

**WHOLESALE WATER SUPPLY AGREEMENT  
BETWEEN  
LOWER COLORADO RIVER AUTHORITY AND  
THE CITY OF DRIPPING SPRINGS**

THIS WHOLESALE WATER SUPPLY AGREEMENT (this "Agreement") is made and entered into by and between LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district and a political subdivision of the State of Texas ("LCRA") and the CITY OF DRIPPING SPRINGS, TEXAS, a Texas general law municipality (the "City").

**RECITALS**

1. LCRA owns and operates a regional water supply system consisting of a raw water intake and pumping system, a raw water transmission main, a water treatment plant, treated water storage facilities and treated water transmission and distribution facilities to serve the needs of its wholesale and retail customers in Travis and Hays Counties, Texas (the "LCRA System"), including that area within the Colorado River watershed in Hays County (the "LCRA Service Area").
2. The City does not presently have a water system or a water certificate of convenience and necessity ("CCN"), but desires to provide retail potable water utility service within certain portions of the City's current corporate limits and extraterritorial jurisdiction ("ETJ"), including the area identified on **Exhibit A** hereto (the "City's Potential Service Area").
3. LCRA is in the process of expanding the LCRA System in order to provide wholesale and retail water service within the LCRA Service Area, which includes the City's Potential Service Area.
4. The City has no facilities to divert, treat, transport, store or distribute the water to potential retail customers in the City's Potential Service Area and desires that LCRA, which is in the process of expanding the LCRA System in order to provide wholesale and retail potable water service within the LCRA Service Area as described on **Exhibit B** hereto (the "LCRA Service Area"), which includes the City's Potential Service Area.
5. The City intends to provide retail water service to the potential retail customers in the City's Potential Service Area, subject to agreements with other parties regarding areas to be served.
6. The City and LCRA now desire to enter into this Agreement pursuant to which LCRA will agree to provide a wholesale treated water supply to the City from the LCRA System and certain related operation and maintenance services for areas where the City obtains a CCN granting the City the Exclusive Right (as hereafter defined) to provide retail potable water utility service.

7. The City desires that LCRA include in the improvements that it constructs for the LCRA System facilities needed by the City to provide retail potable water utility service to all or any portion of the City's Potential Service Area to which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service.
8. LCRA is willing to include in the improvements constructed by it facilities needed to enable the City to provide retail potable water utility service in all or any portion of the City's Potential Service Area for which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service.
9. The City is willing to obtain Wholesale Water Supply (as hereafter defined) from the LCRA System and the related operation and maintenance services as provided herein for areas where the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service within the City's Potential Service Area.
10. LCRA and the City also wish to undertake good faith efforts to extend the City's Potential Service Area wherever possible to include areas along U.S. Highway 290 in Hays County (the "290 Corridor") to facilitate the City's ability to annex these areas and thereby further regulate growth and development and promote the health, safety and general welfare of the residents of the City and its ETJ.
11. LCRA is aware that the City and Dripping Springs Water Supply Corporation (the "Corporation") entered into a "Settlement Agreement and Water and Wastewater Service Agreement" (the "Settlement Agreement") with an effective date of May 28, 2002, that establishes water and wastewater service areas, as between the City and the Corporation, in the City's corporate limits and ETJ and the City and LCRA intend that this Agreement not create a default or breach of the Settlement Agreement.
12. The City is aware that LCRA has also entered into agreements with Dripping Springs Water Supply Corporation and the Hays County Commissioners Court obligating LCRA to undertake certain actions with each of those entities in regard to the City's Potential Service Area, and the City and LCRA acknowledge LCRA's obligations under those agreements and intend that this Agreement not create a default or breach of said agreements.
13. Subject to compliance with the provisions of this Agreement by all parties hereto, and to the extent indicated hereafter, LCRA's System will be capable of providing Wholesale Water Supply to the City, and LCRA agrees to improve its System in order to provide adequate Wholesale Water Supply to the City under this Agreement and to the other wholesale and retail customers of the LCRA System under other agreements, with all costs of the LCRA System (hereafter, the "Costs of the LCRA System") to be recovered through the rates and charges of LCRA to the customers of the LCRA System.
14. LCRA and the City now wish to execute this Agreement to evidence the agreement of LCRA to provide Wholesale Water Supply to the City under the conditions described in this Agreement.

## AGREEMENTS

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LCRA and the City agree as follows:

### ARTICLE I DEFINITIONS

Section 1.01. Definitions of Terms. As used in this Agreement, the following terms have the meanings ascribed in this section.

“Agreement” means this agreement.

“CCN” means a certificate of convenience and public necessity for retail water utility service issued by the Texas Commission on Environmental Quality or its successors.

“Charges” means the LCRA’s charges set from time to time by the LCRA Tariff (as hereafter defined) approved by its Board of Directors for water utility service from the LCRA System.

“City” means the City of Dripping Springs, Texas.

“City’s Potential Service Area” means the area described as such on **Exhibit A** hereto, and may be expanded by agreement of LCRA and the City to include, wherever possible, areas of the 290 Corridor.

“Connection Fee” means the charge described in Section 4.01.a. of this Agreement.

“Costs of the LCRA System” means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating, and obtaining, reserving and using water for, the LCRA System, including, without limiting the generality of the foregoing, the costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the LCRA System. The Costs of the LCRA System shall include reasonable amounts for an operation and maintenance reserve fund, debt service reserve fund, required coverage of debt service, working capital and appropriate general and administrative costs.

“Delivery Point(s)” means the point(s) at which LCRA is obligated to deliver treated water to the City for the City’s retail customers under this Agreement, which shall be the points at which the City delivers retail potable water utility service to its retail customers.

“Emergency” means a sudden unexpected happening; an unforeseen occurrence of condition; exigency; pressing necessity; or a relatively permanent condition of insufficiency of service or of facilities resulting in social distress. The term includes Force Majeure and acts of third parties which cause the LCRA System to be unable to provide the Wholesale Water Supply agreed to be provided herein.

“Exclusive Right” means the City’s right pursuant to a CCN to provide exclusive retail water utility service but also includes dual certification rights with the Corporation along RR 12 where the Settlement Agreement so allows the City to have dual certification with the Corporation.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, acts of terrorism, orders of any kind of any governmental entity or any civil or military authority, acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of such party.

“LCRA” means Lower Colorado River Authority.

“LCRA Service Area” means that area described as such in **Exhibit B** hereto together with such other areas as may be added by LCRA in the future.

“LCRA System” means the facilities owned by LCRA as described in Recital No. 1 above together with all extensions, expansions, improvements, enlargements, betterments and replacements thereof to provide wholesale or retail water service or supply to LCRA’s customers in the LCRA Service Area.

“LCRA Tariff” means the water related portions of LCRA’s West Travis County Regional System Schedules for Rates, Fees, Charges and Terms and Conditions of Retail Treated Water and Wastewater Service as approved for the LCRA System, together with future amendments thereto or replacements thereof as adopted from time to time by the LCRA Board of Directors.

“LUE” means an amount of Wholesale Water Supply sufficient for one living unit equivalent as defined in the LCRA Tariff.

“Meter(s)” means the meter(s) which shall be installed by LCRA at the Delivery Point(s).

“TCEQ” means the Texas Commission on Environmental Quality or its predecessor or successors.

“Wholesale Water Supply” means the supply of potable water to the City at the Delivery Point(s).

Section 1.02. Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

Section 1.03. Wholesale Water Supply. LCRA agrees to provide Wholesale Water Supply to the City under this Agreement all as hereafter specified. Notwithstanding anything herein to the contrary, LCRA shall provide Wholesale Water Supply to the City, and the City shall provide retail potable water utility service from the LCRA System, in a manner which complies with that certain Memorandum of Understanding between LCRA and the United States Fish and Wildlife Service dated May, 2000 (the "MOU"), and only for areas for which the City has obtained a CCN authorizing it the Exclusive Right to provide retail potable water utility service within the City's Potential Service Area. In that regard, the City agrees that its retail water service from the Wholesale Water Supply to "New Development" (as defined in the MOU) will only be provided where (a) the development complies with any final water quality protection measures that result from the Fish and Wildlife Service's review of LCRA's environmental study, or (b) the Fish and Wildlife Service determines in writing that the water quality protection measures provided for the development are consistent with the requirements of the Endangered Species Act, or (c) the development complies with a regional plan that Fish and Wildlife Service determines in writing to be consistent with the requirements of the Endangered Species Act. Further, the City agrees that as a condition to providing retail water service from the Wholesale Water Supply to such "New Development" that it will require that each landowner provide for its development an engineer's certification that the plat for the development contains enforceable restrictions against altering physical elements of any applicable water quality protection measures or alternatives, such as buffer zones and impervious cover, and that the City will require that the landowner also provide an engineer's certification after completion of construction of a subdivision to ensure that construction of the subdivision has been in accordance with the plat restrictions.

## **ARTICLE II LCRA SYSTEM**

Section 2.01. Use of City Property. The City hereby authorizes LCRA to have, acquire, construct, enlarge, extend, improve, maintain, operate, repair, replace, hold, and own the LCRA System in, on, upon, and under the present and future streets, alleys, highways, parkways, easements, rights-of-way, and other public places of the City in order to supply regional water service to LCRA's and the City's customers within and without the City.

Section 2.02. Construction of LCRA System Within City and Its Extraterritorial Jurisdiction. All new construction by LCRA that is related to the LCRA System shall be done in accordance with applicable ordinances, rules, and regulations of the City which are related to the construction of facilities and the use of streets, alleys, highways, parkways, and public places as are now in effect or may be hereafter adopted by the City. The parties agree that the provisions of that certain "Interlocal Cooperation Agreement" between them dated December 21, 2000, shall apply to construction of any part of the LCRA System within the City's limits or extraterritorial jurisdiction except that LCRA shall pay as fee to the City the actual and reasonable time and expenses incurred by the City Engineer and/or Attorneys in reviewing the plans related to construction of retail distribution system facilities. The LCRA System shall not be so located as to prevent the City from making reasonable use of the streets, alleys, highways, parkways, easements, rights-of-way, or other public places in accordance with the use(s) for which they were intended. In constructing or maintaining the LCRA System within the City limits, LCRA

shall not interfere with any existing underground facilities of the City except with the City's consent and under the City's reasonable direction. The City's consent shall not be unreasonably withheld or delayed.

Section 2.03. City's Right to Construct Facilities. If LCRA is unable to construct or have constructed the LCRA System to provide Wholesale Water Supply to any part of the City's Potential Service Area within the time frame provided in Section 3.01 of this Agreement, the City retains, and shall have, the right to construct, contract for the construction of, or accept as contributions from third parties, and thereafter own and operate, subject to the other provisions of this Agreement, any facilities that it needs to provide retail potable water utility service to such portion of the City's Potential Service Area.

Section 2.04. Preservation of Right. The City shall not (i) grant any other easement, license, or franchise to any other entity (other than Dripping Springs Water Supply Corporation) or (ii) construct any facility, to the extent that either of such actions would prevent LCRA from utilizing the authority granted herein without written consent from the LCRA which consent shall not be unreasonably withheld or delayed. Notwithstanding anything herein to the contrary, LCRA understands and confirms that to the extent easements or licenses are granted to LCRA by the City, such easements and licenses are non-exclusive.

Section 2.05. Repairs, etc. Except during Emergencies or to repair breaks or leaks or as provided by that certain "Interlocal Cooperation Agreement" between the parties dated December 21, 2000, LCRA shall provide ten (10) days notice in advance of any construction or maintenance activities in any of the City's public rights-of-way or public areas. LCRA shall return the area impacted by such construction or maintenance to the condition the area was in prior to such construction or maintenance. In the event Emergency maintenance or construction is required, LCRA shall notify the City of the activity as soon as is practicable.

Section 2.06. Relocations. If the City, in constructing public works, should require the LCRA System to be relocated, LCRA shall relocate the LCRA System as required by the City at the LCRA's sole cost and expense. Whenever the City shall intend to pave, construct, or improve any street, highway, alleyway, or other public area in which the LCRA System or other LCRA facilities are located, the City shall provide LCRA with reasonable written notice of the intended improvement to enable LCRA to improve the LCRA System or other facilities, if needed, so as to minimize and coordinate any inconvenience caused to the public by the construction.

Section 2.07. Map of LCRA System. LCRA shall supply the City with a map or maps showing in reasonable and sufficient detail the probable location(s) of the part of the LCRA System in the City limits to be constructed by the LCRA after the date of this Agreement. Information regarding the location(s) of the portion(s) of the LCRA System constructed and located in the City limits prior to the date of this Agreement have been provided to the City and relied upon by the City. LCRA shall be responsible for the accuracy of the information given to the City by LCRA and for providing maps to the City showing lines or facilities in the City corporate limits constructed by LCRA prior to LCRA's execution of this Agreement. To the extent LCRA subsequently determines that such information is inaccurate, it will provide the City with information regarding the inaccuracy.

Section 2.08. Not a Franchise Agreement. The City agrees that nothing in this Agreement constitutes an admission by the LCRA that it is required by law to obtain a franchise from the City. However, in the event that LCRA is required by law, now or in the future, to obtain a franchise from the City for the provision of water service within the LCRA Service Area, then this document shall satisfy such requirement and no other franchise cost or payment shall be due the City. This provision does not prohibit the City from lawfully imposing fees on entities other than LCRA that may be wholesale water customers of LCRA.

Section 2.09. Water Meter(s). LCRA shall install a Meter(s) at or near the point(s) of connection of the LCRA System with each of the City's retail potable water customers. After completion of installation of the Meter(s), the Meter(s) shall be part of the LCRA System, and service from the Meter shall be provided pursuant to this Agreement.

### **ARTICLE III**

#### **CONDITIONS REGARDING PROVISION OF WHOLESALE WATER SUPPLY**

Section 3.01. Supply of Water. Subject to the matters provided in Sections 1.03, 3.03 and 5.03, and completion of construction or dedication of any internal distribution system improvements needed, LCRA agrees to provide Wholesale Water Supply to the City for the City's retail customers. Except as otherwise expressly authorized in this Agreement, the City agrees that, within its Service Area, it will not use potable water from any source or facilities other than water made available from the LCRA System; provided, however, within ninety (90) days after the City notifies LCRA in writing that the City intends to provide retail potable water utility service to an area pursuant to Section 5.03 of this Agreement, LCRA shall notify the City in writing as to whether LCRA is able to supply Wholesale Water Supply to the City for such area. If LCRA is unable to provide Wholesale Water Supply to the City for such area, then the City, in its sole discretion, shall be free to pursue and obtain any other source of water service or supply for such area that it deems appropriate. For any area where, pursuant to this paragraph 3.01, the City has requested service and LCRA has notified the City that it is unable to serve, if LCRA later seeks to provide retail or wholesale service to that area, then LCRA shall first notify the City in writing that it intends to provide such service, and the City shall have 90 days to respond to LCRA in writing that it wishes to proceed with the provision of retail potable water utility service to such area pursuant to this Agreement; if the City so responds in writing, then the parties shall proceed pursuant to this Agreement as if, pursuant to this Section 3.01, the City had notified LCRA that it intended to provide retail potable water utility service to that area pursuant to Section 5.03 of this Agreement, and that LCRA had responded that it was able to supply Wholesale Water Supply to the City for such area.

Section 3.02. Title to and Responsibility for Water; Delivery Point(s).

- a. Title to the water supplied to the City by LCRA under this Agreement shall remain with the LCRA at all times while it is in the LCRA System, even when that water is commingled with water belonging to other customers of the LCRA System, and the City shall have no right of control or dominion over the water until it reaches the Delivery Point(s).

- b. Water delivered by LCRA shall be delivered at the Delivery Point(s) and at no other points.

Section 3.03. Quantity and Pressure.

- a. Subject to the limitations set forth herein and in the LCRA Tariff, and subject to the availability of capacity in the LCRA System at a feasible cost at the time the City requests a service commitment from LCRA for any part of the City's Potential Service Area, upon completion of construction or dedication of any internal distribution system improvements needed, LCRA agrees to supply to the City (i) all water needed and requested by the City for its retail customers in any portion of the City's Potential Service Area, for which the City obtains a CCN granting it the Exclusive Right to provide retail potable water utility service, or (ii) such lesser amount as LCRA may be able to supply in the event of an Emergency and shall make the water available at the Delivery Point(s) at a minimum pressure of thirty-five (35) psi under non-Emergency operating conditions, or at such other pressure as may be required by applicable law or state or federal regulation.
- b. LCRA reserves the right to install flow restriction devices, at such locations as LCRA may hereafter specify, in order to restrict the flow of water to the City to the levels agreed to herein. If the demands of the City for Wholesale Water Supply ever exceed the amount LCRA is able to supply, then the City shall notify LCRA of such shortage and the amount of water needed by the City. LCRA and the City shall consider undertaking all reasonable conservation efforts to allow LCRA to meet said demand subject to the other provisions of this Agreement, LCRA's agreements with other parties, the LCRA Tariff and applicable law.

Section 3.04. Quality of Water Delivered to City. The water delivered by LCRA hereunder at the Delivery Point(s) shall be potable water of a quality conforming to the requirements of all applicable federal or state laws, rules, regulations or orders including requirements of the TCEQ for human consumption and other domestic use.

Section 3.05. Construction, Maintenance and Operation. LCRA shall be responsible for owning, constructing, operating, maintaining, repairing, replacing, extending, improving and enlarging the LCRA System and shall promptly repair any leaks or breaks in LCRA's System.

Section 3.06. Rights and Responsibilities in Event of Leaks or Breaks.

- a. The City shall be responsible for paying for all water delivered to it or its retail customers under this Agreement at the Delivery Point(s) regardless of the fact that such water passed through the Delivery Point(s) as a result of leaks or breaks in the City's retail customers' lines or facilities. In the event a leak, break, rupture or other defect occurs within the City's retail customers' lines or facilities which could either endanger or contaminate the LCRA System or prejudice LCRA's ability to provide water service to its other customers, LCRA, after providing notice conforming to the LCRA Tariff, shall have the right to take whatever actions LCRA reasonably considers appropriate to protect the public health or welfare or the LCRA System or the water systems of LCRA's customers



including, without limitation, the right to restrict, valve off or discontinue service until such leak, break, rupture or other defect has been repaired.

- b. The City further understands that LCRA delivers water from the LCRA System at other points to other customers and has rights under its contracts with those customers which are similar to its rights under Section 3.06.a. of this Agreement. Nothing in this Agreement shall be construed as impairing any of LCRA's rights under its contracts with those other customers. LCRA may exercise any of said rights, including those rights similar to its rights under Section 3.06.a. of this Agreement, and in such event, the City shall have the same rights and obligations with respect to LCRA as the City would have had LCRA exercised its rights under Section 3.06.a. of this Agreement.

#### **ARTICLE IV CHARGES, BILLING AND FINANCIAL MATTERS**

##### **Section 4.01. Connection Fee; Rates.**

- a. The City shall be obligated to pay LCRA, a connection fee (the "Connection Fee") as set from time to time by the LCRA Board of Directors in the LCRA Tariff, and currently estimated to be four thousand five hundred dollars (\$4,500) per LUE, for each new LUE connection which is served by the City with water from the LCRA System pursuant to this Agreement. The Connection Fee for each new retail water connection shall be due and payable to LCRA before the City makes a new retail water connection. The Connection Fee shall be designed primarily to fund or recover all or a part of the Costs of the LCRA System for capital improvements or facility expansion intended to serve new retail connections in the LCRA Service Area.
- b. The City also shall pay to LCRA such other Charges as are imposed by the LCRA Tariff from time to time. The Charges shall be designed primarily to recover the share of the capital related Costs of the System attributable to the City not recovered through the Connection Fee, and the operation and maintenance related costs of the System attributable to the City.
- c. The City hereby appoints LCRA as its agent to collect the Connection Fee and the Charges and other amounts billed to the City's retail customers who are served pursuant to this Agreement and remit same to LCRA and the remainder to the City, subject to the annual review by the City of the LCRA's performance of this agency. LCRA's reasonable and necessary costs of billing and collecting from the City's retail customers, including bad debt accounts, shall be a cost of the LCRA System. This appointment shall be for the duration of this Agreement.
- d. At any time while this Agreement is in effect, LCRA, subject to applicable law, may modify the Connection Fee and the Charges as appropriate to recover the Costs of the LCRA System in a just and reasonable manner from the City and the other customers of the LCRA System.

Section 4.02. City's Retail Charges. During the term of this Agreement, the City agrees to charge its retail customers the same Connection Fee and Charges as imposed by the LCRA Tariff upon the City. In addition, the City may charge an additional amount not to exceed six (6) percent of the Charges, which amount shall be collected by LCRA on behalf of the City as its agent and remitted to the City to reimburse the City for any expenses incurred by the City for, among other things, administering the retail service from the LCRA System and this Agreement. Otherwise, the City shall impose no other charges upon its customers for retail water service from the LCRA System. It is understood and agreed between the parties that this covenant by the City has served as partial inducement to LCRA in entering into this Agreement, and but for this promise, LCRA would not have entered into this Agreement.

Section 4.03. LCRA System to be Self-Sufficient. The LCRA System shall be comprised of the facilities described in Recital No. 1 hereof, together with such improvements, extensions, enlargements, betterments, additions, improvements and replacements thereto as are considered reasonable and necessary by LCRA to provide water to the LCRA Service Area. The parties agree that the Costs of the LCRA System shall be borne by all of the customers of the LCRA System, including the City, in a fair and equitable manner and so that the LCRA System is self-sufficient. Without limiting the foregoing, the parties further agree that LCRA is authorized to issue such indebtedness as it may deem appropriate to pay for any Costs of the LCRA System or, in lieu of issuing indebtedness, to provide for the borrowing of internal LCRA funds from LCRA resources other than the LCRA System and, in such events, the Costs of the LCRA System borne by the customers, including the City, shall include debt service, paying agent/registrar fees and reasonable coverage on any indebtedness issued by LCRA or the recovery (amortized over a reasonable period) of any internal LCRA funds utilized together with reasonable interest and coverage thereon to be established in accordance with LCRA policy as now or hereafter implemented.

## **ARTICLE V CITY'S OTHER COMMITMENTS AND FUTURE SERVICE AREA**

### Section 5.01. City's Rates and Charges.

- a. Subject to the limitations provided in Article IV, the City shall be solely responsible for implementing water rates for its own customers in accordance with applicable law and this Agreement. Failure to collect from its customers will not affect the City's obligation to make all payments due to LCRA, except that, as provided in Section 4.01 (c), bad debt accounts shall be a Cost of the LCRA System.
- b. The parties agree, and the City represents and covenants, that all moneys required to be paid by the City under this Agreement shall constitute an operating expense of the City's waterworks system authorized by the Constitution and laws of the State of Texas, including Chapter 402, Texas Local Government Code, as amended, and Section 791.026, Texas Government Code.
- c. The City covenants and agrees to compute, ascertain, fix, levy and collect such rates and charges for the facilities and services provided by it which will be consistent with this Agreement and adequate to permit the City to make prompt and complete payments pursuant to this Agreement.

Section 5.02. Governmental Approvals. Each party is solely responsible for obtaining any governmental approval required of it under this Agreement.

Section 5.03. City's Future Service Area. The City has identified the City's Potential Service Area in **Exhibit A**. As more fully described in this paragraph, LCRA and the City acknowledge and agree that the provision of water service by the two entities in City's Potential Service Area and the LCRA Service Area in the manner described in this paragraph is intended to be consistent with policies of the State of Texas and the TCEQ regarding regionalization of water service for the respective areas and will inure to the benefit of the present and future customers in the said areas. LCRA agrees that as between it and the City, the City shall have the right to provide retail water service in the City's Potential Service Area provided that it (i) files an application to obtain a CCN or add to its CCN any area within the City's Potential Service Area within sixty days after receiving notice in writing from LCRA that LCRA is able to provide Wholesale Water Supply to the City for such area or any portion thereof pursuant to Section 3.01 of this Agreement and (ii) is able to obtain approval of a CCN granting the City the Exclusive Right to provide potable water service to the area, or any applicable portion thereof, within one year of the City's filing the CCN application or amendment; provided that if the City is diligently pursuing such an application and would have obtained it within such time but for protests filed against it, the LCRA shall grant the City up to an additional year to obtain the CCN or amendment thereto. LCRA will neither object to nor support the City's application during this time period nor will LCRA object to or support any application of any other person or entity for such area during this time period. If (i) the City does not file an application for, or obtain approval of, such service area within such time frames or if the City chooses within such time frames not to provide water service to such area or if another entity obtains a CCN for such area or portion thereof, or (ii) to the extent the Dripping Springs Water Supply Corporation likewise does not file an application for, or obtain approval of, inclusion of such area in the Corporation's CCN within the time frames provided in the water supply contract between LCRA and the Corporation, or if the Corporation chooses not to provide water service to such area, then LCRA may provide retail or, as appropriate, wholesale service in such area and the City will neither object to nor support any application for a CCN by LCRA related thereto. LCRA and the City agree to cooperate with each other in the provision of service to the City's Potential Service Area and the LCRA Service Area to ensure that retail potable water utility service is provided in the most efficient and economical method possible taking environmental measures into account. Notwithstanding the foregoing, nothing in this Section shall prevent LCRA from providing wholesale water service to any entity which obtains a certificate of convenience and necessity for any portion of the area described in **Exhibit A**. However, LCRA and the City agree to cooperate in good faith if the City expresses a desire to provide wholesale water service to an area in the City's Potential Service Area where LCRA likewise may supply wholesale water service.

Section 5.04. Use of LCRA's System. Except as otherwise provided in this Agreement, the City agrees to use the Wholesale Water Supply provided by LCRA under this Agreement as its sole source of potable water for its retail customers during the term of this Agreement. The parties understand that LCRA has relied on this commitment by the City in agreeing to not require the City to make certain minimum payments that LCRA otherwise might have required in this Agreement. Notwithstanding the foregoing, because the City agrees to use the LCRA System as its sole source of Wholesale Water Supply in areas where LCRA is able to provide that water supply pursuant to this Agreement, the City shall nevertheless have the right, within such areas, to use or reuse effluent from a wastewater treatment facility for any purpose and to use water from a City-owned water well to irrigate City-owned property, such as parks and recreation areas.

Section 5.05. City's Service Extension Policy. In agreeing to expand the LCRA System, including constructing or acquiring additional retail distribution system lines in order to provide Wholesale Water Supply to the City under this Agreement, LCRA has not only incurred the additional costs of such facilities, but has also delayed or foregone its opportunity to provide retail service to any area for which the City obtains a CCN authorizing it the Exclusive Right to provide retail service. In addition to the increased Costs of the System for these retail distribution lines and related facilities, LCRA is entering into this Agreement in reliance upon the City's rate covenants in Article IV of this Agreement and this Section 5.05 to conform the City's service extension policy to that of LCRA in the LCRA Tariff for the areas receiving Wholesale Water Supply. Specifically, the City covenants and agrees that its retail water service extension policy for any area for which it obtains a CCN granting it the Exclusive Right to provide retail service in the City's Potential Service Area, and for which LCRA has agreed to provide the Wholesale Water Supply pursuant to this Agreement, will conform in all respects to LCRA's service extension policies that would apply to such area if LCRA were the retail service provider. In addition, in any developer line extension and service commitment agreements, LCRA and the City will jointly negotiate all contract terms for the water line extensions, consistent with that extension policy.

## **ARTICLE VI EMERGENCY OR SHORTAGE OF WATER SERVICE CAPABILITY; TERM; DEFAULT; REMEDIES**

Section 6.01. Termination, Discontinuance and Curtailment of Service; Modification of Agreement. Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed between the parties that the obligation of LCRA to provide Wholesale Water Supply to the City during the term of this Agreement is contingent upon the matters provided herein and further is neither superior nor inferior to the obligation of LCRA to provide similarly situated customers with wholesale or retail water utility service within LCRA's Service Area and to its other presently committed customers or any future customers of the LCRA System. Pursuant to such understanding, the parties hereby agree that if it is ever reasonably determined by LCRA during the term of this Agreement that it is unable to adequately provide water or Wholesale Water Supply to the LCRA Service Area or its existing committed customers because of an Emergency or shortage of water supply, production, treatment, storage or transportation capability in the LCRA System, or if LCRA needs to cause repairs to be made to the LCRA System to repair, replace or improve the level of water supply or Wholesale Water Supply to its customers, then LCRA shall have the right, after reasonable notice to the City and

opportunity for consultation, to curtail or limit service to the City and all other customers of LCRA on a reasonable, non-discriminatory basis so that all similarly situated customers are treated equally, fairly and uniformly. The City further agrees, in times of such Emergency or shortage or the need for repair, replacement or improvement of the LCRA System, to take appropriate action to curtail or limit all usage in the City's Potential Service Area receiving Wholesale Water Supply so that all users of LCRA water will be equally and uniformly restricted and protected. Any such measures taken by the City will be at least as stringent as those adopted by LCRA for the LCRA's Service Area. The parties agree that domestic uses of water shall have priority in times of Emergency or shortage over uses of water for construction or commercial uses and that construction or commercial uses shall have priority over irrigation uses from the LCRA System. Further, both parties agree that use of water for irrigation of lawns shall have the lowest priority in times of Emergency or shortage. Notwithstanding anything herein to the contrary, if it is ever determined by any governmental or regulatory authority that provision of Wholesale Water Supply by LCRA under this Agreement or curtailment or limitation of water or Wholesale Water Supply by LCRA to any of its customers is in violation of applicable law, regulation or order, then LCRA, after reasonable notice to the City and opportunity for consultation, may take such action as will best effectuate this Agreement and comply with applicable law.

Section 6.02. Service Availability and Plumbing Regulations. The City covenants and agrees to adopt and enforce the same service availability and plumbing regulations as contained in the LCRA Tariff with provisions for the proper enforcement thereof, to ensure that neither connections, re-connections, cross-connection or other undesirable practices are permitted, including an agreement with each retail water customer that allows the retail provider to said customer to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent unlawful connections, cross-connection and other undesirable plumbing practices. LCRA is hereby appointed by the City as its agent during the term of this Agreement to enforce the City's plumbing regulations related to customer inspection at the time of initial connection to the LCRA System.

Section 6.03. Default.

- a. In the event the City shall default in the payment of any amounts due LCRA under this Agreement, or in the performance of any material obligation to be performed by the City under this Agreement, then LCRA, after having given the City thirty (30) days written notice of such default and the opportunity to cure same, shall have the right to temporarily limit Wholesale Water Supply to the City under this Agreement, pending cure of such default by the City. In the event such default remains uncured for a period of (i) ninety (90) days in the event of a monetary default or (ii) three hundred sixty-five (365) days in the event of a non-monetary default, then LCRA, after giving the City thirty (30) days notice of its intent to do so and opportunity to cure, at its sole option, shall have the right either (x) to permanently restrict service to the City under this Agreement and to require the City to stop making new retail connections to the City's System, or (y) to require the City to, and the City hereby agrees to, allow LCRA to assume the power and responsibility to provide retail service in the area receiving Wholesale Water Supply, thereby taking over all retail service responsibilities and functions in LCRA's name and pursuant to the retail service requirements of the LCRA Tariff and in such event the City

and LCRA will diligently pursue transfer of that portion of the City's CCN covering the areas receiving Wholesale Water Supply to LCRA.

- b. In the event LCRA shall default in the performance of any material obligation to be performed by LCRA under this Agreement, then the City, after having given LCRA thirty (30) days written notice of such default and the opportunity to cure same, shall have the right to pursue any remedy available at law or in equity, pending cure of such default by LCRA. In the event such default remains uncured for a period of (i) one hundred eighty (180) days in the event of a default which causes the City to be unable to provide service to new retail connections to the City's System or (ii) three hundred sixty-five (365) days in the event of any other type of material default, then the City shall have the right to notify LCRA that the City intends to take a more limited amount of Wholesale Water Supply from LCRA (which shall be at least the amount LCRA is then providing to the City) and the City may then obtain other water service or supplies from another provider or may take appropriate action to supply itself with additional water after giving LCRA thirty (30) days notice of its intent to do so and opportunity to cure.

Section 6.04. Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party hereto and shall be cumulative of the remedies provided herein. Recognizing however, that LCRA's undertaking to provide and maintain the services of the LCRA System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, LCRA agrees, in the event of any default on its part, that the City shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) which may also be available to the City. Recognizing that failure in the performance of the City's obligations hereunder could not be adequately compensated in money damages alone, the City agrees in the event of any default on its part that LCRA shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) which may also be available to LCRA including, without limitation, the right of LCRA to obtain a writ of mandamus or an injunction against the City (i) requiring the City Council of the City to levy and collect rates and charges sufficient to pay the amounts owed to LCRA by the City under this Agreement and (ii) enjoining the City from making additional retail water connections as specified in Section 6.03.a.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

Section 7.01. Contracts. LCRA shall have the right to enter into other water supply or Wholesale Water Supply contracts so long as LCRA's performance of its obligations under such contracts does not prevent LCRA from being able to perform its obligations hereunder. This section shall not be construed as limiting LCRA's rights to temporarily curtail service in times of shortage or Emergency as otherwise provided herein. The City agrees that it will not, without the written consent of LCRA, provide or sell water to any entity, private or public, except retail customers of the City within the City's Potential Service Area where the City has obtained a

CCN authorizing it the Exclusive Right to provide retail potable water utility service from the Wholesale Water Supply provided by LCRA under this Agreement; provided, however, that such restriction on the provision or sale of water shall not prevent the City from providing, selling or using water as expressly authorized in sections 3.01 and 5.04, or pursuant to the remedies of section 6.03(b) and 6.04 of this Agreement.

Section 7.02. Records. LCRA and the City each agree to preserve, for a period of at least two years from their respective origins, all books, records, test data, charts and other records pertaining to this Agreement. LCRA and the City shall each, respectively, have the right at all reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 7.03. State Approval. Each party represents and warrants that the plans and specifications for its System have been or will be approved by the TCEQ.

Section 7.04. Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within, the discretion of either party hereto, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of either party hereto.

Section 7.05. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, in such event the parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

Section 7.06. No Oral Agreements; Modification. There are no oral agreements between the parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or modification only with the mutual written consent of LCRA and the City.

Section 7.07. Addresses and Notices. Unless otherwise notified in writing by the other, the addresses of LCRA and the City are and shall remain as follows:

LCRA:

Lower Colorado River Authority  
Attn: Executive Manager  
Water and Wastewater Utilities  
3700 Lake Austin Boulevard  
Austin, Texas 78703

The City:

City of Dripping Springs, Texas  
Attn: Mayor  
PO Box 384  
Dripping Springs, Texas 78620-0384

Section 7.08. Assignability. This Agreement shall be assignable by LCRA to any affiliate of LCRA without the necessity of obtaining the consent of the City if written notice is provided to the City. Otherwise, this Agreement may be assigned by either party to any other entity with the express written consent of either party, which consent shall not be unreasonably withheld or delayed.

Section 7.09. Customer Advisory Committee Representative. LCRA has previously established a Customer Advisory Committee for the System. The parties agree that so long as the Customer Advisory Committee for the System exists, the City may appoint one representative to serve on the Committee. Such appointment shall be evidenced in writing, signed by the Mayor of the City and delivered to LCRA. The representative shall serve until further written designation of a successor from the Mayor of the City.

Section 7.10. Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary, neither party will unreasonably withhold or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, it being agreed and understood that each party shall act in good faith and shall at all times deal fairly with the other party.

Section 7.11. Counterparts. This Agreement may be executed in as many counterparts as may be convenient or required. All counterparts shall collectively constitute a single instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart.

Section 7.12. Governing Law. The terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect. Either Hays or Travis County, Texas shall be a proper place of venue for suit hereon, and the Parties hereby agree that any and all legal proceedings in respect of this Agreement shall be brought in the District Courts of Hays or Travis County, Texas, or the United States District Court for the Western District of Texas, Austin Division.

Section 7.13. Construction. The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

Section 7.14. Water Conservation Plan. The City agrees to adopt and enforce a water conservation and drought contingency plan in compliance with TCEQ Rules, 30 TAC ch. 288, for water use within the areas receiving Wholesale Water Supply. The plan shall be at least as stringent as those adopted by LCRA for its retail customers in the LCRA Service Area. Within 180 days after the execution of this Agreement, the City will submit its water conservation and



drought contingency plan to the LCRA for the LCRA's review and approval as being consistent with the requirements of this Section 7.14. The City agrees to consider measures described on **Exhibit C** attached hereto in adopting its water conservation plan.

Section 7.15. Authority of Parties Executing Agreement. By their execution hereof each of the undersigned parties represents and warrants to the parties to this document that he or she has the authority to execute the document in the capacity shown on this document.

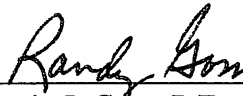
Section 7.16. Term. The term of this Agreement is forty (40) years from the effective date set forth below. After the expiration of the term, the parties shall cooperate in good faith to consider renewing this Agreement.

Section 7.17. Section 13.248 Agreement. This Agreement is a contract between retail public utilities designating areas to be served and customers to be served by those retail public utilities pursuant to Section 13.248, Texas Water Code ("Section 13.248"). Each of the parties may file a copy of this Agreement with the TCEQ in support of applications or other filings provided for in, or consistent with, this Agreement and may request that the TCEQ honor the terms of this Agreement as a contract between retail public utilities pursuant Section 13.248.

Section 7.18. Authority of Parties Executing Agreement. By their execution hereof, each of the undersigned parties represents and warrants to the parties to this document that he or she has the authority to execute the document in the capacity shown on this document.

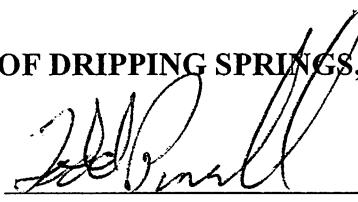
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original and of equal force and effect this 11<sup>th</sup> day of March, 2003.

**LOWER COLORADO RIVER AUTHORITY**

BY:   
Randy J. Goss, P.E.  
Executive Manager,  
Water and Wastewater Utility Services



**CITY OF DRIPPING SPRINGS, TEXAS**

BY:   
Mayor

ATTEST:



  
City Secretary

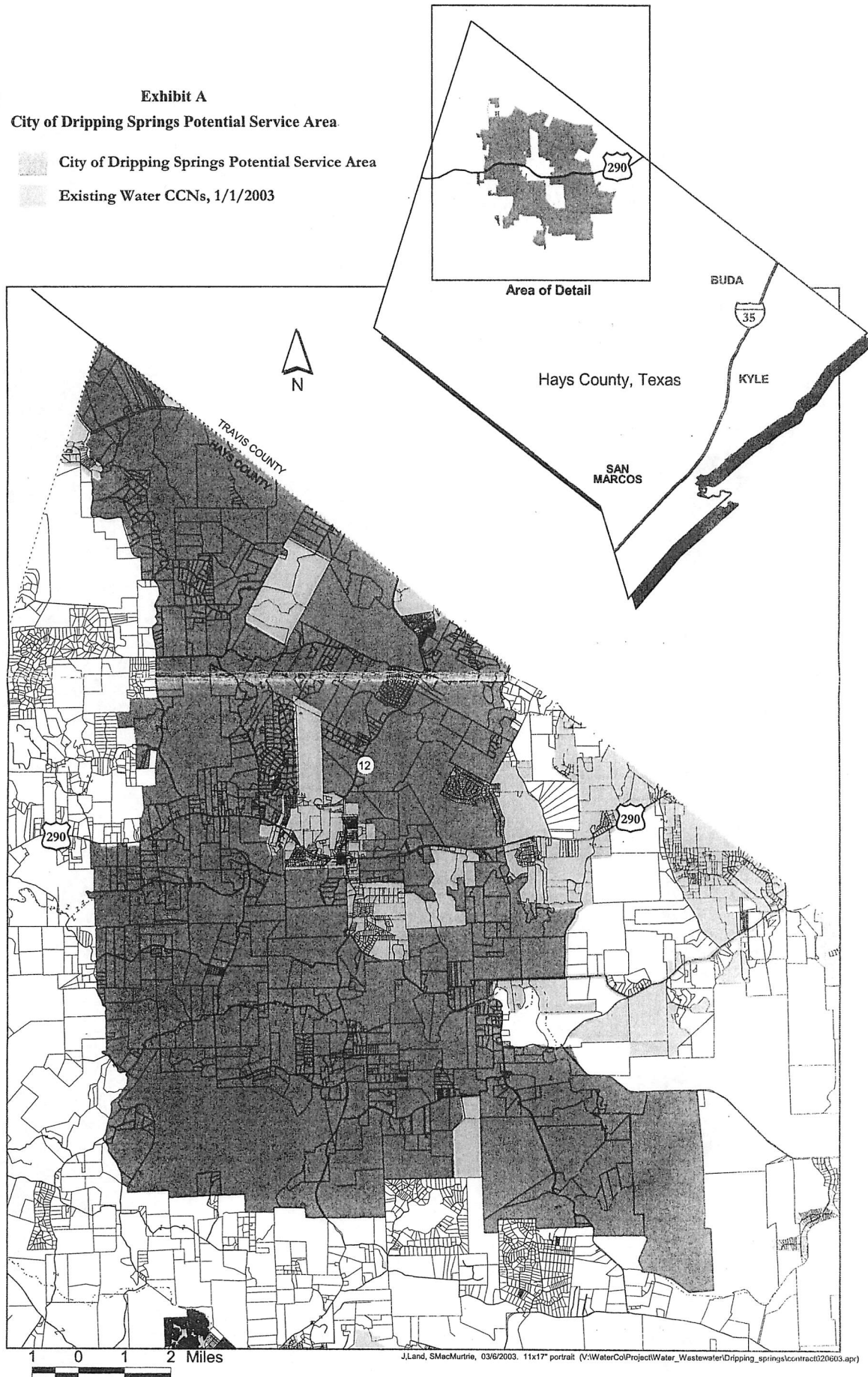
**EXHIBIT "A"**

**CITY OF DRIPPING SPRINGS SERVICE AREA**

**Exhibit A**

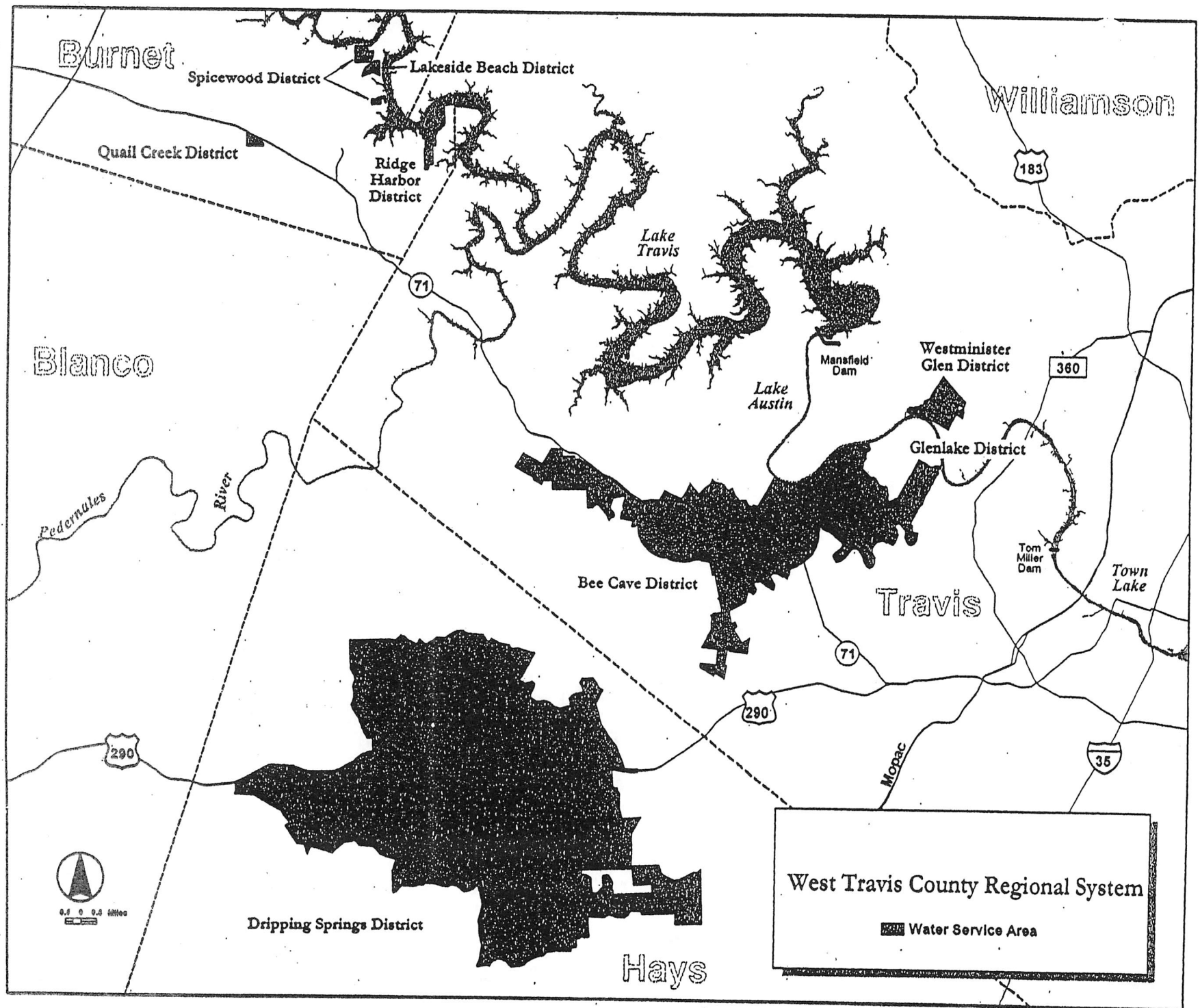
**City of Dripping Springs Potential Service Area**

-  City of Dripping Springs Potential Service Area
-  Existing Water CCNs, 1/1/2003



**EXHIBIT "B"**

**LCRA SERVICE AREA**



## EXHIBIT “C”

### CONSERVATION MEASURES

- Water waste prohibition. Applicant must enact and enforce ordinances to prohibit wasteful activities, some of which include gutter flooding, watering between the hours of 10:00 a.m. and 8:00 p.m., single pass cooling systems in new connections, non-recirculating systems in new conveyer car washes.
- Additional public information programs. Activities should include, but are not limited to: providing speakers, using paid and public service announcements, providing trend information on bills, and providing informational pamphlets, flyers and manuals.
- School education programs. This includes classroom presentations, instructional assistance and distribution of educational materials.
- Large landscape conservation programs and incentives. Customer could identify accounts with dedicated irrigation meters and conduct irrigation audits or assign evapotranspiration (ET)-based water use budgets. Other possibilities include ordinances, training, financial incentives, rebates and other educational activities.
- Small landscape conservation programs and incentives. Conduct irrigation audits, rebates, financial incentives, training or other educational activities.
- Conservation coordinator staff. Designate at least one person who will be responsible for preparation and implementation of the conservation plan.
- Conservation programs for industrial, commercial, and institutional accounts. Identify and rank ICI customers according to water usage and offer water use surveys and customer incentives.
- Water survey programs for single and multi-family residential customers.
- Residential plumbing retrofit programs. Identify homes built before 1992 and develop a plan to distribute or install low-flow plumbing devices as needed.
- High-efficiency washing machine rebate programs.
- Residential ultra-low flush toilet replacement programs.