Account may only be invested in permitted investments under Chapter 2256 of the Texas Government

Code or deposited in accounts collateralized as required by Chapter 2257 of the Texas Government Code, all as shall be directed in writing by the Authority in compliance with the Authority's investment policy.

Section 7: The Escrow Agent shall (i) within 2 business days of the Authority providing to the Escrow Agent Cash or Cash Equivalent (or the renewal or extension of a Cash Equivalent), provide written notice to the Project Parties of the dollar amount of same with a copy of any Cash Equivalent provided, (ii) send monthly statements to all Project Parties of the Authority's current balance stating any deposits into or disbursements from the Escrow Account, and (iii) in the event the Escrow Agent draws funds from Cash Equivalent, the Escrow Agent shall notify all Project Parties (within 2 business days of the draw) of the balance remaining and available for such Cash Equivalent. Notifications and submittals to all Project Parties must be in writing and are deemed delivered on the earlier of the date actually received or the third business day following (a) deposit in a United States Postal Service post office or receptacle; (b) with proper postage (certified mail, return receipt requested); and (c) addressed to the applicable Project Party at the address set forth below. In addition, upon request from any of the Project Parties to send notices through other methods (including electronic mail), the Escrow Agent shall also send notice through such methods.

North Fort Bend Water Authority:

North Fort Bend Water Authority  
c/o Allen Boone Humphries Robinson, LLP  
Attn: David Oliver  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

With a copy to:  
North Fort Bend Water Authority  
c/o AVANTA Services  
Attn: Pamela Logsdon  
5635 Northwest Central Dr., Suite 104E  
Houston, Texas 77092

The City of Houston:

City of Houston  
City Controller  
c/o Ronald Green  
901 Bagby, 6<sup>th</sup> Floor  
Houston, Texas 77002

With a copy to:  
City of Houston  
Resource Management Division  
c/o Susan Bandy



611 Walker, 25<sup>th</sup> Floor  
Houston, Texas 77002

West Harris County Regional Water Authority:

West Harris County Regional Water Authority  
c/o Allen Boone Humphries Robinson, LLP  
Attn: Alex Garcia  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027

With a copy to:  
West Harris County Regional Water Authority  
c/o Myrtle Cruz, Inc.  
Attn: Mary Jarmon  
3401 Louisiana Street, Suite 400  
Houston, Texas 77002

Central Harris County Regional Water Authority:

Central Harris County Regional Water Authority  
c/o Schwartz, Page & Harding, LLP  
Attn: Abraham Rubinsky  
1300 Post Oak Blvd., Suite 1400  
Houston, Texas 77056

With a copy to:  
Central Harris County Regional Water Authority  
F. Matuska Inc.  
Attn: Fran Matuska  
4600 Highway 6 North, Suite 315  
Houston, Texas 77084

North Harris County Regional Water Authority:

North Harris County Regional Water Authority  
Attn: General Manager  
3648 Cypress Creek Parkway, Suite 110  
Houston, Texas 77068

With a copy to:  
North Harris County Regional Water Authority  
c/o Radcliffe Bobbitt Adams Polley PLLC  
Attn: Robin S. Bobbitt  
1001 McKinney, Suite 1000  
Houston, Texas 77002

Section 8. In addition to Section 7, above, the Escrow Agent will provide the Project Parties reports upon request, which reports will describe in reasonable detail all transactions pertaining to the Escrow Account. The Project Parties may also inspect and make copies of the information in the books and records of the Escrow Agent pertaining to the Escrow Account at any time the Escrow Agent is customarily open for business, provided that reasonable time is allowed the Escrow Agent to provide an up-to-date listing or to convert the information into written form.

Section 9. Escrow Agent hereby agrees to hold the Cash and Cash Equivalent in accordance with the terms of this Escrow Agreement and to disburse funds from the Escrow Account in strict accordance with the terms of this Escrow Agreement.

Section 10. As compensation for the Escrow Agent's services as Escrow Agent, the Authority shall be responsible to pay the Escrow Agent the fees set forth in the Escrow Agent's fee schedule attached as **Exhibit C** hereto.

Section 11: This Escrow Agreement shall terminate and any remaining Cash and Cash Equivalent (and earnings and interest attributable to the Cash and Cash Equivalent) shall be released and returned to the Authority within 5 business days after the earlier to occur of (such date, the "Termination Date") (a) January 1, 2027, or (b) the date on which Houston notifies the Escrow Agent in writing that Houston has provided the True-Up Statement to the Authority. Houston shall so notify the Escrow Agent (with a contemporaneous copy to the Authority) at the same time that Houston provides the True-Up Statement to the Authority.

Section 12. The Authority shall have the right to terminate this Escrow Agreement prior to the Termination Date determined in accordance with Section 11 above, with or without cause, upon 30 calendar days prior written notice to all parties hereto; provided, however, that no such termination shall be effective until a successor escrow agent has been appointed and has accepted the duties of the Escrow Agent hereunder. If this Escrow Agreement is terminated prior to the Termination Date, then (a) the Authority shall promptly designate a substitute escrow agent, and (b) the Escrow Agent shall deliver to the successor escrow agent all remaining Cash and Cash Equivalent (and earnings and interest attributable to the Cash and Cash Equivalent) held by the Escrow Agent, and all books and records pertaining to the Escrow Agent's role as Escrow Agent hereunder.

Section 13. Escrow Agent shall have the right to resign at any time by giving 30 calendar days' advance written notice of such resignation to the other parties hereto, specifying the effective date of such resignation. Within fifteen (15) calendar days after the Authority receives such notice, the Authority shall appoint a successor escrow agent to which the Escrow Agent shall turn over the remaining Cash and Cash Equivalent. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such 30-day period, Escrow Agent may either (a) interplead the Cash and Cash Equivalent in the Escrow Account with a court of competent jurisdiction in Harris County, Texas for the appointment of a successor escrow agent; or (b) appoint a successor escrow agent of its own choice. Subject to the

Authority's termination rights under Section 12, any such appointment of a successor escrow agent shall be binding upon the parties. No such appointed successor escrow agent shall be deemed to be an agent of Escrow Agent.

Section 14. The Escrow Agent shall have only the rights, powers, privileges and duties expressly set forth in this Escrow Agreement, together with those rights, powers and privileges reasonably incident thereto.

Section 15. This Escrow Agreement may be executed in counterparts and by facsimile, portable document format (PDF), and other electronic means, each of which shall be deemed an original and which together shall constitute one and the same agreement.

Section 16. This Escrow Agreement shall not be assignable without the consent of all parties hereto.

Section 17. The terms and provisions of this Escrow Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their permitted successors and assigns. The parties hereto hereby expressly acknowledge and stipulate their intent that each of the Project Parties not executing this Escrow Agreement shall be a third party beneficiary of this Escrow Agreement, and shall have the right and legal standing to enforce the respective obligations of the parties hereto hereunder to the full extent allowed at law or in equity; provided, however, that in no event shall any of the Project Parties have the right to bring suit for money damages against any party hereto in any case or cause of action in which a direct party to this Escrow Agreement would have no right to bring suit for money damages under the terms of this Escrow Agreement.

Section 18. No amendment or changes to this Escrow Agreement shall become effective unless in writing and signed by the Escrow Agent and all of the Project Parties.

Section 19. Houston only has the right to access the Authority's funds that have been deposited in the Escrow Account in accordance with this Escrow Agreement. Funds, if any, that the Authority currently or hereafter deposits or invests with the Escrow Agent in the Escrow Agent's capacity outside of this Escrow Agreement (for example, without limitation, in connection with water projects other than the Expansion Project or bond proceeds related to the Expansion Project that have not yet been deposited in the Escrow Account) shall not be subject to the terms and conditions of this Escrow Agreement.

Section 20. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF the parties have executed this Escrow Agreement as of the date and year first written in this Escrow Agreement.

[ \_\_\_\_\_ WATER AUTHORITY ]

\_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

(SEAL)

ESCROW AGENT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF HOUSTON (AS BENEFICIARY)**

**APPROVED:**

\_\_\_\_\_  
Director, \_\_\_\_\_  
Department

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

**EXHIBIT A  
SECOND SUPPLEMENT**

00179692

**EXHIBIT B  
WITHDRAWAL REQUEST AND CERTIFICATE**

**Withdrawal Request and Certificate No. \_\_\_\_\_**

**Date: \_\_\_\_\_**

**To: \_\_\_\_\_, Escrow Agent**

Pursuant to the Second Supplement to Water Supply Contract that is referenced in the Escrow & Pay Agent Agreement, I, \_\_\_\_\_, the Project Director, request to withdraw \$x from the Authority's [fill in applicable water authority name] Escrow Account, in accordance with Cash Call No. \_\_\_\_, attached hereto.

I certify the following: (i) that the request for funds is solely to pay for the Authority's pro-rata share of Costs, based on the Authority's applicable Cost Share, funded by the Cash Call attached hereto ; (ii) that, for Costs that are for Engineering Costs or Construction Costs, I have reasonably determined that the funds being withdrawn hereby are needed to pay for such Costs and that such Costs are reasonably estimated to be due from Houston to pay Consultants or the Contractor within 90 calendar days after the date of this Withdrawal Request and Certificate, and (iii) that, for Costs that are for Cost Recovery Amounts, Houston has already paid such amounts, or reasonably expects to pay such amounts within 90 calendar days after the Project Director signs the Withdrawal Request and Certificate, and has documented or will document such amounts in a Semi-Annual Cost Recovery Amounts Report.

Capitalized terms used herein shall have the same meaning given to such terms in the Second Supplement to Water Supply Contract that is referenced in the Escrow & Pay Agent Agreement.

**AGREED TO AND CERTIFIED BY, AS OF THE DATE SET FORTH ABOVE:**

\_\_\_\_\_  
Project Director



**EXHIBIT C**  
**ESCROW AGENT'S FEE SCHEDULE**

**EXHIBIT "E"**  
**CASH CALL NO. 1**



# Cash Call Due #1

## City of Houston

Public Works & Engineering  
 Combined Utility System  
 611 Walker  
 Houston, Texas 77002

DATE: FEBRUARY 12, 2015  
 CASH CALL # 1

TO Mark Evans  
 North Harris County Regional Water Authority  
 3648 Cypress Creek Parkway, Suite 110  
 Houston, Texas 77068  
 281-440-3924  
 Customer ID 7099-3025-9011

|                                                                                          |                                                 |
|------------------------------------------------------------------------------------------|-------------------------------------------------|
| PAYMENT BY CASH OR CASH EQUIVALENT SHOULD BE REMITTED TO ESCROW AGENT FOR ESCROW ACCOUNT | PAYMENT TERMS AND DUE DATE                      |
|                                                                                          | 120 Days after Second Supplement Effective Date |

| Description                                      | Dollar Amount   | Cost Share Percentage | Line Total             |
|--------------------------------------------------|-----------------|-----------------------|------------------------|
| Multi-Phase Project Cost (including contingency) | \$ 2,241,992.00 | 35.313%               | \$ 2,241,992.00        |
| Multi-Phase PWE Cost Recovery                    | \$ 221,116.00   | 35.313%               | \$ 221,116.00          |
| Phase 1 Project Cost (including contingency)     |                 |                       | \$ -                   |
| Phase 1 PWE Cost Recovery                        |                 |                       | \$ -                   |
| Phase 2 Project Cost (including contingency)     |                 |                       | \$ -                   |
| Phase 2 PWE Cost Recovery                        |                 |                       | \$ -                   |
| Over-sized Project Cost (including contingency)  |                 |                       | \$ -                   |
| Over-sized PWE Cost Recovery                     |                 |                       | \$ -                   |
| Full Cost Obligation                             |                 | 100%                  | \$ -                   |
| <b>Total Cash Call Due</b>                       |                 |                       | <b>\$ 2,463,108.00</b> |

|                                         |      |
|-----------------------------------------|------|
| <b>Surplus from Previous Cash Calls</b> | \$ - |
|-----------------------------------------|------|

CERTIFICATION PER § 3.7.5 IS INCLUDED ON THE FOLLOWING PAGE

**ATTACHMENTS:**  
 CERTIFICATION PER § 3.7.5  
 CALCULATION OF AMOUNT DUE

# Cash Call Due #1

## CASH CALL CERTIFICATION PER § 3.7.5

1. The dollar amount due from each Project Party pursuant to this Cash Call does not exceed the estimated dollar amount provided in the Notice of Upcoming Cash Call related to this Cash Call and is only for costs that have been approved pursuant to Article 6.
2. The calculation of the amount due shown on page 1 of this Cash Call is included on the next page of this document.
3. The Cash Call Due Date is 120 days after Second Supplement Effective Date.
4. The costs and work items to be paid with the proceeds of this Cash Call are as follows:

Ordinance 2012-121 Original Carollo Engineering Contract, First Amendment 2013-155  
& Second Amendment 2014-160

- 1) Project Framework Development
- 2) NEWPP Treatment Concepts
- 3) Scenario & Delivery Alternative Development
- 4) Alternative Assessment
- 5) Project Controls
- 6) Project Delivery Alternatives Report

Ordinance 2014-962 - Carollo Engineering Contract

- 1) Perform raw water system planning and permitting assistance
- 2) Perform US Corp 404 and environmental permitting
- 3) Perform pilot operations
- 4) Perform Texas Commission on Environmental Quality coordination and reporting
- 5) Perform special testing and monitoring
- 6) Provide project administrative, permitting, communications and scheduling support
- 7) Conduct supporting and special studies as necessary to support project management decision-making

Ordinance 2014-1183 Legal Services Hawkins Delafield & Wood LLP

- 1) Project definition and plan
- 2) RFQ Preparation, Issuance and Evaluation
- 3) Preparation and Issuance of RFP and DRAFTY PDB Agreement
- 4) Proposal Development and Submittal
- 5) Proposal Evaluation
- 6) Negotiation and Award
- 7) Post-Execution and Establishment of Final Pricing

5. The City of Houston reasonably expects to spend all of the proceeds of the Cash Call within three (3) years of the Cash Call due date.

NOTE: Any surplus from previous Cash Calls is listed on the first page of this Cash Call.

Project Director

City of Houston  
 Department of Public Works & Engineering  
 Combined Utility System



**NE Plant Expansion Project Tracking - Cash Call #1  
 Contracts**

| Appropriated & Authorized                                |            |                     |                     |                   |
|----------------------------------------------------------|------------|---------------------|---------------------|-------------------|
| COH Ord No.                                              | Date       | Appropriated \$s    | Contract            | Cost Recovery     |
| Remaining \$s from 3 Ordinances authorized and not spent | N/A        | \$ 875,173          | \$ 749,004          | \$ 126,169        |
| 2012-0121, 2013-155 & 2014-0160                          |            |                     |                     |                   |
| 2014-0962 Carollo Engineering                            | 10/14/2014 | \$ 5,500,000        | \$ 5,000,000        | \$ 500,000        |
| 2014-1183 Legal Services                                 | 12/16/2014 | \$ 600,000          | \$ 600,000          | N/A               |
| <b>TOTAL</b>                                             |            | <b>\$ 6,975,173</b> | <b>\$ 6,349,004</b> | <b>\$ 626,169</b> |

**By Regional Authorities EXPANSION ONLY**

| Appropriation Allocation to Participants |                 |                     |                     |                   |
|------------------------------------------|-----------------|---------------------|---------------------|-------------------|
| Participants                             | %               | Appropriated \$s    | Contract            | Cost Recovery     |
| <b>TOTAL</b>                             |                 | <b>\$ 6,975,173</b> | <b>\$ 6,349,004</b> | <b>\$ 626,169</b> |
| NHCRWA                                   | 35.313%         | \$ 2,463,108        | \$ 2,241,992        | \$ 221,116        |
| CHCRWA                                   | 1.525%          | \$ 106,371          | \$ 96,822           | \$ 9,549          |
| NFBWA                                    | 21.406%         | \$ 1,493,123        | \$ 1,359,084        | \$ 134,039        |
| WHCRWA                                   | 25.756%         | \$ 1,796,543        | \$ 1,635,265        | \$ 161,278        |
| COH                                      | 16.000%         | \$ 1,116,028        | \$ 1,015,841        | \$ 100,187        |
| <b>Total</b>                             | <b>100.000%</b> | <b>\$ 6,975,173</b> | <b>\$ 6,349,004</b> | <b>\$ 626,169</b> |