

**Memorandum of Intent Related to the Provision of Treated Wastewater Effluent From the Brazos River Basin to the City of Pflugerville, Texas**

This “Memorandum of Intent Related to the Provision of Treated Wastewater Effluent available pursuant to HB 1437 to the City of Pflugerville, Texas” (the “MOI”) is entered into by and between the City of Pflugerville, Texas (“Pflugerville”), the City of Round Rock, Texas (“Round Rock”), the Brazos River Authority (“BRA”), and the Lower Colorado River Authority (“LCRA”) to be effective on the date the last Party executes the same (the “Effective Date”). Pflugerville, Round Rock, BRA, and LCRA may collectively be referred to herein as the “Parties,” or individually as a “Party.”

**RECITALS**

WHEREAS, the Texas Legislature enacted House Bill 1437 in 1999 (“HB 1437”) to facilitate the interbasin transfer of up to 25,000 acre-feet of water per annum from the Colorado River Basin for transport and use within those portions of Williamson County within the Brazos River Basin under certain specified conditions; and

WHEREAS, BRA secured a firm water contract from LCRA for the entire 25,000 acre-feet of water per annum authorized by HB 1437 (the “HB 1437 Water”); and

WHEREAS, the service area of BRA does not include the Colorado River Basin; and

WHEREAS, BRA in its role as a regional water supplier within the Brazos River Basin has contracted to supply the HB1437 Water to several entities in the Brazos River Basin including the Cities of Round Rock, Texas, Georgetown, Texas and Liberty Hill, Texas in Williamson County, Texas; and

WHEREAS, LCRA is required to collect an additional charge for water sold pursuant to HB 1437 of not less than ten percent (10%) of the price LCRA charges for HB 1437 Water; and

WHEREAS, HB 1437 requires that the transfer of water to Williamson County result in “no net loss” (“NNL”) of water to the Colorado River watershed as determined by the LCRA board; and

WHEREAS, all or part of the NNL requirement (“the NNL Objective”) can be satisfied with water that is imported from the Brazos River Basin to the Colorado River Basin; and

WHEREAS, water imported to the Colorado River Basin from the Brazos River Basin can be applied to achieve the NNL Objective irrespective of the whether the water originated from the Colorado River Basin; and

WHEREAS, water beneficially used within the Brazos Basin that is delivered to the Brushy Creek East Regional Wastewater Treatment Plant (“BCE”) for treatment and purification (Treated BCE Water) before being discharged into Brushy Creek, a watercourse located in the Brazos River Basin, may be delivered by one or more means to the Colorado River Basin to help achieve the NNL Objective; and

WHEREAS, water that is imported to the Colorado River Basin with the intent to meet the conditions of HB 1437 (“HB 1437 Imported Water”) may be firm, interruptible, or any combination thereof; and

WHEREAS, LCRA is interested in the import of Treated BCE Water to the Colorado River Basin as HB 1437 Imported Water that can be made available for sale as firm water supply; and

WHEREAS the City of Pflugerville, Texas, is interested in augmenting its existing municipal water supply inventory with up to an additional 25,000 acre-feet per annum of the Treated BCE Water irrespective of its original source; and

WHEREAS, Treated BCE Water obtained by Pflugerville would be treated in Pflugerville’s surface water purification plant for use in Pflugerville’s municipal public water supply system to address projected growth in the City’s demand through the year 2050 (the “Pflugerville Objective”); and

WHEREAS, in furtherance of that Objective, the Parties desire to enter this nonbinding MOI for the purposes recited herein.

NOW, THEREFORE, in consideration of the Premises and the foregoing Recitals, the Parties agree to work together cooperatively to achieve the following intent:

### **AGREEMENT OF INTENT**

1. **Statement of Purpose:** The purpose of this MOI is to memorialize the commitment of the LCRA, BRA, and Cities of Round Rock and Pflugerville to study the mutual benefits to the Parties available from the development of a means to transport Treated BCE Water from BCE to the Colorado River Basin. Specifically, the focus will be to import water to the Colorado River Basin through sales of Treated BCE Water to Pflugerville after the Williamson County users have put the water to beneficial use and the same has been treated at the Brushy Creek East Regional Wastewater Treatment Plant (“BCE”), which is jointly owned by the Cities of Round Rock, Leander, Cedar Park and Austin, and operated by the City of Round Rock, and presently authorized for discharge pursuant to TPDES Permit No. WQ-0010264002 into Brushy Creek.

2. **Objectives:** Among the specific objectives the Parties seek to accomplish pursuant to this MOI are the following:

- (a) Clarify the following issues for (i) contracting purposes and (ii) determining how the same is treated for HB 1437 purposes:
  - 1. Document the originating water sources (*e.g.*, groundwater, surface water from LCRA, BRA or another source) of the Treated BCE, and
  - 2. Determine the ownership of the Treated BCE Water at the plant and the ownership of Treated BCE Water that has been discharged into Brushy Creek, and
  - 3. Determine the ownership of any Treated BCE water that is derived from any portion of the HB 1437 water contracted by LCRA to BRA and, thereafter, by BRA to third-parties within the Brazos River Basin, and

4. Define what Treated BCE Water is eligible for credit to meet the NNL Objective; and
  - (b) Determine the feasibility of Pflugerville contracting with LCRA, BRA and one or more of the owners of the BCE for the use of Treated BCE Water to facilitate achieving the NNL Objective; and
  - (c) Determine the volume of Treated BCE Water eligible to be credited towards the NNL Objective; and
  - (d) Determine the total volume of Treated BCE Water that may be available for beneficial use by Pflugerville irrespective of HB 1437; and
  - (e) Determine the requirements under both HB 1437 and any applicable rules of the LCRA, the BRA, City of Round Rock, TCEQ, and the U.S. Army Corps of Engineers to transport Treated BCE Water from BCE to Pflugerville; and
  - (f) Determine the dates for phased increases in the volume of Treated BCE Water potentially available for purchase by Pflugerville annually; and
  - (g) Determine which provisions, if any, of HB 1437, other than the annual cap of 25,000 acre-feet per annum, or any other law that could limit the ability to provide Treated BCE Water from BCE to Pflugerville, and whether it is possible to amend or modify the same; and
  - (h) Determine which provisions of any regulations or rules of any of the Parties limit the ability to provide Treated BCE Water from BCE to Pflugerville, and whether it is possible to amend or modify the same; and
  - (i) Determine the need or authority of LCRA to amend its NNL rules to allow for the use of the Treated BCE Water purchased by Pflugerville for use within the Colorado River Basin to meet the NNL Objective and the potential for reducing the additional charge to BRA collected pursuant to HB1437; and
  - (j) Develop a proposed Treated BCE Water Project to help achieve the NNL Objectives to the mutual benefit of all Parties as defined and evaluated through the items stated above; and
  - (k) Identify opportunities designed to facilitate the delivery of up to 25,000 acre-feet per annum of Treated BCE Water from BCE to the City of Pflugerville, including supplemental treatment requirements and terminal storage; and
  - (l) Evaluate the pros and cons of transferring the Treated BCE Water to Pflugerville by means of direct transport from the BCE or by subsequent diversion of Treated BCE Water after discharge to Brushy Creek at a point downstream of the BCE; and
  - (m) Determine the roles and responsibilities of each Party to the proposed Treated BCE Water Project, including project financing, permitting, water rights, contracting,

and design and construction responsibilities, and to commit to timelines to initiating and achieving those respective responsibilities; and

- (n) If determined applicable, evaluate the feasibility of additional water sources outside of treated effluent to facilitate the return of water from the Brazos River Basin to the Colorado River Basin to achieve a “No Net Loss” in the Colorado River Basin.

3. **Term:** The term of this MOI agreed upon by the Parties to investigate the items listed in Section 2. of this MOI shall be for twelve (12) months from the date of acceptance by the Parties, as evidenced by the date of execution of the Acknowledgement at the end of the MOI. The MOI shall be renewable by the Parties.

4. **Relationship of the Parties:** This MOI is a nonbinding agreement between the Parties. Until such time as the Parties negotiate, and execute, a separate binding agreement approved, as necessary, by the respective governing body of each Party, there is no binding contractual obligation by any Party. Furthermore, nothing in this MOI is intended to create, nor shall it be construed as creating, any form or type of partnership, joint venture or agency relationship between the Parties. The Parties agree that no partnership, joint venture, agency relationship, or any similar relationship between the Parties can be, or will be, created between all or any of them in the absence of a separately negotiated and executed written agreement.

5. **Termination Rights:** Any Party shall have the right to terminate the MOI without any cause by thirty (30) days prior notice to the other Parties.

6. **Cost Responsibility:** Unless otherwise agreed to by the Parties, all costs associated with the implementation and due diligence contemplated by the MOI, except as otherwise expressly provided herein, shall be borne by the Party incurring such costs.

7. **Notices to Parties:** Any notice to be given hereunder by any Party to the other Parties shall be in writing and may be accomplished by delivery via e-mail using the identified Party representative, and e-mail address, with a copy to all other Parties to this MOI. Notice shall be deemed given when sent by e-mail to the correct e-mail addresses set forth below.

Any notice to Pflugerville shall be addressed:

City of Pflugerville  
Attn: Amy Giannini, Assistant City Manager  
P.O. Box 589  
Pflugerville, Texas 78691  
Ph: (512) 990-6107  
E-mail: [agiannini@pflugerville.com](mailto:agiannini@pflugerville.com)

Any notice to Round Rock shall be addressed:

City of Round Rock  
Attn: Michael Thane, Director of Utilities  
221 E. Main Street

Round Rock, Texas 78664  
Ph: (512) 218-3236  
E-mail: [mthane@roundrocktexas.gov](mailto:mthane@roundrocktexas.gov)

Any notice to BRA shall be addressed:

Brazos River Authority  
Attn: David Collinsworth, General Manager  
P.O. Box 7555  
Waco, Texas 76714  
Ph: (254) 761-3194  
E-mail: [davidc@brazos.org](mailto:davidc@brazos.org)

Any notice to LCRA shall be addressed:

Lower Colorado River Authority  
Attn: John Hofmann, Executive V.P., Water  
P.O. Box 220  
Austin, Texas 78767  
Ph: (512) 578-7083  
E-mail: [john.hofmann@lcra.org](mailto:john.hofmann@lcra.org)

Any Party may change their e-mail address, and/or point of contact for notice to it by giving notice of such change in writing to all other Parties in accordance with this Section 7. Such notice of change of address shall not become effective until ten calendar days after the date the same is given.

**EXECUTED IN MULTIPLE COUNTERPARTS ON THE DATES SHOWN IN THE SIGNATURE BLOCKS,  
EACH TO BE CONSIDERED AN ORIGINAL.**

**City of Pflugerville, Texas**

**Lower Colorado River Authority**

\_\_\_\_\_  
By: Sereniah Breland  
City Manager

\_\_\_\_\_  
By: John B. Hofmann  
Executive V.P., Water

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

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

**Brazos River Authority**

**City of Round Rock, Texas**

\_\_\_\_\_  
By: David Collinsworth  
General Manager

\_\_\_\_\_  
By: Laurie Hadley  
City Manager

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

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