

**AGREEMENT TO TRANSFER BRAZOS RIVER AUTHORITY CONTRACT WATER
FOR A TERM BETWEEN CITY OF
GEORGETOWN AND BLANCHARD REFINING COMPANY LLC**

THIS AGREEMENT TO TRANSFER BRAZOS RIVER AUTHORITY CONTRACT WATER FOR A TERM is entered into effective as of September 1, 2019, by and between the City of Georgetown (“City”), and Blanchard Refining Company LLC (“Blanchard”) (collectively, the “Parties”) (the “Agreement”).

RECITALS

WHEREAS, the City and the Brazos River Authority (“BRA”) executed a System Water Availability Agreement with an effective date of August 1, 2006 (the “SWAA”), whereby BRA agreed to make available to the City on a take-or-pay basis 10,000 acre-feet of firm raw water from the BRA Water Supply System (as defined in the SWAA) per fiscal year (the “BRA Contract Water”) for municipal purposes;

WHEREAS, the City has decided that it does not require all or part of the BRA Contract Water for use in the near term, but wants to retain its contractual right to the BRA Contract Water long term;

WHEREAS, the City thus concluded that it would be in the City’s best interest to contract for use of its BRA Contract Water to a third-party on a temporary, but potentially renewable, basis;

WHEREAS, Blanchard owns and operates the Galveston Bay Refinery;

WHEREAS, to maintain and operate on a sustainable basis, Blanchard desires to acquire quantifiable amounts of additional supplies of firm water in the Brazos River watershed to firm up current and future water needs;

WHEREAS, Blanchard relies on the Gulf Coast Water Authority (“GCWA”) for water supply and delivery;

WHEREAS, the City desires to sell to Blanchard on a temporary and potentially renewable basis, its right to all or part of the BRA Contract Water;

WHEREAS, Blanchard desires to purchase from the City the BRA Contract Water on a temporary and potentially renewable basis;

WHEREAS, BRA, at the request and with the concurrence of the City, amended the SWAA to consent to the City’s temporary third-party sale to Blanchard of its BRA Contract Water for ten (10) years (the “Amendment”);

WHEREAS, at the request and with the concurrence of the City, BRA included in the Amendment additional temporary diversion points and an additional purpose of use criteria by which Blanchard would receive the BRA Contract Water, and authorization for GCWA to act as Blanchard’s proxy in regard to diverting the BRA Contract Water and reporting requirements, all to facilitate the use of the BRA Contract water by Blanchard; and

WHEREAS, GCWA has executed a separate agreement with Blanchard whereby GCWA agrees that it will have sole rights to manage (divert, measure and report) the diversion of the BRA Contract Water for delivery to Blanchard.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 **“Amendment”** means the Temporary Amendment to the System Water Availability Agreement between BRA and the City, Blanchard and GCWA dated _____, which, among other things, reflects BRA’s consent to the third-party sale of the BRA Contract Water to Blanchard for a period of ten years.

Section 1.2 **“Annual Payment”** means the annual sum due to the City from Blanchard based on the BRA Contract Water x 125% of the BRA System Rate for firm water supplies, as set annually by the BRA for each Contract Year of the Term. To be clear, the 2019 BRA System Rate is \$79.00/acre foot, so the Annual Payment for the first year under this Agreement shall be \$987,500 (10,000 x \$79.00 x 125%). The Annual Payment shall be revised annually to conform to each new annual BRA System Rate. When BRA changes its System Rate, the Annual Payment shall be revised effective on the first day of the next Contract Year following the date of BRA’s System Rate change was authorized and approved as required by applicable law.

Section 1.3 **“Blanchard”** means the refining entity identified in the preamble and its successors and assignees.

Section 1.4 **“BRA”** means the Brazos River Authority.

Section 1.5 **“BRA Contract Water”** means all the firm water from the BRA Water Supply System per year made available to the City per the SWAA and to Blanchard per the Amendment up to 10,000 acre-feet per year, to be used by Blanchard for industrial purposes pursuant to this Agreement.

Section 1.6 **“City”** has the meaning set forth in the preamble.

Section 1.7 **“Contract Rate”** means the rate charged by the City to Blanchard for the BRA Contract Water. The Contract Rate shall be 125% of the BRA’s System Rate as of the first day of a Contract Year.

Section 1.8 **“Contract Year”** means that period commencing in the calendar year after the Effective date of this Agreement on September 1st of a calendar year and ending on August 31st of the same calendar year for each year.

Section 1.9 **“Default”** means (i) either Party fails to perform any of its material duties or obligations under this Agreement, (ii) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a material breach or Default or cause a Dispute to arise or (iii) with respect to this Agreement, the occurrence of an event that with

or without the passage of time or the giving of notice, or both, would give rise to a right of termination, or the right to suspend performance of this Agreement, or a right to receive damages or a payment of TCEQ penalties or any penalties under the SWAA, or (iv) either Party files a petition or otherwise commences or authorizes the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or has any such petition filed or proceeding commenced against it or its assets, or otherwise become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due.

Section 1.10 **“Dispute”** means all controversies or claims between the Parties that arise out of this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement, whether such controversy or claim is based on rights, privileges or interests recognized by or based upon statute, contract, tort, common law or otherwise.

Section 1.11 **“Effective Date”** means September 1, 2019.

Section 1.12 **“Georgetown’s Legal Review”** means the reasonable legal fees incurred and billed to the City and directly incurred by the City in the City’s effort to amend the SWAA to authorize the City to make the BRA Contract Water available to Blanchard for industrial use. Georgetown’s legal Review shall not exceed \$10,000.

Section 1.13 **“Party”** or **“Parties”** means either Blanchard or the City, or both, as appropriate.

Section 1.14 **“Points of Diversion”** means the locations at which GCWA is authorized to divert water from the Brazos River for delivery to Blanchard and which, pursuant to the Amendment, diversion of the BRA Contract Water is authorized. The Points of Diversion are anticipated to be the locations identified on the map attached to this Agreement as Exhibit A-1.

Section 1.15 **“SWAA”** means the System Water Availability Agreement between the City and BRA with an effective date of August 1, 2006, whereby BRA agreed to make available to the City on a take-or-pay basis 10,000 acre-feet of raw water from the BRA Water Supply System per fiscal year.

Section 1.16 **“System Rate”** means the charge per acre-foot of water established by BRA from time to time under its system-wide pricing methodology for supplies of raw water and in effect on September 1 of a Contract Year. If BRA stops using its current system-wide pricing methodology for water made available under its system, the Parties shall agree that the new basis for determining the Contract Rate will be the BRA raw water rate most similar to the System Rate on the Effective Date, but in no event shall the System Rate ever be less than 125% of the rate charged to the City by BRA.

Section 1.17 **“TCEQ”** means the Texas Commission on Environmental Quality and any successor agency.

Section 1.18 **“Term”** has the meaning ascribed to it in Article 4.

Section 1.19 **“Termination Date”** means August 31, 2029.

ARTICLE 2
WATER AVAILABILITY

Section 2.1 The City will, pursuant to this Agreement, make the BRA Contract Water, which is available to it, less any clawback amount of water as provided herein, available to Blanchard on a take or pay basis for the period beginning on the Effective Date and up to and including the Termination Date.

ARTICLE 3
PAYMENT OBLIGATION/RATE

Section 3.1 Beginning on the Effective Date and thereafter for each Contract Year during the Term of this Agreement, Blanchard unconditionally agrees to pay the City monthly 1/12th of the Annual Payment on a take or pay basis.

Section 3.2 The City shall submit to Blanchard a monthly invoice by the fifteenth (15th) day of each month. The amount invoiced by the City shall be 1/12th of the Annual Payment.

Section 3.3 Blanchard's payments shall be due and payable on or before the 30th day following receipt of the City's invoice for the preceding month of each month during the Contract Year beginning on the first full month after the Effective Date.

Section 3.4 In the event of the failure of Blanchard to make any payment to the City as required under this Agreement at the time when same shall be due, the past due payment amount shall bear interest at the lesser of the highest rate allowed for the City by applicable law or 18 percent per year, whichever is lower.

Section 3.5 Blanchard agrees that the rates and payments required by this Agreement are just and reasonable taking into consideration the reliability of the BRA Contract Water.

Section 3.6 Payments to be made hereunder shall be made via electronic delivery as may be later agreed to by the City or via mail. Payments shall be deemed made as of the date postmarked, if mailed, and shall be made to:

Finance Department
City of Georgetown
808 Martin Luther King Jr. Street
Georgetown, TX 78626

Section 3.7 The City shall submit to Blanchard on or before the Effective Date an invoice for reasonable costs associated with Georgetown's Legal Review of this Agreement. Blanchard's payment of the Legal Review invoice shall be due and payable on or before the 30th day following receipt of the invoice.

Section 3.8 Termination of the SWAA or the Amendment shall simultaneously terminate Blanchard's obligations to make payments to the City pursuant to this Article 3, and to any obligation of the City to make water available to Blanchard.

ARTICLE 4 TERM

Section 4.1 The Term of this Agreement is from the Effective Date to and including the Termination Date. This Agreement shall no longer be of any force or effect after the Termination Date.

ARTICLE 5 DIVERSION/RATE/REPORTS

Section 5.1 Blanchard shall utilize the BRA Contract Water for industrial purposes only. Blanchard agrees to comply with the Brazos River Watermaster's requirements applicable to the BRA Contract Water, BRA rules, requirements, regulations or policies, and TCEQ rules, requirements, regulations or policies. To the extent required by any applicable law or rule, Blanchard agrees to implement water conservation and drought management guidelines as required by such laws and rules and use all water diverted under this Agreement in accordance with such requirements.

Section 5.2 The City understands and accepts that GCWA will be solely responsible for diversions of the BRA Contract Water on behalf of Blanchard and delivery of the BRA Contract Water to Blanchard. The City further understands and accepts that GCWA will be solely responsible for ordering and stopping releases, coordinating diversions if applicable, and reporting, metering, and making notifications to the City, the Brazos River Watermaster, and BRA regarding diversion and use of BRA Contract Water under this Agreement.

(i) Blanchard has requested and GCWA has agreed to divert the BRA Contract Water only at the Points of Diversion shown on Exhibit "A-1", attached hereto and incorporated by reference herein, and to divert and deliver the BRA Contract Water in compliance with BRA water delivery, reporting, and metering requirements.

(ii) Blanchard has requested and GCWA has agreed to provide up to 13 days' advance notice to BRA of:

(A) the beginning and end date and time of anticipated pumping of BRA Contract Water;

(B) the specific diversion point(s) it will be pumping water from;

(C) the desired daily rate of pumping and volume of BRA Contract Water; and

(D) as applicable, any discontinuance or change proposed to the rate at which it desires to pump water at the diversion point.

(iii) Blanchard has requested and GCWA has agreed to provide reports in the form and at such frequency as needed by the City to comply with terms of the SWAA and the Amendment and the requirements of the Brazos River Watermaster.

(iv) Any notices required pursuant to this Article 5.2 will be given by telephone but must be confirmed in writing by email, fax or mail, but in all instances in accordance with the Amendment.

ARTICLE 6 CLAWBACK PROVISION

Section 6.1 During the Term of this Agreement, City shall have the right to reduce by no more than 2,500 acre-feet/year the amount of the BRA Contract Water to be delivered pursuant to this Agreement only if all of the following conditions are met:

(a) The pipeline between Lake Belton and Lake Stillhouse-Hollow is substantially complete;

(b) The City provides written notice to Blanchard on or before September 1, 2025, that it intends to reduce by up to 2,500 acre-feet/year the amount of BRA Contract Water to be delivered to Blanchard pursuant to this Agreement, including the volume of the reduction and proposed date of reduction; and

(c) The reduction shall not commence prior to September 1, 2027.

Section 6.2 Blanchard's payment obligations under Article 3 shall be proportionately reduced on the date that the City reduces the amount of BRA Contract Water to be delivered to Blanchard pursuant to this Agreement.

ARTICLE 7 ASSIGNMENT AND GUARANTEE

Section 7.1 This Agreement may be assigned by Blanchard with written consent of the City, such consent not to be unreasonably withheld.

ARTICLE 8 DIVERSION DURING DROUGHT

Section 8.1 In the event that BRA or the Brazos River Water Master require the City to reduce its diversions of BRA supplied water due to a drought, Blanchard agrees that, if requested by BRA or the Brazos River Water Master, it will reduce its diversions up to the same percentage as that being required of the City.

**ARTICLE 9
NO WARRANTY**

Section 9.1 The City makes no representation or warranty as to the quality or suitability of the BRA Contract Water for the purposes intended by Blanchard.

**ARTICLE 10
RIGHTS OF REFUSAL**

Section 10.1 Subject to any restrictions in law, the City grants to Blanchard a right of first refusal for any opportunity to renew this Agreement to use the BRA Contract Water after the Amendment expires.

**ARTICLE 11
TERMINATION AND RIGHT TO CURE**

Section 11.1 This Agreement may only be terminated prior to the Termination Date for a material breach of the terms of this Agreement and only after the Party claiming a material breach has given written notice to and a reasonable opportunity, but no more than ninety (90) days for the Party alleged to be in material breach to cure or to take good faith efforts to begin the cure of such material breach. Upon receipt of notice of termination by the City and if Blanchard has failed to take reasonable measures to cure the material or cured the material breach, Blanchard shall immediately discontinue all diversion and use of BRA Contract Water made available hereunder.

**ARTICLE 12
FORCE MAJUERE**

Section 12.1 Notwithstanding anything herein to the contrary, neither Party hereto shall be under any liability or be deemed in Default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such Party's obligations hereunder, except for the obligation to pay money if the Agreement is terminated, where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, acts of insurrection, sabotage, mechanical malfunction or failure, strikes or other differences with labor whether or not within the power of the Parties to settle same, decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes or catastrophes not within the reasonable control of such Party and not due to negligence of such Party. Each Party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

**ARTICLE 13
WAIVER**

Section 13.1 Any waiver at any time by any Party of its rights with respect to Default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent Default or matter.

ARTICLE 14 DISPUTE RESOLUTION

Section 14.1 Any Dispute will be resolved in accordance with the following:

(a) **MEDIATION.** If a Dispute cannot be settled by direct negotiations within 60 days following delivery of a notice of such Dispute, any Party may initiate non-binding mediation hereunder by giving the other Party a notice of mediation. The mediator will be jointly appointed by the Parties and the mediation will be conducted in the County of Williamson, State of Texas, unless otherwise agreed to by the Parties. The mediator shall reside within fifty (50) miles of the home office of the City. All costs and expenses of the mediator will be shared equally by the Parties. Each Party will be represented by one or more senior representatives who will have authority to resolve any Disputes.

(b) **LITIGATION.** Only if the Dispute cannot be resolved in accordance with 14.1 (a) within 180 days of delivery of a notice of Dispute, either Party may bring an action or proceeding in respect of such Dispute, whether in tort or contract or at law or in equity. Venue will be as agreed to by the Parties in Section 17.2.

ARTICLE 15 NOTICES AND CERTIFICATIONS

Section 15.1 Notices and communications provided for in this Agreement shall be in writing. The same shall be delivered in a manner agreed to by the Parties at the following addresses:

The City: David Morgan, City Manager
City of Georgetown
808 Martin Luther King Jr. Street
Georgetown, TX 78626

Blanchard: 539 South Main Street
Findlay, OH 45840
Attention: Manager, Title and Contract
Email: TCNotifications@marathonpetroleum.com

For all notices of Disputes under this Agreement, notices to Blanchard will be addressed as follows:

Blanchard Refining Company LLC
539 South Main Street
Findlay, OH 45840
Attention: General Counsel

Each Party may change its address for notice by notice to the other Party in the manner set forth above. Any notice required or permitted hereunder will be deemed given (a) 3 days after being deposited in the U.S. Mail as registered or certified mail, return receipt requested, postage

prepaid, (b) when received if delivered by recognized commercial courier or next business day delivery and addressed to the Party to whom the notice is being given at the address set forth above for such Party, and (c) if delivered by email, when a delivery receipt is received by the sending Party.

ARTICLE 16 INDEMNITY/HOLD HARMLESS

Section 16.1 BLANCHARD SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES INCLUDING PENALTIES RESULTING FROM FAILURE TO DO SO. IN ADDITION, BLANCHARD AGREES TO KEEP, SAVE AND HOLD THE CITY HARMLESS 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 FOR ANY NEGLIGENT ACT OR OMISSION OF BLANCHARD RELATED TO THE PROVISION OF BRA CONTRACT WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF BLANCHARD OR BLANCHARD'S AGENT(S), CONSULTANT(S), OR EMPLOYEES.

Section 16.2 CITY SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL, TO THE EXTENT ALLOWED BY LAW, EXONERATE, INDEMNIFY AND HOLD BLANCHARD HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, TO THE EXTENT ALLOWED BY LAW, CITY AGREES TO KEEP, SAVE AND HOLD BLANCHARD HARMLESS 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 BLANCHARD, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES FOR ANY NEGLIGENT ACT OR OMISSION OF THE CITY RELATED TO THE PROVISION OF BRA CONTRACT WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE CITY OR THE CITY'S AGENT(S), CONSULTANT(S), OR EMPLOYEES.

ARTICLE 17 MISCELLANEOUS

Section 17.1 This Agreement constitutes the sole and only agreement of the Parties regarding the purchase of BRA Contract Water as defined herein and supersedes any prior understanding or oral or written agreements between the City and Blanchard respecting the subject matter of this Agreement.

FINAL EXECUTION VERSION

Section 17.2 This Agreement, and the rights and obligations of the Parties pursuant to this Agreement, shall be governed by the laws of the State of Texas. Venue for legal actions arising hereunder shall be in Williamson County, Texas.

Section 17.3 The Parties represent that they are authorized by their respective governing bodies to enter into this Agreement.

Section 17.4 Each clause and provision of this Agreement is severable. If any clause or provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, all other clauses or provisions of this Agreement will remain in full force and effect in such jurisdiction and will not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Agreement in any jurisdiction. If any clause or provision contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, such clause or provision will be restricted in applicability, reformed to the minimum extent required for such clause or provision to be enforceable or the Parties will amend or otherwise modify this Agreement to replace such clause or provision with a valid and enforceable clause or provision giving effect to the intent of the Parties.

Section 17.5 Neither action taken nor inaction pursuant to this Agreement will be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained herein by the Party committing such action or inaction. A waiver by any Party of a particular right, including breach of any provision of this Agreement, will not operate or be construed as a subsequent waiver of that same right or wavier of any other right.

Section 17.6 **CONSPICUOUS. TO THE EXTENT REQUIRED BY LAW TO BE EFFECTIVE, THE PROVISIONS IN THIS CONTRACT IN BOLD-TYPE FONT ARE “CONSPICUOUS” FOR THE PURPOSE OF ANY LAW.**

Section 17.7 This Agreement will not be modified, in whole or in part, except by a written revision signed by both Parties and expressly identified as an amendment or modification. Any attempt by either Party through any document to vary any of the terms of this Agreement will be deemed void.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, intending to be bound thereby.

**BLANCHARD REFINING
COMPANY LLC**

CITY OF GEORGETOWN

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

EXHIBIT A-1