



NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations set forth herein, the Parties agree as follows.

**ARTICLE I.**  
**DEFINITIONS**

1.1 The term “Effective Date” shall mean the date by which both Parties have signed this Agreement.

1.2 The term “Option Period” shall mean that period during which this Option Agreement shall be binding on the Parties. The Option Period shall begin on the Effective Date and terminate 180 days thereafter. This Agreement may be extended for an additional 180 days upon written, mutual agreement of the Parties.

1.3 The term "Option Price" shall mean the price paid by the District to the City for agreeing to reserve to the District, for a period of 180 days, an option to purchase Return Flows pursuant to the terms and conditions of the Groundwater Return Flow Purchase Agreement between City of Bryan and Galveston County WCID No. 12 (hereafter “Return Flow Purchase Agreement”) attached hereto as Exhibit 1. The Option Price shall be \$10,000.00 (ten thousand dollars).

**ARTICLE II.**  
**GRANT OF OPTION**

2.1 For and in consideration of the District paying to the City the Option Price on the Effective Date, the City does hereby grant to the District an option for the right to purchase Return Flows as provided in the Return Flow Purchase Agreement attached hereto as Exhibit 1.

2.2 The District may exercise its option at any time during the Option Period by executing the Return Flow Purchase Agreement attached hereto as Exhibit 1, and making any necessary payments provided by such agreement. By approving the execution of this option agreement, the governing body of the City authorizes its Mayor to execute the Return Flow Purchase Agreement attached hereto as Exhibit 1 if the District exercises its option during the Option Period and makes any necessary payments provided by such agreement.

2.3 The District acknowledges that the only consideration it shall receive under this Agreement in return for paying the Option Price to the City is that the City will reserve to the District the option to purchase Return Flows as provided in the Return Flow Purchase Agreement attached hereto as Exhibit 1.

2.4 The District acknowledges that once the Option Price is paid to the City, the City shall be under no responsibility to refund any of the Option Price to the District or to provide any payment offsets to the District, regardless of whether the Parties enter into the Return Flow purchase agreement during the Option Period or thereafter, or whether no such agreement is ever executed between the Parties.

2.5 If the District has not executed the Return Flow Purchase Agreement by the end of the Option Period, this Agreement shall terminate and the City shall be released of its duty to reserve for purchase any amount of Return Flows by the District, without cost to the City.

2.6 During the Option Period, the City agrees to reserve Return Flows sufficient to allow the City and the District to enter into the Return Flow Purchase Agreement attached hereto as Exhibit 1.

**ARTICLE III**  
**MISCELLANEOUS**

3.1 This Agreement constitutes the sole and only agreement of the Parties regarding the option to purchase Return Flows and supersedes any prior understanding or oral or written agreements between the City and District respecting the subject matter of this Agreement.

3.2 This Agreement, and the rights and obligations of the Parties pursuant to this Agreement, shall be governed by the laws of the State of Texas. Venue for legal actions arising hereunder shall lie exclusively in Brazos County, Texas.

3.3 The Parties represent that they are authorized by their respective governing bodies to enter into this Agreement.

3.4 The Parties agree that the Party prevailing in a lawsuit pertaining to the subject matter of this Agreement shall be entitled to reasonable attorney fees.

3.5 The Parties agree that one of the purposes of this Agreement is for the City to provide goods or services or both to the District.

**GALVESTON COUNTY WCID 12**

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

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

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

**ATTEST:**

**CITY OF BRYAN, TEXAS**

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Mary Lynne Stratta, City Secretary

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Jason P. Bienski, Mayor

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**DATE**

**APPROVED AS TO FORM:**

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Janis K. Hampton, City Attorney

# Exhibit 1

STATE OF TEXAS §

§

BRAZOS COUNTY §

**GROUNDWATER RETURN FLOW PURCHASE AGREEMENT BETWEEN  
CITY OF BRYAN AND GALVESTON COUNTY WCID NO. 12**

This Groundwater Return Flow Purchase Agreement (the “Agreement”) is entered into by the City of Bryan (the “City”) and the Galveston County Water Control and Improvement District No. 12 (the “District”), collectively the Parties.

**RECITALS**

WHEREAS, the City treats and discharges groundwater-based return flows (“Return Flows”) as authorized by the City’s TPDES permits;

WHEREAS, the City has obtained from the Texas Commission on Environmental Quality (“TCEQ”) authorization to convey its Return Flows down various watercourses in the Brazos River Basin for subsequent diversion and reuse under Water Use Permit No. 5912;

WHEREAS Water Use Permit No. 5912 provides that the City’s Return Flows do not have a priority date and are not subject to a water rights priority call;

WHEREAS, the District desires to obtain additional supplies of untreated water in the Brazos River Basin in order to facilitate its ability to receive additional quantities of treated water from Gulf Coast Water Authority, the District’s treated water provider;

WHEREAS, the City desires to sell Return Flows to the District as provided herein; and

WHEREAS, the District desires to purchase from the City a minimum of one (1) million gallons per day (“MGD”) of Return Flows on a daily basis and an option to increase its purchase to two (2) MGD as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations set forth herein, the Parties agree as follows.

**ARTICLE I.  
DEFINITIONS**

1.1 The term "Annual Contracted Amount" shall mean the total volume of Return Flows which the City agrees to make available and the District agrees to purchase. For this Agreement, the Annual Contracted Amount is one (1) MGD multiplied by the number of days in the year. (This is equivalent to 1,121 acre-feet per year for a standard year and 1,123 acre feet per year for a leap year). If the District exercises its option provided in Article XXIV, the Annual Contracted Amount shall be two (2) MGD multiplied by the number of days in the year. (This is equivalent to 2,242 acre-feet per year for a standard year and 2,246 acre feet per year for a leap year).

1.2 The term "Contract Year" shall mean that period beginning on the Effective Date and ending on the anniversary date of the Effective Date, and each additional one year period beginning on the anniversary date of the Effective Date, throughout the term of this Agreement.

1.3 The term "Contract Rate" shall mean the rate of discharge of Return Flow expressed in MGD that will be made available to the District under this Agreement.

1.4 The term "Effective Date" shall mean the date by which both Parties have signed this Agreement.

1.5 The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(A) the application site is land owned or leased by the Chapter 26 permit holder; or

(B) the application site is within an area for which the Texas Commission on Environmental Quality has adopted a no-discharge rule.

1.6 The term "Overuse" shall mean diversion of Return Flows at an MGD rate greater than the Contracted Rate less channel losses or in an amount greater than Annual Contracted Amount less channel losses.

1.7 The term "Party" shall mean either the District or the City, as appropriate.

1.8 The term "Point of Delivery" shall mean the location at which title, possession, ownership, control and responsibility for the Return Flows shall pass from the City to the District. For purposes of this Agreement, the Point of Delivery is the point at which the City discharges its Return Flows pursuant to its TPDES permits.

1.9 The term "Point of Diversion" shall mean the location at which the City's Return Flows will be diverted by the District. The Point of Diversion is identified on the map attached to this Agreement as Exhibit 1.

1.10 The term "Subsequent Reuse" shall mean the use of any portion of any of the Return Flows sold hereunder that remains unconsumed after the water is used for the purposes authorized herein and is then placed into a watercourse.

1.11 The term "System Rate" shall mean the charge per acre-foot of water established by Brazos River Authority ("BRA") from time to time under its system-wide pricing methodology for firm supplies of water for municipal use. The System Rate is to be determined on date when the option is exercised.

## **ARTICLE II. AVAILABILITY OF WATER**

2.1 While this Agreement remains in force, the City agrees to make available to the District Return Flows at the Contract Rate and Annual Contracted Amount subject to the City obtaining an amendment of Water Use Permit No. 5912 authorizing an additional diversion at the Point of Diversion and use in Galveston County. Such Return Flows may be conveyed down the Brazos River and its tributaries from the Point of Delivery to the Point of Diversion and accounted for by the District as provided herein. The District agrees that it is contracting to have Return Flows made available to it in amounts and at such times and locations as are provided for herein and that its use of the Return Flows will be subject to the terms and conditions of the City's Water Use Permit No. 5912, including the approved accounting plan, the approvals or authorizations of the Brazos River Watermaster and the terms of this Agreement.

2.2 The District acquires no property right in the Return Flows made available to it under this Agreement beyond the right to have the Return Flows made available to it for conveyance and subsequent diversion and use under the terms of this Agreement for Municipal Uses by the District for its retail water customers. Utilization of the Return Flows for other purposes shall be deemed a breach of this contract and grounds for termination of this Contract. The City agrees to make Return Flows available to the District, and the District agrees that it acquires no rights or interests in any of the Return Flows other than those specifically authorized by this Agreement.

## **ARTICLE III. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION/ RATES AND PAYMENTS**

3.1 The District unconditionally agrees to pay the City annually for the Annual Contracted Amount at a price equal to the product of multiplying 120% of the System Rate times the Annual Contracted Amount regardless of how much, if any, of the Annual Contracted Amount of Return Flows is diverted and used by the District during the Contract

Year. The District stipulates and agrees that the Rates provided by the Agreement are just and reasonable taking into consideration the reliability of the City's supply of Return Flows and the conditions of Water Use Permit 5912 providing that the City's Return Flows do not have a priority date and are not subject to a priority call from senior water rights.

3.2 The District's first annual payment for Return Flows shall become due and payable on the Effective Date. Following its first annual payment, the District's subsequent annual payments shall be due and payable on or before the first day of the succeeding Contract Year.

3.3 Payments to be made hereunder shall be made via electronic delivery as may be later agreed to by the City or via mail. Payments shall be deemed made as of the date postmarked, if mailed, and shall be made to:

Finance Department  
City of Bryan  
P.O. Box 1000  
Bryan, Texas

3.4 The rates due and payable by the District shall be adjusted to conform to changes in the BRA System Rate. When BRA changes its System Rate, the District's rate calculated as provided in 3.1 above shall adjust effective on the first day of the Calendar Year following the date of BRA's rate change.

#### **ARTICLE IV. SOURCE OF PAYMENTS**

4.1 The payments to be made hereunder by the District shall constitute operating expenses of the District's water works system. The District shall charge rates for services of its water works system that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by the District now or hereafter payable from the revenues of said system.

#### **ARTICLE V. INTEREST ON PAST DUE PAYMENT**

5.1 In the event of failure of the District to make any payment to the City provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

**ARTICLE VI.  
REMEDIES FOR NONPAYMENT OR DEFAULT**

6.1 Should the District fail to make any payment to the City when due hereunder or otherwise be in default under this Agreement, the City at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to either (i) suspend its obligation to make available Return Flows to the District under this Agreement or (ii) terminate this Agreement, by providing written notice of such termination delivered to the District on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either Party of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**ARTICLE VII.  
REMEDIES FOR OVERUSE**

7.1 The District recognizes that any diversion of Return Flows in excess of the Contract Rate less channel loss or the Annual Contracted Amount less channel loss is prohibited unless expressly authorized by the City in writing. The District agrees that if for any reason it desires to divert at greater than the Contract Rate or more than the Annual Contracted Amount, District will give written notice to the City 30 days in advance of the need for such additional Return Flows and in such notice will state the reason for the additional need, the amount of additional Return Flows needed to be made available, and the duration of the need.

7.2 The City, in its sole discretion, may make all or a portion of the requested additional Return Flows available. Nothing in this Agreement shall obligate the City to provide Return Flows in excess of the Contract Rate or Annual Contracted Amount nor should the District rely on additional Return Flows being made available in excess of the Contract Rate or Annual Contracted Amount except as approved in writing by the City under the terms stated herein.

7.3 In the event that the City determines that it can make all or a portion of the requested Return Flows available, the District shall pay for such additional Return Flows to be made available in advance of diversion, and at a rate that is equal to twice the rate specified in Article III.

7.4 In the event the District fails to notify the City of its need for additional Return Flows to be made available, and the District makes diversions that exceed the Contract Rate or Annual Contracted Amount or should the District, after notification to the

City and the City's determination that additional Return Flows are not available for the District's use, nonetheless makes a diversion that exceeds the Contract Rate or Annual Contracted Amount, the City may, at its option, charge the District for the overuse at a rate of three times the rate specified in Article III and/or cancel this Agreement by providing thirty (30) days written notice of such cancellation delivered to the District.

7.5 In the event District diverts Return Flows in excess of its Contract Rate less channel loss or Annual Contracted Amount less channel loss twice in any five-year period, the City may at its sole discretion, if such additional Return Flows can be made available on a long-term basis, cause this Agreement to be amended to increase the Contract Rate or Annual Contracted Amount to the maximum total rate of discharge or annual amount requested by the District in any one Contract Year during that five-year period. Such Amendment shall not excuse the District from paying for any Return Flows used in excess of the Annual Contracted Amount prior to amendment of this Agreement at the appropriate rate under paragraph 8.4. Following any such amendment, the District shall pay for all Return Flows to be made available to the District under this Agreement and such amendment at the rate specified in Article III.

7.6 Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either Party of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions of this Agreement.

#### **ARTICLE VIII. DIVERSION NOTICE AND RATE**

8.1 At least seven (7) business days before it intends to divert Return Flows agreed to be made available pursuant to this Agreement, the District shall submit to the Brazos River Watermaster, and simultaneously copy the City with, a written declaration of intent to divert identifying the specific account under which water is to be diverted, the amount of water to be diverted or transported, a schedule for diversions, the diversion facility to be used, the rate at which water will be diverted and any other information required by TCEQ Rules or the Watermaster. The City shall, within two business days following receipt of the District's declaration filed with the Brazos River Watermaster, as required by TCEQ Rules file with the Brazos River Watermaster a declaration of intent to make dedicated releases of Return Flows at the Contract Rate for downstream use and shall simultaneously submit a copy to the District. The City shall also notify the District of the amount of water that may be diverted pursuant to the City's Water Use Permit No. 5912 and its approved accounting plan. The District shall, within two business days, submit to the City a copy of any approval or authorization received from the Brazos River Watermaster in response to the District's declaration and any report of actual diversions submitted to the Brazos River Watermaster. The District shall also provide the City, within two business days, any other information concerning its conveyance, diversion, or use of Return Flows requested by the City.

8.2 The pumping and discharge rates specified in the notices given under paragraph 8.1 shall be expressed in MGD in addition to any other units required by the Brazos River Watermaster.

8.3 The District shall not divert Return Flows at a rate or in an amount in excess of that authorized by the City pursuant to this Agreement or the rate and amount authorized by the Brazos River Watermaster.

8.4 Any Return Flows agreed to be made available under this Agreement that are not diverted by the District may be used by the City for instream use or any other use authorized by Water Use Permit No. 5912.

8.5 Notwithstanding Article XX, all communication between the Parties pursuant to this Article shall be by facsimile or other means of expedited written communication agreed to in writing by the Parties. Communications pursuant to this Article shall be made to:

**The City:**

Jayson Barfknecht  
Director, Public Works  
City of Bryan  
Fax: (979) 209-5959

**The District:**

Galveston County WCID No. 12  
c/o Strawn & Richardson, P.C.  
Fax: (713) 864-3170

Either Party may change its designated contact information as shown above by written notice to the other Party.

**ARTICLE IX  
DIVERSION FACILITIES**

9.1 The cost of construction, operation and maintenance of facilities for diversion of the Return Flows agreed to be made available by the City to the District shall be solely the responsibility of the District. Any subsequent change of the Point of Diversion must be approved in writing by the City. All diversions must be made in accordance with the City's water use permit no. 5912 and its TCEQ-approved accounting plan. The District shall bear responsibility for the installation of the screens required for the diversion structure pursuant to Water Use Permit No. 5912. Prior to commencing diversions of Return Flows, the District shall provide the City with proof that the required screens have been installed.

**ARTICLE X  
METERING**

10.1 The District agrees that, at its sole cost and expense, it shall own, install, operate and maintain one or more meters for the accurate measuring of all Return Flows diverted by the District under this Agreement in order to aid the City in accurately reporting water usage to the TCEQ as required by applicable law or regulation, and by the City's Water Use Permit No. 5912 and its TCEQ-approved accounting plan.

10.2 Such meter or meters shall be tested and calibrated for accuracy by and at the expense of the District once each Contract Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to the City within one week after the testing and calibration is conducted.

10.3 The City shall be given notice at least two business days prior to the time of any test and calibration of the District's meters, or any of them, and the City shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary.

10.4 The City shall have the right to inspect and check the accuracy of the District's meter or meters at any time during usual business hours after not less than one nor more than five (5) days notice.

10.5 In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of the City, the expense of such test to be borne by the City if the meter is found to be correct, and by the District if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct.

10.6 If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial City demand for meter testing, and the records of readings shall be adjusted accordingly. Following each test of a meter, the District shall cause the same to be calibrated to register accurately.

## **ARTICLE XI REPORTING**

11.1 The District agrees that it shall keep accurate records of the daily readings from the meter or meters installed pursuant to Article 11. These records shall be subject to inspection by the City at reasonable times and places during regular business hours.

11.2 The District shall provide the City with reports identifying the quantity of

Return Flows diverted by the District at such frequency as needed by the City to comply with the terms of its Water Use Permit No. 5912, and any other reporting requirement imposed by the Texas Commission on Environmental Quality.

11.3 The District shall submit records and reports to the City by the 10th day of each month showing the amount of Return Flows diverted under this Agreement each day during the preceding month. Failure to comply with this reporting requirement will be deemed a breach of this Agreement and may result in termination of the Agreement.

11.4 The District shall provide the City with a copy of all reports and other documents filed with the Brazos River Watermaster regarding diversions made at the Point of Diversion within 3 business days of filing such reports and other documents.

## **ARTICLE XII CONSERVATION OF WATER**

12.1 It is the intent of the Parties to provide to the maximum extent practicable for the conservation of water, and the District agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of the Return Flows. The City, in accordance with applicable law or regulation, may from time to time adopt reasonable ordinances relating to water conservation. Purchaser agrees to abide by such ordinances to the extent they relate to the conservation of Return Flows.

12.2 The District agrees to implement a water conservation and drought management program in accordance with the TCEQ's rules.

## **ARTICLE XIII WATER QUALITY**

13.1 As a further condition of this Agreement, the District also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of Return Flows made available hereunder.

13.2 Should the District be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute breach under this Agreement and may result in termination of this Agreement.

## **ARTICLE XIV WATER SURPLUS TO DISTRICT'S NEEDS**

14.1 The District may not unilaterally cancel this Agreement or reduce the amounts of Return Flows agreed to be made available to it and for which availability it is obligated to pay under this Agreement.

14.2 The District may not sell or make available to others the Return Flows agreed to be made available to it under this Agreement, except that the District may provide the water to its customers to be used for Municipal Use.

14.3 Should the District determine that it has water surplus to its anticipated needs from the Return Flows to be made available by the City under this Agreement, the District may notify the City as to the amount of Return Flows no longer needed to be made available to it. The City will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of or beyond the term of this Agreement. If the City is successful in finding such a third party suitable to it to acquire the District's interest in its available surplus for a period of time to the end of or beyond the term of this Agreement, this Agreement will be amended to reduce the amount of Return Flows to be made available to the District by the amount of availability paid for by such third party, and the District will be relieved of the obligation to make payments for such availability of Return Flows.

## **ARTICLE XV REUSE**

15.1 All rights to reuse the Return Flows made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water ("Reuse Water") shall remain with the City. The District may not use, sell, or make available to others, any form of Reuse Water without the express written consent of the City. However, the District may directly reuse the Return Flows provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

## **ARTICLE XVI INTERBASIN TRANSFER**

16.1 Return Flows made available under this Agreement shall not be transferred or used outside of the Brazos River Basin until the City amends Water Use Permit No. 5912 to add Galveston County as a place of use of the Return Flows.

## **ARTICLE XVII OPERATION OF TREATMENT PLANTS; OTHER SUPPLY CONTRACTS**

17.1 The right of the City to maintain and operate its wastewater treatment plants

at any and all times in the future to impound, release and make available Return Flows therefrom in any lawful manner and to any lawful extent the City may see fit is recognized by the District; and, except as otherwise provided herein, there shall be no obligation hereunder upon the City to discharge, release and make available or not to discharge, release or make available any amount of Return Flows at any time or to maintain any Return Flows at any specified level or to operate its wastewater treatment plans in any manner not in compliance with applicable laws or regulations, and the City's water use permit no. 5912. The City may enter into agreements with other parties regarding the provision of Return Flows. The City makes no representation as to the quality of the Return Flows.

### **ARTICLE XIII FORCE MAJEURE**

18.1 Notwithstanding anything herein to the contrary, neither Party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such Party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, mechanical malfunction or failure, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply, strikes or other differences with labor (whether or not within the power of the Parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such Party and not due to negligence of such Party. Each Party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

### **ARTICLE IX WAIVER**

19.1 Any waiver at any time by any Party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

### **ARTICLE XX NOTICES AND CERTIFICATIONS**

20.1 Notices and communications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, or hand delivered, to the respective parties at the following addresses:

**The City:** City Manager  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805-1000  
Fax: (979) 209-5106

**The District:** Galveston County WCID No. 12  
c/o Strawn & Richardson, P.C.  
6750 West Loop South, Suite 865  
Bellaire, Texas 77401  
Fax: (713) 864-3170

Either Party may change its address as shown above by written notice to the other Party.

#### **ARTICLE XXI OTHER REQUIREMENTS**

21.1 This Agreement is subject to all conditions, provisions, and limitations included in the City's Water Use Permit No. 5912. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

#### **ARTICLE XXII SEVERABILITY**

22.1. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

#### **ARTICLE XXIII TERMINATION**

23.1 This Agreement may be terminated by either party for material breach of the terms of this Agreement or as provided herein. Upon receipt of notice of termination by

City, the District shall immediately discontinue all diversions of use of Return Flows made available hereunder.

## **ARTICLE XXIV OPTION**

24.1 The City grants the District an option to increase the Contract Rate to two (2) MGD and the Annual Contracted Amount to two (2) MGD multiplied by the number of days in the year. The District may exercise the option at any time during the term of this Agreement by providing written notice to the City.

24.2 The District agrees to pay the City annually 10% of the System Rate, as modified from time to time, multiplied by 1121 acre feet in return for the City granting the option to the District. District agrees to pay the City for the option during the term of this Contract when it pays the City for the Return Flows on the Effective Date and on each subsequent anniversary of the Effective Date unless the option has been exercised, in which case the District shall pay the City for the Annual Contracted Amount established by the exercise of the option.

24.3 If the District has not exercised its option and either a third party has submitted a letter of intent to the City to purchase the amount of Return Flows covered by the option or the City identifies a need that requires use of the amount of Return Flows covered by this option, the City shall provide District with written notice regarding the proposed purchase by a third party or use by the City. The District shall within thirty (30) days either exercise its option and pay for the Annual Contracted Amount established by the exercise of the option or the option will be terminated without cost to the City. The City hereby expressly acknowledges and agrees that the District's option hereunder shall be senior to the option rights of any third party with which the City may agree for sale of Return Flows after the Effective Date of this Agreement

## **ARTICLE XXV INDEMNITY/HOLD HARMLESS**

25.1 THE DISTRICT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE DISTRICT AGREES TO KEEP, SAVE AND HOLD THE CITY HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST THE CITY, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE DISTRICT RELATED TO THE PROVISION OF RETURN

FLOWS MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE DISTRICT OR THE DISTRICT'S AGENTS, SUB-CONSULTANT, OR EMPLOYEES.

**ARTICLE XXVI  
ASSIGNMENT**

26.1 This Agreement may be assigned in whole by the District to its treated water provider, the Gulf Coast Water Authority ("GCWA"). Provided however, the terms of the assignment must be approved by the City, which approval may not be unreasonably withheld. This Agreement may be assigned by the District to any other party only with the written consent of the City.

26.2 If the District assigns its interests, rights and duties under this Agreement, the District agrees to guarantee the payments to the City as provided herein. If the District's assignee does not make the necessary payments to the City as required by this Agreement, the District agrees to pay to the City the amount owed by its assignee within thirty (30) days following receipt of the City's demand for payment.

**ARTICLE XXVII  
CANCELLATION FOR NONPAYMENT**

27.1. Should the District fail to make any payment to the City when due, the City may cancel this Agreement by written notice of such nonpayment and statement of the City's election to cancel this Agreement by reason thereof delivered to the District on or before 30 days before the date specified in the notice for cancellation, provided that the nonpayment with respect to which notice has been given shall not be cured by the date thus specified in such notice.

**ARTICLE XXVIII  
TERM OF AGREEMENT**

28.1 The term of this Agreement shall begin on the Effective Date and shall terminate twenty five (25) years thereafter. This Agreement may be renewed for an additional twenty five year term by mutual written agreement of the governing bodies of the Parties hereto.

**XXIX  
BED AND BANKS AUTHORIZATION AMENDMENT**

29.1 The District acknowledges that the City must amend its Water Use Permit No. 5912 in order to obtain authorization for the District to divert the Return Flows at the Point of Diversion and to use the water in Galveston County.

29.2 On or before thirty days after the Effective Date, the City shall file an application with the TCEQ seeking the required amendments and any other changes deemed appropriate for its Water Use Permit 5912.

29.3 The District agrees that the City is under no obligation to provide Return Flows to the District until the City has received authorization from the TCEQ to divert Return Flows at the Point of Diversion and to use flows in Galveston County.

29.4 The District agrees to pay for City's reasonable costs and attorney fees, not to exceed \$2500, to amend Water Use Permit No. 5912 as described herein.

### **ARTICLE XXX MISCELLANEOUS**

30.1 The City agrees to provide Return Flows to District at the Point of Delivery in compliance with all applicable federal, state and local rules and regulations, but the City makes no representation or warranty as to the quality or suitability of the Return Flows for the purposes intended by the District. District agrees to divert, transport and use the Return Flows in compliance with all applicable federal, state and local rules and regulations, and with the City's Water Use Permit No. 5912 and its TCEQ approved accounting plan.

30.2 This Agreement constitutes the sole and only agreement of the Parties regarding the purchase of Return Flows as defined herein and supersedes any prior understanding or oral or written agreements between the City and District respecting the subject matter of this Agreement.

30.3 This Agreement, and the rights and obligations of the Parties pursuant to this Agreement, shall be governed by the laws of the State of Texas. Venue for legal actions arising hereunder shall lie exclusively in Brazos County, Texas.

30.4 The Parties represent that they are authorized by their respective governing bodies to enter into this Agreement.

30.5 The Parties agree that the Party prevailing in a lawsuit or an administrative hearing regarding a dispute pertaining to the subject matter of this Agreement shall be entitled to reasonable attorney fees.

30.6 The Parties agree that one of the purposes of this Agreement is for the City to provide goods or services or both to the District.

**GALVESTON COUNTY WCID 12**

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

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

**ATTEST:**

**CITY OF BRYAN, TEXAS**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

\_\_\_\_\_  
**DATE**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney