

## Short-Term Raw Water Sales Agreement

This agreement ("Agreement") dated \_\_\_\_\_, 2016 by and between the City of Mansfield, a Texas home-rule municipality whose office address is 1200 E. Broad Street, Mansfield, Texas 76063, hereinafter referred to as "City", and Lane/Abrams Joint Venture., whose address is, 200 North State Hwy 360, Mansfield, Texas 76063, hereinafter referred to as "Purchaser", sets forth terms and conditions, whereby City agrees to sell to Purchaser raw water from a specific City water source, hereinafter referred to as "City Source", to wit:

### 1. Quantity of Water

During the term of this Agreement as defined in Section 4 below, City agrees to allow Purchaser to withdraw available raw water from the City Source raw water line near the intersection of Lone Star Road and State Highway 360 at a price of \$1.96 (one dollar and ninety-six cents) per one thousand gallons ("Purchase Price"), PLUS (Pass Through Raw Water Cost Increases), or upward adjustment in price paid per thousand gallons for raw water by the City of Mansfield.

### 2. Payments

Payments will be made monthly within thirty days following the end of the month in which water was taken from the City Source by Purchaser pursuant to this Agreement with payments tendered to the attention of the City's Utility Billing Supervisor at the address set forth above.

### 3. Purpose

The water purchased pursuant to this Agreement is for the sole purpose of mixing with lime for soil stabilization and construction completion operations related to the Hwy 360 project by the Purchaser in Johnson and Tarrant County, Texas.

### 4. Term of Agreement

This Agreement shall be for a term of thirty-six (36) calendar months from the full execution of this Agreement.

### 5. Withdrawal Facilities

The provision of facilities for taking water from the City Source pursuant to this Agreement shall be the sole responsibility of the Purchaser and in compliance with the all Federal, State and Municipal regulations.

## 6. Subordinate Use

The Purchaser agrees to withdraw water for the City Source only when the withdrawal of said water does not interfere with or reduce in any manner, whether by volume or pressure, the raw water supply of the City of Mansfield, and/or the pre-existing users as authorized by City. All pre-existing users of the City Source shall have an absolute right of first use. Pre-existing users include, but may not be limited to, Mansfield National Golf Course and the City of Mansfield Sports Complex, all of which shall have a **First Right of Service**.

## 7. Metering and Reporting

Purchaser shall install and maintain meter(s) suitable to the City for measuring within standard accuracy limits as established by the American Water Works Association (AWWA) for the quantities of water taken from City Sources under this Agreement. City may require calibration of such meter(s) at reasonable intervals with City's representative witnessing said calibration. City may install and maintain check meters if City so desires. Purchaser agrees to keep accurate records of all usage and readings obtained daily from the meter(s) installed by purchaser. The records shall be subject to review at any reasonable time by the City.

## 8. Water Sales by Purchaser

Purchaser may not, without written consent of the City, sell or otherwise provide to any third-party the water agreed to be supplied to Purchaser under this Agreement.

## 9. Force Majeure

If either party is rendered unable wholly or in part by Force Majeure to carry out its obligations under this Agreement, upon such Party's giving notice and reasonably full particulars of the Force Majeure in writing to the other Party within a reasonable time after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by the Force Majeure, shall be suspended during the continuance of any disability so caused, but for no longer period, and the Party subject to the cause shall remedy it so far as possible with all reasonable dispatch. The term "Force Majeure" shall mean acts of God; strikes, lockouts or other industrial disputes or disturbances; civil disturbances, arrests and restraint from rulers of people; interruptions or delay by present and future valid court orders of any regulatory body having proper jurisdiction; inability to obtain or unavoidable delay in obtaining labor, materials (including inability to secure materials by reason of allocations promulgated by authorized governmental agencies) or equipment; epidemics; landslides; lightning; earthquakes; fire; storm; floods; washouts; explosions; breakage or accident to machinery; or any other cause not reasonably within the control of the Party claiming "Force Majeure".

#### 10. City Representation

City represents that it has the right to sell to Purchaser water from the City Source as provided for herein for the purposes stated.

City makes no representation as to the quality of the raw water supplied under this Agreement. Purchaser acknowledges and agrees that the raw water supplied under this Agreement may require treatment for certain uses and Purchaser accepts all responsibility for the treatment of the raw water supplied under this Agreement. Purchaser further acknowledges and agrees that it is solely responsible for compliance with any federal and/or state laws that may impose requirements for the treatment of raw water supplied under this Agreement.

#### 11. Cure(s) for Violation of Agreement

Immediately upon the receipt of any form of notice by the City to the Purchaser of interference with the delivery of water for City purposes or use, the Purchaser shall immediately discontinue withdrawal of water from City Source until it can be determined that resumption of water withdrawal will not interfere with City use.

Upon the third written notice of interference by Purchaser with City use of water from City Source, the City may at its sole discretion disconnect the City Source from the Purchaser's withdrawal facilities and terminate any future sales under this Agreement.

#### 12. Notices

Notices provided for in this Agreement shall be delivered by electronic mail, facsimile, regular mail or courier service to the telephone numbers and addresses as set forth below:

City of Mansfield  
1200 East Broad  
St.  
Mansfield, Texas  
76063 Attention: Jeff  
Price Email Address:  
jeff.price@mansfield-tx.gov  
No.: 817.728.3602

Lane/Abrams Joint Venture  
200 North State Hwy 360  
Mansfield, Texas 76063  
Attention: Jason McLear  
Email Address:  
No.:

#### 13. Indemnity Hold Harmless Clause

Subject to City's representation contained in Section 10 above, Purchaser shall comply with the requirements of all applicable laws, rules, and regulations and shall defend, indemnify, and hold City harmless from any and all liability or damages resulting from failure to do so. In addition, Purchaser agrees to defend, indemnify, save and hold harmless City from any and all actions, liabilities, damages,

judgments, costs and expenses including reasonable attorney's fees, in case an action is filed or does in any way accrue against the City, its officials, officers, and employees in consequence of this Agreement or for any negligent act or omission of the Purchaser related to the provision of the water made available under this Agreement or that may result from the negligence of the Purchaser or the Purchaser's agents, consultants, or employees.

#### 14. Severability

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

#### 15. Termination

Either party may terminate this Agreement with 60 (sixty) days written notice to the other party for any reason or no reason.

#### 16. Successors and Assigns

Each party binds itself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither party shall assign or transfer its interest herein without the prior written consent of the other.

#### 17. Applicable Law

This Agreement is entered into subject to the Charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and any applicable Federal laws. Situs of this Agreement is agreed to be in Johnson County and Tarrant County, Texas, for all purposes including performance and execution.

#### 18. Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder.

#### 19. Entire Agreement

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

#### 20. Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof. No covenant or condition of this

Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

21. Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

22. Venue

The parties to this Agreement agree and covenant that this Agreement will be enforceable in the City of Mansfield, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Johnson or Tarrant County, Texas.

23. No Third Party Beneficiary

The parties agree that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with a party hereto; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the City or Purchaser.

24. Governmental Immunity

Purchaser agrees that the City is a Texas home-rule municipality and that by entering into this Agreement the City is performing a governmental function. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the City.

**IN WITNESS WHEREOF**, this Agreement is executed as of the dates shown below:

City of Mansfield, Texas

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

Clayton Chandler, City Manager

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

Attest: \_\_\_\_\_

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

Lane/Abrams Joint Venture

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

Jason McLearn

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

Attest: \_\_\_\_\_

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