

Lower Colorado River Authority
AGRICULTURAL INTERRUPTIBLE WATER SERVICE CONTRACT RULES
Board Approved April 21, 2010

I. PURPOSE

- A. The purpose of these rules is to provide guidance and establish procedures for the administration of LCRA's agricultural interruptible water service contracts (Contracts), including the standard terms and conditions for such contracts. These rules also include the Standard Terms and Conditions for Contracts, which are incorporated by reference into the Contracts. The LCRA Board of Directors may amend these rules from time to time. Sales of water by LCRA are subject to, among other things, water availability, the policies of LCRA, the LCRA Water Management Plan, and the requirements of the Texas Water Code and rules of the Texas Commission on Environmental Quality.

II. STANDARD TERMS AND CONDITIONS FOR CONTRACTS

A. DEFINITIONS

1. Per Acre Duty – the amount of water which will be delivered to the CUSTOMER during the Irrigation Season or portion thereof, as defined in the Contract, above which Surcharges may apply as specified in the Contract. The Per Acre Duty will be specified in units of acre-feet per acre irrigated.
2. Per Acre Limit – where applicable, the maximum amount of water which will be delivered to the CUSTOMER during the Irrigation Season or portion thereof, as defined in the Contract. LCRA will cut off delivery of water if such delivery, in combination with prior deliveries, would exceed the Per Acre Limit. The Per Acre Limit will be specified in units of acre-feet per acre irrigated.
3. Canal Operating Procedures – the guidelines that LCRA staff generally follow in operating the irrigation canals. These guidelines are not enforceable against LCRA.
4. Supplemental Purposes – the use of agricultural interruptible water for purposes other than rice or turf irrigation. Such uses include row crop, alternate crops, and wildlife management.

B. WATER SUPPLY

1. Interruptible Water.

LCRA agrees to furnish interruptible water in the canals and laterals it owns or controls for diversion and use by CUSTOMER for agricultural purposes during the Irrigation Season as defined in the Contract and these Rules. Subject to the conditions set forth in the Contract and these Rules, LCRA will supply interruptible water to irrigate the crops and acreage as described in the Contract. LCRA's obligation under the Contract does not include any

responsibility or obligation to operate any inlet or intake structures owned by CUSTOMER or located on CUSTOMER's property. LCRA shall have no obligation to deliver water during periods outside of the Irrigation Season.

LCRA's obligation to supply water for rice or turf irrigation will be limited to any applicable Per Acre Limit as specified in the Contract. LCRA's obligation to supply water for Supplemental Purposes is limited to periods in which water is available in the canals and not needed for rice or turf irrigation. LCRA is not obligated to divert water into the canals specifically for Supplemental Purposes. However, LCRA may divert water into the canals for Supplemental Purposes if water is available at the river pump station in excess of LCRA's other commitments and pumping capacity is available to capture such water.

Furthermore, CUSTOMER agrees that if the amount of water delivered to CUSTOMER, on a contracted field basis, for the first crop of rice is 5.25 acre-feet per acre or greater, LCRA will not provide water to CUSTOMER for such contracted field for the irrigation of a second crop of rice. For purposes of this provision, the term "contracted field" refers to the entire acreage under a single contract. If CUSTOMER has separate contracts for multiple fields, any contracted fields for which the first crop per acre delivery was less than 5.25 acre-feet per acre would be eligible for water for a second crop subject to the availability of supply; any contracted fields for which the first crop per acre delivery was 5.25 acre-feet per acre or greater would not be provided water for a second crop. Notwithstanding the previous, in the event that the amount of water delivered to CUSTOMER for a contracted field for the first crop of rice was 5.25 acre-feet per acre or greater as a result of extraordinary rain events (such as those resulting from a hurricanes or tropical storms), earthquakes, floods, unauthorized acts of a third-party, or failure of LCRA to cease delivery to the contracted field within the period provided for in Section III.A of these Rules, the contracted field will be eligible for water for a second crop subject to the availability of supply.

2. Source and Availability of Supply.

Interruptible water supplied under the Contract will only be that water that is available from time to time to LCRA for diversion and use for agricultural (including irrigation) purposes in accordance with LCRA's applicable run-of-river water rights (Certificates of Adjudication Nos. 14-5475 [Lakeside], 14-5476 [Gulf Coast], and 14-5434 [Garwood]), as such rights have been and may be amended from time to time, and LCRA's water rights for Lakes Buchanan and Travis (Certificates of Adjudication Nos. 14-5478 [Lake Buchanan], and 14-5482 [Lake Travis]), as such rights have been and may be amended from time to time).

CUSTOMER further agrees that the water supplied under the Contract is subject to availability, provided on an interruptible basis, and subject to curtailment in accordance with the terms of the Contract, these rules, the LCRA Water Management Plan and the LCRA Drought Contingency Plan in

effect on the date of the Contract (both of which are incorporated by reference herein as if set forth fully and available electronically at <http://www.lcra.org/water/wmp.html>), including any amendments thereto that may be approved by the Texas Commission of Environmental Quality (TCEQ) during the term of the Contract, and as otherwise may be required by Section 11.039 of the Texas Water Code or any other orders of TCEQ that may affect LCRA's operation of the Colorado River. If CUSTOMER is within the Garwood Water Division, the Parties acknowledge that such curtailment also is subject to the Purchase Agreement between LCRA and the Garwood Irrigation Company, dated July 20, 1998.

3. Irrigation Season.

Subject to Sections II.B.5, II.G.2 and II.G.3, during the calendar year in which the Contract is executed, LCRA shall have its canal system ready to start delivery of water for agricultural purposes during the Irrigation Season, as defined in the Contract.

Notwithstanding the previous, LCRA shall have no obligation to deliver water after the start of the Irrigation Season until requests for delivery have been received for at least 1000 acres from a pumping facility in an irrigation division.

4. High Point of Land.

LCRA shall not be obligated to furnish water to irrigate any high point of land that is so much above the other lands as to be higher than the water in the lateral supplying water to the particular area.

5. LIMITATION OF LCRA LIABILITY.

THE PARTIES HEREBY ALLOCATE THE RISK OF LOSS ATTENDANT TO ALL HAZARDS AND UNCERTAINTIES INCIDENT TO SUPPLYING WATER BY MEANS OF PUMPS AND CANALS. THESE INCLUDE, WITHOUT LIMITATION, WEAR AND TEAR TO EQUIPMENT, SABOTAGE, ACCIDENT, INJURY OR DAMAGE TO MACHINERY, CANALS, OR DAMS, FLOODING OR OVERFLOW OF THE COLORADO RIVER, FAILURE OR SHORTAGE OF WATER SUPPLY CAUSED BY NATURAL CONDITIONS, AS WELL AS ALL OTHER RISKS THAT COULD PREVENT LCRA FROM PROVIDING WATER UNDER THIS AGREEMENT OR DISRUPT SUCH SERVICE.

LCRA SHALL USE ITS EXISTING FACILITIES TO FURNISH WATER TO CUSTOMER AND ITS OTHER PATRONS IN SUCH QUANTITY AS IS PRACTICABLE AND WITHOUT DISCRIMINATION. CUSTOMER AGREES THAT LCRA SHALL NOT BE HELD LIABLE IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, INDEMNITY CONTRIBUTION OR UNDER ANY OTHER THEORY OF RECOVERY FOR ANY DAMAGE SUSTAINED BY CUSTOMER RESULTING FROM A FLOODING OR AN OVERFLOW OF

THE COLORADO RIVER OR A FAILURE OR SHORTAGE OF WATER SUPPLY CAUSED BY NATURAL CONDITIONS.

CUSTOMER AGREES THAT LCRA SHALL NOT BE HELD LIABLE IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, INDEMNITY CONTRIBUTION OR ANY OTHER THEORY OF RECOVERY FOR ANY DAMAGE TO CUSTOMER THAT MAY BE CAUSED EITHER BY A FAILURE TO FURNISH WATER OR A DISRUPTION OF SUPPLY UNDER THIS AGREEMENT IF LCRA HAS EXERCISED REASONABLE DILIGENCE IN MAINTAINING AND OPERATING ITS EXISTING FACILITIES TO GET A SUFFICIENT SUPPLY OF WATER FROM THE COLORADO RIVER. CUSTOMER AGREES THAT IT CONSTITUTES REASONABLE DILIGENCE BY LCRA IF:

- a. LCRA PERFORMS A COMMERCIALY REASONABLE PROGRAM OF SCHEDULED GENERAL MAINTENANCE WITH RESPECT TO ITS MACHINERY, CANALS AND DAMS; AND
- b. LCRA REPLACES, REPAIRS OR RECONDITIONS ITS MACHINERY, CANALS, OR DAMS THAT ARE DAMAGED FROM ANY CAUSE, INCLUDING WITHOUT LIMITATION WEAR AND TEAR, SABOTAGE, ACCIDENT, FLOODING, OR DROUGHT, WITHIN A COMMERCIALY REASONABLE TIME. AT A MINIMUM, A DETERMINATION OF COMMERCIAL REASONABLENESS SHALL CONSIDER THE SERIOUSNESS AND EXTENT, BOTH LOCALLY AND REGIONALLY, OF THE DAMAGE TO LCRA'S MACHINERY, CANALS OR DAMS, THE COMPLEXITY OF THE DAMAGE, THE COST OF REPLACING, REPAIRING OR RECONDITIONING THEM, THE EXTENT TO WHICH OUTSIDE RESOURCES MUST BE HIRED BY LCRA TO DESIGN AND PERFORM ANY REPLACEMENT, REPAIR OR RECONDITIONING WORK, AND ALL APPLICABLE REGULATORY REQUIREMENTS.

6. Distribution of Water Supply.

To ensure the most efficient and economical distribution of water, CUSTOMER acknowledges and agrees that LCRA shall have sole control of the distribution of the water supply provided under the Contract and shall control all LCRA canals, flumes, drains, and laterals, in accordance with LCRA's Canal Operation Procedures included in these Rules. In the event that terms of the Contract and LCRA's Canal Operation Procedures conflict, the Contract shall control.

7. Point of Delivery

The Point of Delivery for purposes of calculating amounts owed under the Contract shall be as follows:

- a. for deliveries from LCRA-owned canals, the point at which the water is diverted from the canal onto CUSTOMER's property identified in the Contract; and
- b. for deliveries where water is diverted onto the CUSTOMER's property identified in the Contract from a canal that is not owned or controlled by LCRA, a point to be determined solely by LCRA that is located on a canal that is owned or controlled by LCRA that is upstream of the CUSTOMER's diversion and downstream of other diversions or for which LCRA can make reasonable adjustments to exclude intervening diversions.

8. Unlawful Taking

CUSTOMER, his agents and employees shall not willfully open, close, change or interfere with any headgate or water box without the consent of LCRA. Additionally, CUSTOMER, his agents and employees, shall not willfully use water or conduct water through his ditch or upon his land to which he is not entitled.

9. Excess Acreage

Under no circumstances shall LCRA be obligated to provide water for the irrigation of acreage in excess of the acreage indicated in the Contract ("excess acreage"). In the event that CUSTOMER diverts LCRA water to irrigate excess acreage, CUSTOMER shall pay the full applicable agricultural interruptible water service rate (including per acre and diversion charges), PLUS the maximum surcharge rate as set forth in the Contract.

10. Unforeseen Conditions

If, at any time during the Irrigation Season, any condition occurs in connection with the supply of water of which CUSTOMER deems it necessary to notify LCRA, CUSTOMER shall promptly give written notice to the Irrigation Coordinator or LCRA office, stating the nature of such condition. LCRA shall promptly investigate said matter and take such action thereon as it deems appropriate. In the absence of such notice from CUSTOMER, it shall be presumed that LCRA is performing under the Contract to CUSTOMER's satisfaction.

C. TERM

1. Term.

The term of the Contract is for the period from the date of the execution of the Contract until all payments are received consistent with these Rules. LCRA's obligation to supply water is limited to the Irrigation Season as defined in the Contract and these Rules.

2. Termination

In the event that CUSTOMER fails to comply with LCRA's Drought Contingency Plan or otherwise violates any provision of the Contract, LCRA

may terminate the Contract without recourse unless CUSTOMER takes reasonable measures to cure such default within seven (7) days of CUSTOMER's receipt of written notice of such default. In the event LCRA terminates the Contract as provided herein, CUSTOMER shall suspend immediately upon such termination all withdrawal of water from the Colorado River, or any tributaries thereof, or irrigation canals operated by LCRA under the Contract. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized withdrawals by CUSTOMER. In the event LCRA terminates the Contract, CUSTOMER shall remain liable for all payments due. LCRA shall not be liable for any damages resulting to CUSTOMER'S crops as a result of such termination.

D. CONTRACT ADMINISTRATION

1. Agreement to Pay

CUSTOMER agrees and covenants to pay LCRA at the applicable rates specified in the Contract. CUSTOMER acknowledges that amounts owed under the Contract will be determined by LCRA in accordance with this Section II.D.

2. Payment.

For water provided for rice or turf irrigation, amounts owed by CUSTOMER are net and are payable on the sooner of: (1) December 1 immediately following the Irrigation Season, (2) upon the sale of CUSTOMER's crop, or (3) on the date CUSTOMER receives his loan from the Farm Service Agency.

For water provided for Supplemental Purposes, the Base (Per Acre) charge is due upon contract execution; any Diversion charges are due within 30 days of the monthly invoice. In the event that LCRA does not deliver water to CUSTOMER under a contract for Supplemental Purposes, LCRA will refund the Base charge and any pre-paid Diversion charges.

The payments described herein shall be paid to LCRA at its Local Office, as follows:

Gulf Coast Division Address: 100 7th Street, Bay City, Texas 77414

Lakeside Division Address: 209 S. McCarty, Eagle Lake, Texas 77434-2432

Garwood Division Address: 7859 State Hwy 71, Garwood, Texas 77442

3. Failure to Pay.

In the event CUSTOMER fails to make payment by the payment date established by Section II.D.2, CUSTOMER shall then pay a late payment charge of 8% per annum. Payments tendered after January 2 of the calendar year immediately following the Irrigation Season covered by the Contract shall pay an additional late payment charge of five percent (5%) of the amount of the invoice. In the event CUSTOMER attempts to pay LCRA by check, draft, or any other similar instrument and the instrument is returned or refused by the bank or other similar institution as insufficient or non-negotiable for

any reason, CUSTOMER shall be assessed and must pay to LCRA, per each returned instrument, the returned instrument fee set by LCRA's Board of Directors for LCRA's Water and Wastewater Utility Services. In the event CUSTOMER fails to make payment by the payment date established by Section II.D.2, CUSTOMER further agrees to pay all costs of collection and reasonable attorney's fees, regardless of whether suit is filed, as authorized by section 271.159, Texas Local Government Code. Further, CUSTOMER agrees that LCRA shall have no obligation to furnish interruptible water to CUSTOMER after the Irrigation Season covered by the Contract unless and until the CUSTOMER has paid all outstanding balances owed to LCRA under the Contract.

4. Computation of Charges.

Determination of the number of acres irrigated by CUSTOMER for purposes of computing charges due under the Contract shall be made on the basis of the entire area within CUSTOMER's outside levee or farmed tract, as applicable, and shall be determined by LCRA using: (a) existing survey information; or (b) new survey information gathered by LCRA in the case of new fields that have not been irrigated previously with water supplied by LCRA or fields that have not been irrigated in such a long time that old boundaries and acreage figures are questionable; or (c) from the County Farm Service Agency. CUSTOMER, by signing the Contract, authorizes the release by the County Farm Service Agency of information to verify acreage. Notwithstanding the previous, for contracts for rice or turf irrigation, in the event that the customer initially contracts for more acreage than is actually planted, or for more acreage than measured, the per acre (base) charge will apply to the amount initially contracted. CUSTOMER will be notified by mail as soon after the start of the Irrigation Season as is practicable, of the per-acre charges due under the Contract based on the area calculated under this Section II.D. CUSTOMER has seven (7) days from the date of LCRA's bi-weekly water use report to dispute any volumes or charges under the report, such disputes to be identified in writing to LCRA at the address indicated in Section II.D.2. If no dispute is filed with LCRA within this time period, CUSTOMER will be deemed to agree that the volumes and/or charges are correct, and full payment as provided in the Contract and these Rules will be required. Should there be a disagreement between LCRA and CUSTOMER as to the acreage contained in said survey or the volumes of water delivered, such disagreement shall be resolved by arbitration in accordance with the arbitration procedures set forth in these rules.

If CUSTOMER's crop has not matured or has been abandoned by the closing date of the Irrigation Season, CUSTOMER shall nevertheless remain liable for all payments owed to LCRA under the Contract.

5. Water Rate Tariff for Excess Water and Cut Off of Water Supply.

In the event that CUSTOMER is delivered water in excess of any applicable Per Acre Duty, CUSTOMER will be assessed a Surcharge in addition to the

Total Diversion Charge for any water delivered in excess of the Per Acre Duty, as such Per Acre Duty and Surcharge(s) are specified in the Contract. In the event that CUSTOMER has been delivered water in an amount up to or exceeding any applicable Per Acre Limit specified in the Contract, CUSTOMER agrees that LCRA will cut off delivery of water for the remainder of the Irrigation Season. In the event that CUSTOMER is delivered water to irrigate acreage in excess of that identified in the Contract, or to irrigate acreage for purposes other than that specified in the Contract, CUSTOMER will be billed for the use of such excess water in accordance with the applicable Base charge and Diversion charge PLUS the maximum surcharge rate as set forth in the Contract.

6. Disputes Relating to Charges Billed.

In the event that CUSTOMER disputes the charges billed during the Irrigation Season in writing within thirty (30) days from the date of LCRA's billing notice and LCRA and CUSTOMER are unable to resolve such dispute, then LCRA and CUSTOMER both agree that such dispute shall be resolved through arbitration in accordance with the arbitration procedures set forth in these rules. However, CUSTOMER agrees that any dispute related to the computation of acreage or the volume of water delivered must be resolved pursuant to Section II.D.4, above.

E. SECURITY

1. Security Agreement.

For value received hereunder, CUSTOMER grants to LCRA a security interest in the crops and any proceeds from said crops to secure any and all payments due the LCRA under the Contract. The lien created by this Security Agreement is in addition to any statutory lien provided for under the Texas Business and Commerce Code and the Texas Water Code.

2. Financing Statement.

CUSTOMER grants LCRA the authority to file a Financing Statement (Form UCC-1) in order to perfect the lien on the crops granted by CUSTOMER to LCRA hereunder. Lien Waivers will be made out jointly to CUSTOMER and LCRA unless CUSTOMER has paid to LCRA all applicable charges in accordance with the Contract. LCRA cannot accept payment for outstanding charges by post-dated check or other payment arrangement that is contingent upon CUSTOMER's receipt of a loan disbursement.

3. Warehouse Storage.

Until all of the charges and payments under the Contract have been fully paid and satisfied, all harvested farm products shall be stored in the name of the CUSTOMER in a public bonded warehouse or warehouses agreeable to LCRA.

F. CONSERVATION OF WATER AND WASTE

CUSTOMER agrees and binds himself not to cause, permit, or in any other manner allow water furnished by LCRA hereunder to be wasted, used in manner that is careless, or used in quantities that significantly exceed those amounts used (on an acre-feet per acre basis) by similarly situated agricultural water users in the area. CUSTOMER is responsible for preparing the acreage and any personal lateral(s) for the delivery of water. LCRA reserves the right to inspect CUSTOMER's acreage and lateral(s) prior to delivery. If LCRA determines that improvements are needed to prevent the waste of water, CUSTOMER will be contacted and CUSTOMER must make improvements prior to delivery of water. Furthermore, LCRA reserves and is hereby granted the right to enter CUSTOMER's land and cut off all delivery or diversions of water to said land if CUSTOMER causes, permits, or allows such wasteful use of water to occur, including if such delivery would exceed any applicable Per Acre Limit. In the event that LCRA cuts off water in accordance with this section, CUSTOMER shall nevertheless pay all charges in accordance with the Contract as though LCRA had continued to allow diversion of water to CUSTOMER through the end of the same crop season (first crop or second crop) for which CUSTOMER diverted any water from LCRA

G. GENERAL PROVISIONS

1. Indemnification.

CUSTOMER will indemnify and save LCRA harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from or in any way connected with any and all acts or omissions of CUSTOMER under the Contract. CUSTOMER's pumping and related facilities shall be installed, operated and maintained by CUSTOMER at CUSTOMER's sole risk. Nothing in the Contract shall be construed as authorizing CUSTOMER, or recognizing that CUSTOMER has any right, to install any equipment or improvements on property owned or controlled by LCRA or third parties.

2. Force Majeure.

LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of reasonable diligence, to make the supply of water from the Colorado River available to CUSTOMER due to any Force Majeure. LCRA shall use reasonable diligence to repair or recondition the machinery, canals, or dams in the event said machinery, canals or dams are damaged or made unserviceable from any Force Majeure. The term "Force Majeure" as used herein shall mean situations or conditions beyond the control of LCRA that render LCRA unable, wholly or in part, to carry out its obligations under the Contract. Such Force Majeure includes but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any of kind of the government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil

disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial, or entire failure of water supply.

3. HOLD HARMLESS AGREEMENT AND WAIVER RELATED TO SPECIFIC PUMP EQUIPMENT.

CUSTOMER ACKNOWLEDGES THAT, DUE TO DECADES OF USE AND NORMAL WEAR AND TEAR, AND DESPITE LCRA'S CONTINUED AND DILIGENT MAINTENANCE AND REPAIR EFFORTS, THE PUMPS AND RELATED MECHANICAL EQUIPMENT (COLLECTIVELY, "EQUIPMENT") USED BY LCRA TO DELIVER WATER UNDER THE TERMS OF THE CONTRACT ARE INCREASINGLY UNRELIABLE. CUSTOMER ACKNOWLEDGES THAT, GIVEN THE CONDITION OF THIS EQUIPMENT, IT IS QUITE POSSIBLE THAT SUCH EQUIPMENT, OR PORTIONS THEREOF, MAY BECOME INOPERABLE, UNSAFE TO OPERATE, AND/OR IRREPARABLE AT ANY TIME AND THAT, AS A RESULT, LCRA MAY BE UNABLE TO DELIVER WATER, OR SOME PORTION THEREOF, PURSUANT TO THE TERMS OF THE CONTRACT. CUSTOMER AGREES THAT LCRA MAY RELY ON THE BEST ENGINEERING JUDGMENT OF ITS STAFF TO DETERMINE WHETHER A PARTICULAR PIECE OF EQUIPMENT HAS BECOME INOPERABLE, UNSAFE TO OPERATE, AND/OR IRREPARABLE. IN THE EVENT THAT SUCH EQUIPMENT IS DETERMINED TO BE INOPERABLE, UNSAFE TO OPERATE, OR IRREPARABLE, LCRA SHALL UNDERTAKE COMMERCIALY REASONABLE MEASURES TO REMEDY THE PROBLEM(S) AND RESTORE SERVICE AS SOON AS IS REASONABLY PRACTICABLE IN LIGHT OF ALL THE FACTS AND CIRCUMSTANCES; HOWEVER, CUSTOMER ACKNOWLEDGES THAT LCRA DOES NOT GUARANTEE THAT SUCH REMEDIAL MEASURES WILL BE COMPLETED WITHIN ANY SPECIFIC TIME PERIOD. IF REMEDIAL MEASURES ARE REQUIRED, CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT LCRA MAY MAKE AN IMMEDIATE MODIFICATION TO THE RATES CHARGED UNDER THE CONTRACT IN ORDER TO EXPEDITIOUSLY RECOVER THE COSTS OF TAKING SUCH ACTIONS.

IN LIGHT OF THE FOREGOING, CUSTOMER HEREBY AGREES TO HOLD LCRA HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY OR DAMAGES TO THE CUSTOMER OR ITS PROPERTY RESULTING FROM THE FAILURE OF LCRA TO DELIVER WATER BECAUSE THE ABOVE-REFERENCED EQUIPMENT IS INOPERABLE, UNSAFE TO OPERATE, OR IRREPARABLE.

CUSTOMER FURTHER ACKNOWLEDGES THAT THIS SECTION SHALL NOT PROVIDE THE EXCLUSIVE MEANS OF LIMITING LCRA'S POTENTIAL LIABILITY FOR LCRA'S INABILITY TO SUPPLY WATER, BUT RATHER CUSTOMER ACKNOWLEDGES THAT ANY APPLICABLE PROTECTIONS FROM LIABILITY AFFORDED TO LCRA

PURSUANT TO SECTIONS II.B.5 (LIMITATION OF LCRA LIABILITY) OR II.G.2 (FORCE MAJEURE) ARE OF FULL FORCE AND EFFECT.

4. No Third-Party Beneficiary.

The parties hereto are entering into the Contract solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

5. Quality of Water.

LCRA makes no representation as to the quality of the water in the Colorado River and CUSTOMER hereby releases LCRA and agrees to hold it harmless from any and all claims that CUSTOMER has or may have against LCRA for any diminution in or impairment of the quality of water in Colorado River caused by lawful acts or failures to act of LCRA.

6. Pesticide Application.

Texas Department of Agriculture ("TDA") regulations require that signs be posted at entry points of fields prior to application and removed within 24 hours after the reentry period has expired. CUSTOMER agrees to require the person ordering pesticide application to post such notice as required by said TDA regulations. Additionally, at least 24 hours prior to the application of pesticides and herbicides, CUSTOMER shall provide notice to the LCRA Irrigation Coordinator.

7. Modifications or Amendments

Any modification of or amendments to the Contract, as well as any waiver of a party's rights or remedies under the Contract, must be in writing to be effective. No representative of either party is authorized to modify or amend any provision of the Contract or to waive any rights or remedies under it except in writing. Failure, neglect, or delay by a party to enforce the provisions of the Contract or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under the Contract and will not in any way affect the validity of the whole or any part of the Contract or prejudice such party's right to take subsequent action.

8. Customer Confidentiality

Section 182.052 of the Texas Utilities Code requires government-operated utilities to notify customers of their right to confidentiality. CUSTOMER is hereby informed of the right to request confidentiality of your address, telephone number, social security number and information relating to the volume or units of utility usage and the amounts billed to or collected from you for utility usage, as contained in our records. If CUSTOMER has made such a request of confidentiality and LCRA receives an open records request for the information described above, LCRA shall notify CUSTOMER of any filings made to keep such information confidential, and shall keep the information confidential unless required or mandated by law. Please note that the Texas Attorney General has opined that the protections in Section 182.052

only apply to natural persons and do not apply to artificial entities such as corporations or partnerships.

III. Canal Operating Procedures

A. Ordering and Delivery Procedures

1. All contracts for first crop must be signed by March 1.
2. All contracts will be signed at the LCRA office prior to water delivery into the field. Water will not be delivered until notification from the office that the contract has been signed. When signing contracts, LCRA will no longer split fields between customers. Each field will be designated to one customer only. The customer and others who have interest in the crop must divide the diversion bill amongst themselves.
3. The LCRA office is open from 8:00 AM to 4:30 PM Monday through Friday with the exception of Holidays. Regular working hours for field personnel are Monday through Friday from 7:00 AM to 3:30 PM.
4. The Gulf Coast Water Division canal system is divided into four individual operating sections with an Irrigation Coordinator (IC) responsible for management of each section. The Lakeside canal system is divided into five individual operating sections with an Irrigation Coordinator responsible for management of each section. The Garwood canal system is divided into three or four individual operating sections with an Irrigation Coordinator responsible for management of each section.
5. An IC's workday starts at 7:00 AM Monday through Sunday. Any request for a system change outside of the hours specified for receiving orders will be charged (minimum of 1 hour) a cost recovery rate as specified in the Contract for each hour of work performed by the I.C.
6. Each IC will have a mobile phone and will use this phone for communication with customers. It is requested that while a customer is taking water he maintain daily communications with the IC. This will assist the IC's in daily planning and overall management of the system.
7. IC's will run their line creating a reasonable routine. This will allow customers to determine an approximate time when he will pass their field(s) or normal meeting location. Once this schedule is established it will only be deviated from if problems develop.
8. IC's will log all requests for water. A customer must place a water order a minimum of one (1) day before the water is required at his field. Turf farms must call the IC before beginning to take water.
9. An IC has a maximum of six (6) days to deliver water to a field. Day one starts the day water was requested for and not the day water was ordered. (Example: if a customer orders water on Monday for Wednesday, then the IC has six days from Wednesday to deliver the water.) Pump changes will be coordinated with water orders and, under normal conditions, water orders will be filled as soon as water is available. A request for switching water

constitutes a new order for water. (Example: Water is being delivered to a customer on one field and the customer requests that this water be switched to another field. This switching constitutes a new order and will be filled in the order in which it was received.) If water has not been furnished prior to the commencement of the sixth day, customer shall give notice at LCRA's office not less than 12 hours before water is actually desired stating the specific lands to be watered and the facilities to be used, the time when water is desired on each tract, and the time, place, circumstance, and the person to whom notice was first given.

10. Normal operating procedures require that the IC make all changes to the irrigation system in the morning. Measurements are taken each day for all structures that are delivering water. Structures opened in the morning will be measured when the head stabilizes. Depending on the circumstances, structures may be opened in the morning or afternoon. (Example: If the canal needs to build up head pressure the IC will set the mainline canal in the morning and turn water into the field in the afternoon. In this instance, the first measurement may be taken the next morning and this measurement will be recorded for the previous day and the day the measurement was taken.
11. Under normal operating procedures, no changes in the irrigation system will be made after 2:00 P.M. on weekdays and 11:00 A.M. on weekends and holidays.
12. The IC and not the customer will make all changes.
13. The IC has 24 hours from the time water was ordered off to actually turn a delivery structure off. Measurement will not stop until the structure is physically off. (Example: If a customer requests water to be turned off at 10:00 am Monday then the IC has 24 hours from 10:00 A.M. Monday to turn the water off. The measurement of that water will stop when the water is physically turned off.) Under normal operating conditions water will be turned off the day requested; however, canal operations require no additional changes be made until the following day.
14. IC's ride the canals in the afternoon to monitor changes that were made in the morning and collect measurements from structures that were opened that morning. IC's check canals for levels, trash, leaks and unauthorized discharges. When pumping volumes are low on an IC's canal and no water orders were filled that morning, the evening run may be eliminated at the discretion of the IC.
15. All pump changes will be made at the discretion of the IC.
16. In instances where fields are being measured and the delivery structure is not in close proximity to the field, the IC will approximate the time water will reach the field and the recorded time of delivery will be the time water reaches the field. When the water is turned off the time will be recorded and the water in the lateral will be free water to account for canal losses between the measurement and the field.

17. If the IC is delivering water to a field and water is observed running out the bottom of the field, the IC will attempt to notify the customer. However, if the water continues to run out, the IC will shut the water off and give it to the next customer on the order list.
18. The customer shall keep the IC informed of any problems pertaining to watering his field. The customer shall also coordinate fertilizer and chemical application with the IC so that he can efficiently plan water ordering and distribution.
19. Rainfall Procedures: In instances of high rainfall, all deliveries will be logged off when pumps are turned off. It is the responsibility of the IC to determine if pumping operations will be stopped due to rainfall. Field delivery structures will be turned off at the discretion of the IC. Efforts will be made to maintain all canal levels. Start-up after rainfall will be coordinated with water orders, along with rainfall analysis of the district (this procedure will be supported by upper management).
20. If the customer feels that measurement techniques affect the ability to deliver adequate water to the field, the customer should communicate with the IC and the local LCRA office to determine if measurement procedure can be improved.
21. The customer shall be responsible for protection of the customer's land from flooding during land preparations, planting and harvest. The customer is responsible for removing all dams prior to requesting water. If a customer damages a measurement structure, LCRA shall repair the structure and bill the customer for the repair cost.
22. All canals, laterals, ditches, and other facilities belonging to the customer shall be built and maintained according to the specification of LCRA. All of the facilities owned by a customer, or owned by LCRA or others but used for the benefit of only one customer, shall be kept clean, unobstructed, and maintained by such customer so as to properly perform the purposes for which the facilities were constructed, and if the customer shall fail to maintain and keep clean and unobstructed all such facilities, LCRA may do so and charge the expense thereof to the customer.
23. The customer shall prepare the customer's field levees and perimeter (outside) levee so as not to allow water to escape the field during normal field flood condition; i.e., levee height and compaction must be adequate to contain irrigation water. If the customer fails to contain water and willfully or knowingly allows water to escape the field, LCRA may cease delivery of water immediately. Continuation of water starts after water is controlled or contained.
24. The customer agrees that filling all land described in the Agricultural Irrigation Service Contract with water prior to drainage so as to facilitate run-off is counter to conservation. The customer shall notify the LCRA at least six (6) days prior to draining.

25. All field water delivery data collected by the IC will be entered into the billing system on the 2nd business day following collection, except for data collected on Thursday, Friday and Saturday, which will be entered on Monday. Bi-weekly water-use reports will be mailed to each customer/contract holder. Customer shall notify LCRA in writing within seven (7) business days after receipt of water usage reports if customer disputes the volume. (*See Section II.D.4.*)

B. Measurement Procedures

1. Water Box

In preparing water box for measurement, care must be taken that the structure is clean and free of large debris. Water boxes come in varying widths and depths ranging from thirty inches to seventy-two inches. Metal weir blades are attached to water boards to create a sharp crested orifice opening. The depth to the bottom weir blade is recorded and placed in the computer records. If the depth of the weir blade changes, the depth must be changed in the computer. A metal weir blade is attached to a water board and used for the top weir blade. The depth of the weir opening is set with spacers. Spacers are two by two's cut from one to nine inches in length and attached to survey lathes. Upstream and downstream measurements are taken at reference marks set on the sidewall of the water box. Measurements are taken at these points with a metal ruler that measures the depth of water to the hundredth of a foot. The upstream and downstream measurements are taken once each day. These measurements, the time, and the date are recorded on the daily log sheet. When the water level is below the top weir blade an open channel flow measurement must be taken.

2. Pipe

A pipe can be measured ideally running full or partially full. The area of the pipe submerged is calculated by measuring the depth of flow in the pipe with a measurer ruler. The velocity of the water moving through the pipe is measured with a Global Flow Meter. The velocity measurement is taken by moving the Global Flow Probe across the cross section of the pipe and an average velocity is registered. By multiplying the cross sectional area by the average velocity you receive a volume in cubic feet per second. Measurements can be taken through a controlled section such as a water box with all the boards pulled in the same manner as a pipe. The depth of flow is measured and multiplied times the width to calculate a cross sectional area. The average volume in cubic feet per second is obtained by multiplying the cross sectional area times the average velocity that is obtained with a Global Flow Meter.

3. Grainland Meter

A Grainland Meter is an impeller based measurement device to measure relifts and wells. It requires a full discharge pipe ideally free of debris. The Irrigation Coordinator will record the totalizer readings as necessary. This will generally

be on a weekly basis and these readings will be used to determine the total water usage at the end of the irrigation season.

IV. Arbitration

A. Volume Disputes

1. In the event customer disputes the volume of water used in a Customer Use Summary report, customer shall notify LCRA of such dispute within the timeframe defined in Section II.D.4.
2. LCRA irrigation operations staff and/or manager shall review such dispute and respond to customer within two (2) weeks with a proposed resolution, if appropriate.
3. In the event customer is not satisfied with the irrigation operations proposed resolution, customer shall request, within two (2) weeks, a resolution from the Water Operations Manager, LCRA Water Services.
4. In the event customer is not satisfied with the irrigation operations proposed resolution, customer shall request, within two (2) weeks, resolution by arbitration.

B. Arbitration Procedures

1. **Binding Arbitration.** Binding arbitration shall be conducted in accordance with the following procedures:
 - a. The party seeking arbitration hereunder shall request such arbitration in writing, which writing shall be delivered to the opposing party or parties and include a clear statement of the matter(s) in dispute. If a legal proceeding relating to the matter(s) in dispute has previously been filed in a court of competent jurisdiction (other than a proceeding for injunctive or ancillary relief) then such notice of election under this section shall be delivered within ninety (90) days of the date the electing party receives service of process in such legal proceeding. Otherwise, the legal proceeding shall be allowed to continue and binding arbitration shall not apply to the matter(s) in dispute in that legal proceeding.
 - b. Except to the extent provided in these Arbitration Procedures, the arbitration shall be conducted in accordance with the commercial rules of the American Arbitration Association by a single arbitrator to be appointed as follows: (i) upon the issuance and receipt of a request for arbitration, the requesting and receiving party each shall designate a representative for the sole purpose of selecting, by mutual agreement with the other party's designee, the individual who shall arbitrate the Dispute or Controversy referred to arbitration hereunder; (ii) within twenty (20) days of their appointment, the two representatives shall designate a third individual who shall be the arbitrator to conduct the arbitration of the Dispute or Controversy; (iii) said individual shall be qualified to arbitrate the Dispute or Controversy referred to arbitration hereunder and have a

schedule that permits him or her to serve as arbitrator within the time periods set forth herein. In order to facilitate any such appointment, the party seeking arbitration shall submit a brief description (no longer than two (2) pages) of the Dispute or Controversy to the opposing party. In the event the parties' two representatives are unable to agree on a single arbitrator of the Dispute or Controversy within the twenty (20) day period, then the arbitrator shall be appointed by the then-serving chief administrative district judge of Travis County, Texas, or any successor thereto within the next ten (10) day period. The party seeking arbitration shall make the parties' request for appointment of an arbitrator and furnish a copy of the aforesaid description of the Dispute or Controversy to said judge. Each party may, but shall not be required to, submit to said judge a list of up to three (3) qualified individuals as candidates for appointment as the arbitrator whose schedules permit their service as arbitrator within the time periods set forth herein. The arbitrator appointed by the judge need not be from such lists.

- c. Within thirty (30) days of the date the arbitrator is appointed, the arbitrator shall notify the parties in writing of the date of the arbitration hearing, which hearing date shall be not less than one-hundred twenty (120) days from the date of the arbitrator's appointment. The arbitration hearing shall be held in Austin, Texas. Except as otherwise provided herein, the proceedings shall be conducted in accordance with the procedures of the Texas General Arbitration Act, Tex. Civ. Prac. & Remedies Code § 171.001 et seq. (the "Texas General Arbitration Act"). Depositions may be taken and other discovery may be made in accordance with the Texas Rules of Civil Procedure, provided that (i) depositions and other discovery shall be completed within ninety (90) days of the appointment of the arbitrator, (ii) there shall be no evidence by affidavit allowed, and (iii) each party shall disclose a list of all documentary evidence to be used and a list of all witnesses and experts to be called by the party in the arbitration hearing at least twenty (20) days prior to the arbitration hearing. The arbitrator shall issue a final ruling within thirty (30) days after the arbitration hearing. Any decision of the arbitrator shall state the basis of the award and shall include both findings of fact and conclusions of law. Any award rendered pursuant to the foregoing, which may include an award or decree of specific performance hereunder, shall be final and binding on, and not appealable by, the parties, and judgment thereon may be entered or enforcement thereof sought by either party in a court of competent jurisdiction. The foregoing deadlines shall be tolled during the period that no arbitrator is serving until a replacement is appointed in accordance with these Arbitration Procedures.

Notwithstanding the foregoing, nothing contained herein shall be deemed to give the arbitrator appointed hereunder any authority, power or right to alter,

change, amend, modify, waive, add to or delete from any of the provisions of the contract.

2. **Further Qualifications of Arbitrators; Conduct.** All arbitrators shall be and remain at all times wholly impartial and, upon written request by any party, shall provide the parties with a statement that they can and shall decide any Dispute or Controversy referred to them impartially. No arbitrator shall be employed by any party, the State of Texas, or have any material financial dependence upon a party, the State of Texas, nor shall any arbitrator have any material financial interest in the Dispute or Controversy.
3. **Applicable Law and Arbitration Act.** The agreement to arbitrate set forth in these Arbitration Procedures shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the Texas General Arbitration Act. In deciding the substance of any such Dispute or Controversy, the arbitrator shall apply the substantive laws of the State of Texas. The arbitrator shall have authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of the State of Texas, except that the arbitrator shall have no authority to award incidental or punitive damages under any circumstances (whether they be exemplary damages, treble damages or any other penalty or punitive type of damages) regardless of whether such damages may be available under the laws of the State of Texas. The parties hereby waive their right, if any, to recover punitive damages in connection with any arbitrated Dispute or Controversy.
4. **Consolidation.** If the parties initiate multiple arbitration proceedings, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then the parties hereby agree that all such proceedings may be consolidated into a single arbitration proceeding.
5. **Pendency of Dispute; Interim Measures.** The existence of any Dispute or Controversy eligible for referral or referred to arbitration hereunder, or the pendency of the dispute settlement or resolution procedures set forth herein, shall not in and of themselves relieve or excuse either party from its ongoing duties and obligations under the contract or any right, duty or obligation arising therefrom; provided, however, that during the pendency of arbitration proceedings and prior to a final award, upon written request by a party, the arbitrator may issue interim measures for preservation or protection of the status quo.

6. **Complete Defense.** The parties agree that compliance by a party with the provisions of these Arbitration Procedures shall be a complete defense to any Action or Proceeding instituted in any federal or state court, or before any administrative tribunal by any other party with respect to any Dispute or Controversy that is subject to arbitration as set forth herein, other than a suit or action alleging non-compliance with a final and binding arbitration award rendered hereunder.

7. **Costs.** Each party shall bear the costs of its appointed representative to select the arbitrator of the Dispute or Controversy and its own attorneys' fees, while the costs of the arbitrator of the Dispute or Controversy incurred in accordance with the foregoing shall be shared equally by the parties. Additional incidental costs of arbitration shall be paid for by the nonprevailing party in the arbitration; provided, however, that where the final decision of the arbitrator is not clearly in favor of either party, such incidental costs shall be shared equally by the parties.