

## EXECUTIVE SUMMARY<sup>1</sup>

### SECOND SUPPLEMENT TO WATER SUPPLY CONTRACT BETWEEN THE CITY OF HOUSTON, TEXAS AND THE NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY

This Executive Summary outlines the terms of the proposed *Second Supplement to Water Supply Contract between the City of Houston, Texas and the North Harris County Regional Water Authority* (the "Second Supplement"). While the Second Supplement is a two-party contract between the North Harris County Regional Water Authority (the "Authority") and the City of Houston, Texas (the "City"), other substantially similar two-party contracts have been executed between the City and the West Harris County Regional Water Authority, the Central Harris County Regional Water Authority and the North Fort Bend Water Authority (collectively, the "Other Authorities"), respectively. Because the City, the Authority and the Other Authorities, (collectively, the "Project Parties") intend to pursue a 320 million gallons per day ("MGD") expansion (the "Expansion Project") of the City's Northeast Water Purification Plant (the "NEWPP"), representatives of all Project Parties participated in the negotiation of the Second Supplement. In addition to providing for the design and construction of the Expansion Project, the Second Supplement provides a structure that preserves efficiency, while also allowing the Authority and the Other Authorities significant access to information throughout, and input into the execution of, the Expansion Project.

#### Background

The City and the Authority have a long history of cooperation in order to meet their collective water supply needs. The Second Supplement is the next step in that burgeoning history. However, a review of some of the details in several past City/Authority contracts is necessary to fully understand the significance of the Second Supplement.

**Original Water Supply Contract.** The *Water Supply Contract between the City of Houston, Texas and the North Harris County Regional Water Authority* (the "Original Contract"), effective December 16, 2002, laid the foundation for the Authority to comply with the Harris-Galveston Subsidence District's (the "HGSD") groundwater reduction mandate until at least the year 2040. By the Original Contract, the Authority purchased "Demand Allocations" of 31 million gallons per day ("MGD"). The Authority's contracts with the City use the term "Demand Allocation," which is very similar to the "capacity" concept with which many people in the water industry are familiar.

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<sup>1</sup> This Executive Summary details only the terms of the Second Supplement most likely to be encountered during the performance of the Expansion Project; this Executive Summary is not an exhaustive review of all terms of the Second Supplement. The Second Supplement contains additional provisions related to the topics discussed herein that are not fully described in this Executive Summary, as well as provisions to address issues less likely to arise (*e.g.* various parties' rights in the event of default).

In the Original Contract, Demand Allocations are divided into two (2) distinct categories, Treated Water Facilities Demand Allocation and Untreated Water Facilities Demand Allocation. In general terms, Untreated Water Facilities Demand Allocation refers to the Authority's capacity in raw water facilities (e.g. Lake Houston) and Treated Water Facilities Demand Allocation refers to the Authority's capacity in water treatment facilities (e.g. the NEWPP). After performing certain obligations in the Original Contract, the Authority acquired 31 MGD of both Untreated Water Facilities Demand Allocation and Treated Water Facilities Demand Allocation (individually, a "Demand Allocation" and collectively, the "Demand Allocations").

In addition to providing for the initial 31 MGD of Demand Allocations, the Original Contract set forth a procedure by which the Authority could purchase additional Demand Allocations to meet its future surface water needs. However, the procedure set forth in the Original Contract provided, in pertinent part, that the Authority would request additional Demand Allocation(s) and for each such request the City would inform the Authority of the cost of the Demand Allocation(s), whether the City then possessed the facilities necessary to provide the Demand Allocation(s) or additional facility construction would be required. If additional facility construction would be required in order for the City to provide the requested Demand Allocation(s), the City would construct the necessary facilities and the Authority would pay the cost of such facilities. Nothing in the Original Contract allowed the Authority input into the procurement, design or construction processes for those new facilities.

In addition to the Authority, the Other Authorities each executed contracts with the City that are substantially similar to the Original Contract, but their contracts included different Demand Allocations and, in the case of the West Harris County Regional Water Authority and the North Fort Bend Water Authority, contemplated receiving water from a different water plant owned by the City.

**First Supplement.** The purpose of the First Supplement to the Original Contract is to provide for the funding and construction of the Luce Bayou Interbasin Transfer Project ("Luce Bayou"), which will move untreated water from the Trinity River into Lake Houston for treatment at the NEWPP. Using the terminology of the Original Contract, the First Supplement outlines the parties' rights and duties related to the construction of a new Untreated Water Facility, Luce Bayou. As a result of the First Supplement, the Authority will acquire an additional 128 MGD of Untreated Water Facilities Demand Allocation, bringing its total Untreated Water Facilities Demand Allocation to 159 MGD and leaving its Treated Water Facilities Demand Allocation at 31 MGD.

Much like the Original Contract, nothing in the First Supplement allowed the Authority input into the procurement, design or construction processes for Luce Bayou. Also, as with the Original Contract, the Other Authorities each executed contracts with the City that are substantially similar to the First Supplement, but for varying quantities of Untreated Water Facilities Demand Allocation.

**Second Supplement.** As previously mentioned, the First Supplement was executed so the Authority could increase its Untreated Water Facilities Demand Allocation. The Second Supplement has been negotiated to facilitate the design and construction of the Expansion

Project. A major distinguishing feature of the Second Supplement relative to the Original Contract and the First Supplement is that the Authority will be involved in every step of the procurement, design and construction of the Expansion Project.

The remaining portions of this Executive Summary will outline various aspects of the Second Supplement and the Authority's rights and obligations contained therein.

## **Second Supplement**

The following paragraphs will provide a broad overview of the major concepts contained within the Second Supplement, including:

1. a detailed description of the Expansion Project and the Authority's participation in same;
2. the mechanisms by which the Authority will receive notice of and fund its share of costs;
3. a description of design-build project delivery and the process the City will follow to procure a design-builder for the Expansion Project;
4. the mechanisms ensuring the Authority will have input during the Expansion Project; and
5. the financial accountability and reporting requirements included in the Second Supplement.

This list alone conveys a sense of the detailed nature and complexity of the Second Supplement. As a result of this detail and complexity, this Executive Summary merely describes these aspects of the Second Supplement in general terms. In order to accurately interpret any specific fact scenario that may arise during the Expansion Project, reference to the Second Supplement, and not to this Executive Summary, will be necessary.

**1. Expansion Project.** The primary purpose of the Second Supplement is to memorialize the terms pursuant to which the City will construct new Treated Water Facilities, the Expansion Project. As previously mentioned, the Expansion Project is comprised of an expansion to the NEWPP that will increase its treated water production capacity by 320 MGD. From the Expansion Project, the Authority will increase its Treated Water Facilities Demand Allocation by 113 MGD, resulting in the Authority possessing 144 MGD of Treated Water Facilities Demand Allocation. Based on the best available projections for future water demand and population growth, after the City completes the Expansion Project, the Authority's staff and consultants estimate the Authority's Demand Allocations will satisfy its surface water needs until approximately 2040.

The Expansion Project will add four (4) water treatment modules to the NEWPP, with each module capable of producing 80 MGD of treated water. In the Second Supplement, the City agreed to require the prime contractor for the Expansion Project to place the first module in service not later than August 31, 2021 ("Phase 1") and to place the remaining three (3) modules in service not later than June 30, 2024 ("Phase 2"). The Authority's pro rata share of Costs (its "Cost Share") is based on the Authority's shares of Treated Water Facilities Demand Allocation

resulting from each phase of the Expansion Project. In addition, because some portions of the project will benefit both Phase 1 and Phase 2, the Authority will fund all "Multi-Phase Work" based on its total Treated Water Facilities Demand Allocation in the entire Expansion Project. Each of the Project Parties Cost Shares for Phase 1, Phase 2 and Multi-Phase Work is summarized in the following tables:

**Treated Water Facilities Demand Allocations**

<b>Party</b>	<b>Multi-Phase</b>	<b>Phase 1 (80 MGD)</b>	<b>Phase 2 (240 MGD)</b>
NHCRWA	113.00	51.05	61.95
CHCRWA	4.88	0.46	4.42
NFBWA	68.50	11.46	57.04
WHCRWA	82.42	17.03	65.39
City	51.20	0.00	51.20

**Cost Shares**

<b>Party</b>	<b>Multi-Phase Cost Share</b>	<b>Phase 1 (80 MGD)</b>	<b>Phase 2 (240 MGD)</b>
NHCRWA	35.31%	63.81%	25.81%
CHCRWA	1.53%	0.58%	1.84%
NFBWA	21.41%	14.33%	23.77%
WHCRWA	25.76%	21.29%	27.25%
City	16.00%	0.00%	21.33%

As these tables show, the Authority will receive 51.05 MGD from Phase 1 and 61.95 MGD from Phase 2. Based on these Demand Allocations, the Authority will pay 35.31% of the Costs for Multi-Phase Work, 63.81% of the Costs for Phase 1 and 25.81% of the Costs for Phase 2.

The City currently estimates the Expansion Project will cost a total of approximately \$1.28 billion. Of that total cost, the City estimates Multi-Phase Work will cost approximately \$393 million, Phase 1 will cost approximately \$266 million and Phase 2 will cost approximately \$621 million. Based on the Authority's Cost Shares stated above, the City estimates the Authority's share of the total Costs will be approximately \$469 million. These costs are summarized as follows:

	<b>Total Costs</b>	<b>NHCRWA Cost Share</b>	<b>NHCRWA Cost</b>
<b>Multi-Phase</b>	393,064,200	35.31%	138,790,969.02
<b>Phase 1</b>	266,192,000	63.81%	169,857,115.20
<b>Phase 2</b>	<u>621,121,000</u>	25.81%	<u>160,311,330.10</u>
<b>Total</b>	1,280,377,200		468,959,414.32

In addition to the phases of work described in the preceding paragraphs, the City may, at its option, design and construct some of the Multi-Phase components of the Expansion Project (e.g. the raw water intake structure) so these components can support more than 320 MGD of treated water production in order to accommodate the City's summer demand for peaking and/or fully utilize the City's water rights in Lake Houston. If the City chooses to oversize, of course, the City must pay for all increased costs resulting from the oversizing.

In addition, if the City elects to oversize facilities to fully utilize its water rights in Lake Houston, the Authority will have options to purchase an additional 15 MGD of both (i) Treated Water Facilities Demand Allocation in the oversized facilities, and (ii) Untreated Water Facilities Demand Allocation in Lake Houston. The purchase price for the Treated Water Facilities Demand Allocation will be equal to the City's cost to construct the oversized portion of the facilities, including any costs of issuance and/or debt-service paid on the City's bonds issued to fund the construction. The purchase price for the Authority to purchase additional Untreated Water Facilities Demand Allocation will be determined according to the formula stated in the Original Contract.

**2. Cash Flow/Funding.** Work on the Expansion Project has already begun and is projected to reach final completion in 2025. Because of the length and cost of this project, none of the Project Parties can or should simply fund its entire share of the Costs up-front. As a result, the Second Supplement contains a procedure for the City to issue periodic Cash Calls to the Authority, as funds are required for the Expansion Project. The Authority may satisfy each Cash Call with either cash or "cash equivalent." Finally, the Second Supplement contains provisions for the Authority to fund its share of the City's prior expenditures and appropriations for the Expansion Project.

Cash Call Process. The Second Supplement contains a specific process by which the City will obtain money from the Project Parties to fund the Expansion Project. This process requires the City to send a written notice of a Cash Call at least 180 days prior to any proposed Cash Call Due Date. Each such notice must include estimates of the (i) Costs and Work Items to be funded from the Cash Call, (ii) dollar amount due from each Project Party and the calculation of such amounts, and (iii) Cash Call Due Date.

As the Cash Call Due Date approaches, the City will make a Cash Call by providing each Project Party a written statement including:

- (a) the actual (i) Costs and Work Items to be funded from the Cash Call, (ii) dollar amount due from each Project Party and the calculation of such amounts, (iii) Cash Call Due Date;
- (b) a certification that the Project Director reasonably expects to spend all of the proceeds of the Cash Call within three (3) years of the Cash Call Due Date (in order to provide some assurance of tax compliance related to expenditure of bond proceeds); and
- (c) each Project Party's surplus remaining from previous Cash Calls.

In order to allow the parties to appropriately plan for the Cash Call, the actual Cash Call Due Date cannot occur before the later of (a) the 60<sup>th</sup> day after the Cash Call, or (b) the estimated Cash Call Due Date stated in the original notice of the Cash Call. In addition, the Cash Call Due Date must be the same for the Authority and the Other Authorities, and the City's Cash Call Due Date must be no more than 30 days after the Authority's and the Other Authorities' Cash Call Due Dates. The City is allowed this additional 30 days because the City must comply with its requirements related to the City Controller's certification of funds availability, which must occur prior to all appropriations by City Council. For any particular Cash Call, the City Controller cannot certify funds availability until after the City receives payments from the Authority and the Other Authorities.

Cash Call Payments and Draws. The Authority will satisfy each Cash Call by depositing Cash into an Escrow Account or providing Cash Equivalents (*e.g.* a line of credit), at the Authority's option, to the Escrow Agent, who will draw on this Cash or Cash Equivalents upon receipt of a required certification from the City. The form of certification is specified in a form of Escrow Agreement, which is an exhibit to the Second Supplement, and requires the City to certify that the requested funds are solely to pay Costs funded by the Cash Call and the Costs to be funded from the draw have already been expended or are reasonably necessary to pay expenses of the Expansion Project during the next 90 days. However, prior to submitting the certification to the Escrow Agent, the City must first give the Authority 5 days' notice of its intent to draw funds. In addition, the City must make draws against all Project Parties' Cash or Cash Equivalents (including the City's) at the same time and according to each Project Party's pro rata share of the Costs the City proposes to fund with the draw.

When the City makes a draw, the City will deposit all drawn funds into a project fund it holds for the benefit of the Expansion Project (the "Authority Fund") and all funds drawn from the Authority shall be held by the City in trust for the benefit of the Authority. The City will then utilize the Authority Fund to pay the Costs of the Expansion Project.

Past City Expenses and Appropriations. The City has already spent money on the Expansion Project and has also appropriated money that has not yet been spent. As a result, the Second Supplement requires the Authority to (i) within 90 days after the effective date of the Second Supplement, pay \$645,768.52 to the City, which amount is an estimate of the Authority's pro rata share of the Costs the City incurred through December 1, 2014, and (ii) within 120 days after the effective date of the Second Supplement, deposit \$2,463,108.00 into the Escrow Account, which amount represents the Authority's pro rata share of the Costs the City has appropriated to date. After this initial payment and deposit, all additional funding will occur in accordance with the Cash Call process.

**3. Design-Build Procurement & Contractor Selection.** The City, with the concurrence of the Authority and the Other Authorities, has decided to use the design-build project delivery method for the Expansion Project. In a design-build model, the owner engages a single design-build firm which is responsible for both the design and construction of the project. The belief is that the design-build delivery method will result in earlier project completion, while also providing much greater input from the City (and by extension the Authority) into the design and construction of the Expansion Project and creating more opportunities for value engineering

because the designer and constructor work more collaboratively. During the procurement process, the Second Supplement provides the Authority significant opportunity for input, while also protecting the integrity of the process to ensure the City, as the owner of the Expansion Project, will select the contractor.

In order to put the Second Supplement in proper context, the following section titled *Design-Build Procurement* describes the procurement process as if the City were constructing the Expansion Project without the Second Supplement. The paragraphs below under the heading *Contractor Selection*, details the process provided in the Second Supplement.

Design-Build Procurement. Texas law provides a somewhat rigid process through which the City must procure the design-builder for the Expansion Project. The process consists of two (2) distinct steps. First, the City must publish a request for qualifications (“RFQ”). After receiving responses to the RFQ, the City will select the firms that will receive a request for proposals (“RFP”). The RFP must state the specific criteria according to which the responses to the RFP will be scored, among other things. In addition, the RFP must require proposers to respond with two (2) separately sealed proposals. The first sealed proposal is the “technical proposal” and will address items such as project approach, anticipated problems, proposed solutions to anticipated problems, ability to meet schedules and conceptual engineering design. The second sealed proposal is the “price proposal.” Texas law provides little specificity on the contents of the price proposal, but makes clear that price must be a component of the procurement.

The City must open, evaluate and score the technical proposal prior to opening the price proposals. In addition, City representatives have told the Authority it intends to interview firms responding to the RFP prior to opening the price proposals so that the interviews can be taken into account when scoring the technical proposals. The scoring of the technical and price proposals will result in a ranking of the design-build firms, from highest to lowest score. The City must then begin negotiating a contract with the highest-ranked firm. If the City and that firm are able to achieve an agreement on the contract terms, the City will engage that firm. If the City is unable to successfully negotiate a contract with that firm, the City must formally end negotiations with that firm and initiate negotiations with the second-highest ranked firm. This process will continue until the City successfully engages a design-build contractor.

Contractor Selection. The procurement process included in the Second Supplement cannot conflict with the statutorily required process described above. However, the Second Supplement includes some supplementary provisions to allow the Authority input into the process, while maintaining the integrity of the process and consistency with Texas law. Under the Second Supplement, the Authority must appoint a Selection Reviewer to represent the Authority throughout the procurement process. The Selection Reviewer must not be an employee of any engineering or construction firm associated with a firm responding to the RFQ and must sign a non-disclosure agreement with the City to ensure the information provided to the Selection Reviewer remains confidential.

Upon receiving the RFQ responses, the City will provide copies of all such responses to the Selection Reviewer. The Selection Reviewer may consult as needed with the Authority’s

Board and staff, so long as none of those individuals are affiliated with one (1) of the design-build firms. The Selection Reviewer will then send the City a written statement identifying the firms it believes to be qualified, based on the responses to the RFQ. The design-build firms appearing on at least two (2) Authorities' list of qualified firms may receive the RFP from the City; any firm not appearing on at least two (2) Authorities' lists will not receive the RFP.

The City will issue a draft RFP, including a draft of the proposed design-build contract, for public review and comment. After the public review and comment period and after finalizing the RFP, the City will send the RFP to the qualified firms in order for those firms to provide their sealed technical and price proposals. Upon receiving these sealed proposals, the City will proceed with the review, interview and scoring process described above.

The Authority will not have formal input into the scoring or ranking process, but the City may designate the Selection Reviewers as advisory members of its selection committee. Regardless of the form in which the Authority's input occurs, at the end of the process, the City must obtain a Consensus Vote, as described below, on the proposed design-build contractor and contract prior to presenting the contract to City Council for approval. As a result, the City will have to consult with the Selection Reviewer during the decision-making process in order to avoid a situation in which the City is unable to obtain the Authorities' approval after negotiating the contract.

**4. Consensus Process.** Due to the duration and cost of the Expansion Project and some of the operational issues related to the existing NEWPP, the Authority and the Other Authorities heavily negotiated provisions of the Second Supplement to allow the Authority and Other Authorities to have input into all aspects of the Expansion Project. As noted above, these rights to provide input into virtually any aspect of the Expansion Project do not exist in the Original Contract or First Supplement, and their presence in this Second Supplement represents a significant enhancement for the Authority and a major sign of the level of cooperation the Authority's negotiating team has received from the City's team.

The mechanism in the Second Supplement providing this right of input for the Authority is called the Consensus Process. The Consensus Process identifies three (3) categories of work: Consensus Items, Representatives' Issues and Exempt Items. The City must present Consensus Items to the Authority and the Other Authorities for approval. The Authority and the Other Authorities may raise Representatives' Issues at any time. Exempt Items are certain specifically identified items that are excluded from being Consensus Items or Representatives' Issues.

However, the Authority's right to provide input in this manner would be meaningless without the Authority being educated about the substance of the work then-occurring on the Expansion Project. As a result, the Consensus Process is based on a structure that requires the Authority to designate a representative (the "Representative") and allows that Representative to participate in the day-to-day Expansion Project activities and have the same privileges of access as a member of the City's Expansion Project Team. As a result of these rights, the Representative should have the ability to stay abreast on all aspects of the Expansion Project and to advise the Authority throughout the Expansion Project.

Consensus Items. Several major items ("Consensus Items") must be presented to the Representative and the Representatives for the Other Authorities (collectively, the "Representatives") for an affirmative vote before the City can proceed past those items. Consensus Items include:

- (a) Costs to be included in a Contract Price, plus any contingency;
- (b) Costs and estimated costs used to determine the dollar amount of Costs resulting from the City's decision to oversize certain facilities;
- (c) change orders that will delay the proposed delivery date for Phase 1 or Phase 2 by more than 60 days;
- (d) emergency purchase orders proposed by the City; and
- (e) a contract with/selection of a prime contractor for the Expansion Project.

Each of the Project Parties will cast a vote weighted equally with each party's Multi-Phase Cost Share, as reflected above (the "Weighted Vote"). These Consensus Items must receive a favorable vote of Project Parties representing at least 63% of the Multi-Phase Cost Share (a "Consensus Vote") in order for the Consensus Item to be approved. If any Consensus Item fails to receive a Consensus Vote, the City will be responsible for taking appropriate subsequent action to secure the Consensus Vote.

Representatives' Issues. Any Work Items that are not Consensus Items can be halted to allow additional discussion among the City and the Representatives (each such issue is called a "Representatives' Issue"). A Representatives' Issue is raised if:

- (a) two (2) or more Representatives submit a written request to the Project Director;
- (b) the Representatives submitting the written request previously notified the Project Director of the issue and a proposed solution;
- (c) the request includes a summary of the Representatives' Issue and the proposed solution; and
- (d) the request is sent not later than five (5) business days after a decision by the Project Director on the subject of the Representatives' Issue.

Once this request has been sent, the Project Director must convene a meeting among the Representatives to discuss the Representatives' Issue and the proposed solution. Any Representative can request a Weighted Vote on the proposed solution by requesting the vote by 11:59 p.m. on the day of the meeting. If a Representative requests a Weighted Vote, each Representative must vote within five (5) business days. If the Representatives approve the proposed solution by a Consensus Vote (i.e. 63%), the proposed solution binds the Project Parties. If the proposed solution fails to receive a Consensus Vote, Representatives representing at least 20% of the Weighted Vote can appeal the issue to the City's Director of Public Works (the "Director").

If the Representatives' Issue is appealed to the Director, he or she will choose whether to change the vote cast on the City's behalf. If such a change occurs and the change results in a Consensus Vote in favor of the proposed solution, the proposed solution shall bind the Project

Parties. If the issue is not appealed to the Director or the Director chooses to not change the City's vote, the originally proposed course of action shall bind the Project Parties.

Exempt Items. Certain items cannot be subject to a Consensus Vote. These items include items the Director reasonably determines are necessary to comply with any applicable regulatory requirements related to workplace safety, public safety, operations, or regulatory compliance (collectively, "Exempt Items"). If the Director determines, in his or her reasonable discretion, that a matter constitutes an Exempt Item, the Director will provide the Authority with written notice of this determination and will in good faith consider any comments or input provided by the Authority.

As previously mentioned, no right of input or involvement exists in the Original Contract or the First Supplement. The Consensus Process in the Second Supplement provides the Authority direct involvement and input into the execution of the Expansion Project. Consensus Items must receive the affirmative support of a Consensus Vote representing 63% of the Multi-Phase Cost Shares of the Project Parties. Representatives' Issues can be raised at any time as long as more than one (1) Representative agrees to raise the issue and the notice of the issue follows the requirements of the Second Supplement. The presence of this Consensus Process in the Second Supplement represents a major improvement over the status quo in the Original Contract.

**5. Financial Accountability/Reporting.** Although the Authority will be involved in all aspects of the Expansion Project, the Second Supplement also requires formal reporting of financial information so the Authority can monitor the total expenditures on, and its own costs related to, the Expansion Project. The reporting includes both periodic reports of expenditures by the City, as well as a final accounting and true-up process.

Periodic Reporting. In an effort to allow discussion more contemporaneous to the time at which the City incurs Costs during the Expansion Project, the Second Supplement requires the City to provide financial reports periodically throughout the Expansion Project. These periodic reports include bi-annual reports of Cost Recovery Amounts, Annual Financial Reports, and Phase Financial Reports.

Every six (6) months the City will provide a report to the Authority regarding the costs for the City's internal expenditures in support of the Expansion Project (these costs are referred to as "Cost Recovery Amounts"). These Cost Recovery Amounts allow the City to recover costs related to its staff that will support the Expansion Project (*e.g.* Public Works accounting staff that will handle invoice processing on the Expansion Project and many other City construction projects). The City routinely allocates these kinds of costs across all of its construction projects and has for many years. However, rather than merely receiving an annual allocation, the City has agreed to provide such a report for the Authority's review twice each year.

In addition, no later than October 1 of each year until the Final Accounting, the Authority will receive an unaudited financial report (the "Annual Financial Report"). Each Annual Financial Report will state the following:

- (a) the funds credited to and debited from the Escrow Account;

- (b) the sources and uses of funds credited to and debited from the Authority Fund;
- (c) the amounts and dates of funds paid from City appropriations of funds;
- (d) earnings and interest accrued in the Authority Funds; and
- (e) the Cost Recovery Amounts and the calculation thereof.

Each Annual Financial Report will contain data from July 1<sup>st</sup> of the prior year through June 30<sup>th</sup> of the current year.

Finally, the City will issue financial reports (each a "Phase Financial Report") within 90 days of the completion of each of the following: Phase 1, Phase 2 and the Multi-Phase Work. Each Phase Financial Report shall provide the same categories of data as the Annual Financial Report, but the data will be limited to only the appropriate phase. In addition, each Phase Financial Report will include information regarding:

- (a) funds remaining in the Authority's Escrow Account and the Authority Fund; and
- (b) anticipated refunds or shortfalls in funding for the applicable phase of work.

In addition, after the Authority has an opportunity to review and comment on each Phase Financial Report, the City must have an agreed upon procedures report prepared by an independent third-party to review, test and verify the Phase Financial Report (each a "Phase AUP Report").

Final Accounting & True-Up. The last Phase AUP Report will include a final accounting for all phases of work (the "Final Accounting"). The Final Accounting will include:

- (a) a list of all Costs paid from the Authority Fund;
- (b) the cumulative amount of draws from the Escrow Account and from the Other Authorities' escrow accounts;
- (c) the earnings on the Authority's funds and the Other Authorities' funds in the Authority Fund;
- (d) the amount of funds, if any, remaining in the Authority Fund after all Costs have been paid;
- (e) each Project Party's share of any remaining funds;
- (f) the amount of funds, if any, the Authority owes that was not already paid by the Authority; and
- (g) detail, by Project Party, of any amounts owed to or due from each Project Party for each category of item listed in (a) – (f) above.

The Authority will have 30 days to review and comment on the Final Accounting. After this review period, the City will send a statement to the Authority reflecting the amount, if any, due or owing to or from the Authority (the "True-Up Statement"). If the Authority owes the City a payment, the Authority shall pay the amount owed within 180 days of the date the True-Up Statement is issued. If the City owes the Authority a payment, Houston shall pay any such amount to the Authority within 60 days of the date the True-Up Statement is issued.

## **Conclusion**

The Second Supplement represents another significant phase of cooperation among the Authority, the City and the Other Authorities in order to meet the Houston region's surface water needs through at least 2040. Included in the Second Supplement are provisions providing an unparalleled level of cooperation and communication among the Project Parties and significant rights for the Authority to provide input into all phases of the Expansion Project, while also protecting each Project Parties' needs to receive water in a timeframe that will meet future growth and allow continued compliance with HGSD mandates.