

AMENDED AND RESTATED WATER SUPPLY AGREEMENT

This Agreement is for the sale of water by Bexar-Medina-Atascosa Counties Water Control & Improvement District No. 1 ("BMA") to Bexar Metropolitan Water District ("BexarMet"), and is to be effective as of January 1, 2008 (the "Effective Date"). BMA and BexarMet are collectively referred to herein as the "Parties."

Whereas, BMA and BexarMet have previously entered into a series of Agreements describing how BMA would supply and BexarMet would purchase a defined water supply from Medina Lake; and

Whereas, the Parties mutually recognize the complexity of their previous agreements and various amendments to such agreements including the following:

- "Water Sale Agreement" dated August 19, 1991, as amended;
- "1992 Water Conservation Agreement" dated September 10, 1992;
- "1995 Agreement Related to Water Availability for Delivery to the Bexar Metropolitan Water District by the Bexar-Medina-Atascosa WCID No. 1," effective December 1, 1995, as amended;
- "1999 Agreement Amending 1991 Water Supply Agreement, 1992 Conservation Agreement and 1995 Agreement Related to Water Availability for Delivery to the Bexar Metropolitan Water District by the Bexar-Medina-Atascosa WCID No. 1", dated November 1, 1999, as amended;
- "Memorandum of Understanding Concerning Joint Water Resource Endeavors and Related Funding Activities, dated January 13, 2003, and any and all work program cost and justification memorandums prepared pursuant to the memorandum of understanding signed by the Parties' general managers or approved by the Parties;

and

Whereas, BMA and BexarMet mutually desire to simplify the terms of their existing water supply agreement, and all amendments thereto; and

Whereas, the Parties mutually desire that this Agreement will replace and supercede all prior agreements between the Parties, except that certain "Compromise, Settlement and Mutual Release Agreement: of even date herewith:

NOW, therefore, the Parties hereby evidence a new and restated Water Supply Agreement, with such Restated Agreement to be entered for and in

consideration of the mutual benefits to be derived by each of the Parties hereto, and other good and valuable consideration stated herein, the receipt and sufficiency of which is hereby acknowledged;

Accordingly, the Parties agree as follows:

1. Term.

The term of this Water Supply Agreement shall all commence on January 1, 2008, and continue until December 31, 2049.

2. Supply.

2.1 Maximum Volume and Rate. BMA agrees to supply untreated water from Medina Lake to BexarMet for BexarMet's municipal purposes. The amount of water shall not exceed 19,974 acre-feet per calendar year and at a diversion rate not to exceed 42 cfs (18,850 gpm).

2.2 Water Availability. BMA makes no warranty to BexarMet that water will be available at any particular time, in any particular quantity, because the obligation of BMA to supply water to BexarMet is limited by when, and if, water is available in sufficient quantities. BMA's obligation to furnish water to BexarMet is further limited by and subject to the general law on distribution and allocation of water during shortages of supply as contemplated by Section 11.039, Texas Water Code, or any other statute, order, regulation, or directive issued during the term of this Agreement by any court or other governmental authority, including the Texas Commission on Environmental Quality (the "TCEQ") and BMA's certificate of adjudication nos. 19-2130C (municipal use) and 19-2130E (bed and banks).

The Parties further acknowledge that there exist certain Prior Vested Rights, as described in Section 2.3 below, and that BMA must deliver water based upon such Prior Vested Rights as established by statute and contract. BMA shall, at all times, deliver to BexarMet all water that is physically available for delivery after meeting the demand requirements of the Prior Vested Rights, as defined in Section 2.3 below. Further, in the event that water is not physically available for delivery to meet all the demand of the Prior Vested Rights and the demand of BexarMet under this Agreement, then to the extent allowed or required by law or contract, BMA agrees to reduce water requirements for each of its purchaser-customers proportionately, consistent with the principles stated in Texas Water Code § 11.039. Nothing in this Agreement is intended to grant, or be construed to grant, BexarMet a preferential right superior to the Prior Vested Rights.

2.3 Prior Vested Rights. The Parties further recognize that BMA's obligation to deliver water is subject to and shall be proportionally reduced to the extent necessary to honor the "Prior Vested Rights." "Prior Vested Rights" means the right, if any, to purchase, appropriate, divert, or otherwise obtain water by a third-party pursuant to state law applicable to BMA or pursuant to BMA's Certificates of Adjudication,

existing as of the Effective Date of this Agreement, including the following: (i) the service rights, if any, of persons owning or leasing irrigable land within BMA's boundaries for which the flat rate assessment imposed by BMA has been paid and subject to compliance with BMA's rules and requirements; and (ii) the right, if any, held by Bandera County to obtain up to 5,000 acre-feet per annum of water from BMA either by long-term contract or outright sale of BMA's water rights under the agreement captioned "Water Supply Agreement" between BMA and Bandera County, Texas, effective March 19, 1997; and (iii) the rights, if any, of Bandera County and Springhills Water Management District under the agreement captioned "Memoranda of Understanding to Facilitate Regional Cooperation for the Maximization of Beneficial Development of the Water Resources Available From Medina Lake Pursuant to BMA's Certificate of Adjudication 19-2130 and to Settle and Compromise Issues and Disputes Among the Parties," effective March 19 1997; and (iv) the rights, if any, held by the Edwards Aquifer Authority, as successor in interest of the Edwards Underground Water District, under the agreement captioned "Interlocal Agreement For Regional Cooperation For The Maximization Of Beneficial Development Of Water Resources Affecting Regional Management Of The Edwards Aquifer," effective September 1, 1994.

2.4 Quality. BexarMet agrees to accept the water "As Is" from BMA. BMA makes no warranty, expressed or implied, as to the quality of the water to be furnished. Any costs associated with treatment, testing, reporting, and maintaining of any water sold under this Agreement to any applicable lawful standards for whatever purposes BexarMet may intend to use the same, including, without limitation, domestic or municipal consumption, which shall be at the sole expense of BexarMet

2.5 Operations. BexarMet acknowledges and agrees that BMA has the right to maintain and operate Medina and Diversion Lakes and their sources, as BMA may deem appropriate under the then prevailing facts and circumstances. BexarMet further acknowledges that BMA has a right, at any and all times in the future, to impound and release waters within and from Medina and Diversion Lakes, in any lawful manner and to any lawful extent BMA may see fit.

2.6 Municipal Use Only. All water diverted to BexarMet pursuant to this Agreement shall be used by BexarMet for BexarMet's municipal purposes (as defined by TCEQ rules in effect on the Effective Date of this Agreement) within the portion of BexarMet's Service Area located within Bexar, Medina, and/or Atascosa Counties within the San Antonio River Basin.

3. Price.

3.1 Take or Pay Charge. BexarMet agrees to pay to BMA, on a monthly basis, "take or pay" the sum of 19,974 acre-feet multiplied by the rate per acre-foot then in effect at the beginning of the Contract Year (January 1 of each year) and the total sum is then divided by twelve (12). Without waiver of any remedies available to BexarMet, payments shall be due and owing each month at BMA, to be placed by BMA in the account designated by BMA, with payment delivery by the fifteenth (15th) calendar day of each month even if BexarMet cannot take or process such water. Provided, however, that BexarMet shall be obligated to pay for the water, unless BMA shall fail or refuse to deliver same. If during any Calendar Year, BMA is unable to deliver the 19,974 acre-feet of water to BexarMet due to BMA's statutory or contractual obligations to satisfy the demand of the holders of Prior Vested Rights, as described in Section 2.3 above (the "Shortage"), then at the end of such Calendar Year, BMA shall grant BexarMet a credit on each monthly payment to be made by BexarMet to BMA for the next subsequent Calendar Year, such monthly credit equal to the Shortage during the Calendar Year, multiplied by a factor equal to the rate at the time when the Shortage occurred, and divided by twelve (12). The phrase "take or pay" shall mean the payment is due regardless of whether BexarMet can actually physically receive and use such water recognizing that all water not received is lost to BMA. This provision is being expressly agreed to and acknowledged by the Parties because of the fact that the availability of water under BMA's COA 19-2130 is governed by state law which provides that water authorized by a water right and not used during the calendar year, according to its terms, is lost to the water right holder.

3.2 Rate and Adjustments. The rate per acre-foot shall remain at \$69.00 per acre-foot through the end of calendar year 2012. BMA shall be entitled to adjust the per acre-foot price effective at the commencement of each Contract Year beginning January 1, 2013.

The Parties agree that beginning January 1, 2013, the rate, as adjusted, shall reflect a basin-wide Market Rate then existing, which the Parties hereby stipulate is a term fashioned for and applicable solely to this Agreement, is limited exclusively to this Agreement, notwithstanding any other provision of law. For purposes of calculating and applying the water cost adjustment mechanism of this Agreement, the Parties stipulate that the Contract Market Rate shall be as defined and hereby is established as the Guadalupe Blanco River Authority's ("GBRA's") basin-wide benchmark water sales price per acre foot for raw water then existing on January 1st of each Contract Year.

The Parties further agree that in the event the GBRA discontinues the establishment of basin-wide benchmark water sales price or the GBRA's function or agency is discontinued, the Parties agree to establish a substitute mechanism for establishing a reasonable prevailing rate, such as the possible use of a Consumer Price Index mechanism related to water as a commodity, a commodity index or other pricing mechanism may be agreed upon.

3.3 TWDB Bonds. BexarMet agrees to make additional cash payments to BMA in the amount of \$500,000 during each of the years 2008, 2009, and 2010 for the purpose of and to be used solely by BMA to pay the debt service on the funds borrowed by BMA from the Texas Water Development Board (the "TWDB"). Payment shall be tendered by BexarMet to BMA at least two (2) weeks before the debt service payment on the TWDB bonds is due.

3.4 Canal Maintenance Fee. In consideration for BMA's agreement to assume BexarMet's obligations under section 3.6.C.2 of the 1999 Agreement beginning January 1, 2008. BexarMet shall pay BMA an annual Canal Maintenance Fee, such fee being payable in twelve (12) equal monthly installments during the calendar year, with the first payment due the fifteenth (15th) calendar day of each month. The initial amount of the annual Canal Maintenance Fee shall be \$169,000, but the amount of the annual Canal Maintenance Fee shall be adjusted upward on January 1st of each year in the amount of three percent (3%) of the Canal Maintenance Fee then in effect, up through and including calendar year 2012. Prior to the end of calendar year 2012, the Parties agree to negotiate a Canal Maintenance Fee reflecting the cost of maintenance of the canal system from Chacon Reservoir south, so as to minimize waste and maximize efficient water delivery, and to provide maximum beneficial use of said water. BexarMet shall have no further obligation to perform the work to maintain any portion of the BMA canal system, but shall be obligated to pay BMA the Canal Maintenance Fee set-forth herein .

3.5 Taxes. In addition to the price and the adjustments in the Price described in the proceeding paragraphs of this Section 3, BMA shall pass through to BexarMet in like amounts any direct cost or expense which may be imposed upon BMA subsequent to the execution of this Agreement in connection with the fulfillment of its obligations under this Agreement by taxation, assessment, or as a result of regulations or requirements lawfully imposed by the State of Texas, the United States, or any state or federal agency for which BexarMet may be liable.

4. Payment.

4.1 Due Date. BexarMet shall pay to BMA the full amount due BMA under this Agreement whether or not water from BMA is diverted by BexarMet. Payment shall be made by the fifteenth (15th) calendar day of the month.

4.2 Form. Payments shall be made to BMA in cash, certified funds, electronic transfer or cashier's check payable to BMA and delivered to BMA's principal office, as designated by BMA in writing to BexarMet from time to time.

4.3 Late Charge. Time shall be of the essence in the payment of the full amount of the Price due for water pursuant to the terms of this Agreement and the Canal Maintenance Fee. Failure of BexarMet to make a timely payment, pursuant to Section 4.1 above, shall be a default by BexarMet in the

performance of BexarMet's obligations pursuant to this Agreement. Among the remedies for such default shall be a right of BMA to impose a late fee in the amount of five percent (5%) of the amount not received by the due date, as specified in Section 4.1 above.

4.4 Pledge of Revenue Only. BexarMet shall make payments to BMA from the revenue of BexarMet's water system.

5. Delivery.

5.1 Points of Delivery/Points of Diversion. The "Point of Delivery" means the point located at BMA's "Siphon No. 2" where BMA releases water for BexarMet into the Medina River for "bed and banks" delivery to BexarMet's river diversion point ("Point of Diversion"). BMA shall bear all the expense, including the risk of operating, maintaining, repairing, and replacing the water meter, gates, valves, and/or checks, and any other facilities or equipment at the Point of Delivery. BexarMet shall bear all expense and risk of operating, maintaining, repairing, and replacing the water meter, pumps, and all other facilities and equipment required to divert the water from the Medina River at the Point of Diversion. BMA may use a reasonable alternate point of delivery, which is acceptable to BexarMet, in the event that BMA is unable to deliver water to the "Point of Delivery."

5.2 Water Meters. The water meter, at the Point of Delivery and Point of Diversion, may be calibrated annually and tested in accordance with the procedure and standards set forth in section 291.89 of the TCEQ rules in effect on the Effective Date of this Agreement; provided, however, that BMA shall bear all costs necessary to repair, replace or adjust such meters in the event of defect or disrepair. BMA will perform and pay for the test and calibration of the meter located at the point of Point of Delivery, and BexarMet will perform and pay for the test and calibration of the meter at the Point of Diversion.

5.3 Water Loss. The BMA shall be responsible for and bear all transportation losses, including, without limitation, any loss by theft, evaporation or seepage in the delivery of water to the Point of Delivery. BexarMet shall be responsible for and bear all risks of loss, of every kind for all water after the Point of Delivery.

6. Supercedes Prior Agreement.

The Parties agree that this Agreement supercedes the following agreements between the Parties:

"1999 Agreement Amending 1991 Water Supply Agreement, 1992 Conservation Agreement and 1995 Agreement Related to Water Availability for Delivery

to the Bexar Metropolitan Water District by the Bexar-Medina-Atascosa WCID No. 1", dated November 1, 1999, as amended,

"Memorandum of Understanding Concerning Joint Water Resource Endeavors and Related Funding Activities, dated January 13, 2003, and any and all work program cost and justification memorandums prepared pursuant to the memorandum of understanding and signed by the Parties' general managers or approved by the Parties;

"Water Sale Agreement" dated August 19, 1991, as amended;

"1992 Water Conservation Agreement" dated September 10, 1992; and

"1995 Agreement Related to Water Availability for Delivery to the Bexar Metropolitan Water District by the Bexar-Medina-Atascosa WCID No. 1" effective December 1, 1995, as amended.

7. Water Conservation Plans.

The Parties each agree to develop and implement respective water conservation plans or water conservation programs that incorporate elements of chapter 288 of the TCEQ rules, as amended from time to time by the TCEQ or its successor agencies. BexarMet agrees to comply with the requirements, if any, of BMA's water conservation plan adopted in accordance with section 288.5 of the TCEQ rules, as amended from time to time by the TCEQ or its successor agencies.

8. Indemnification.

To the greatest extent allowed by law, the Parties agree to defend, indemnify and hold harmless each other, their respective directors, officers, employees and agents, against and from any and all claims, demands, causes of action, indemnifications, suits, or litigation (including all costs, expenses and attorneys' fees incurred in respect of any such matters) of every kind and character brought or asserted for injuries or death of any person, or for damaged property or for any other damage, fine or penalty whatsoever, arising out of, resulting from, or in connection with this Agreement. This covenant to defend, indemnify and hold harmless includes, without limitation, any injury, death, damage, fine or penalty which, in any part arises out of, results from, or occurs in connection with the negligence or fault of either Party, its directors, officers, employees or agents. The term "fault" as used herein includes, among other matters, a condition or event that gives rise to strict liability or to a breach of warranty. However, if the respective Party, its officers, employees, agents or contractors did not cause the injury, death, damage, fine or penalty, in whole or in part, and are not otherwise responsible for such death, injury, damage, fine or penalty then the Party shall have no liability under this indemnity. This indemnity clause is hereby limited and shall be interpreted (including the severance of invalid provisions) as may be required to make the indemnity clause valid and enforceable under existing law. The

Parties agree to take such actions, as may be necessary or required, to cause this indemnity to be enforceable and valid to its fullest permitted scope under law.

9. Default.

9.1 Remedies. The Parties do not intend to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be sought of by either Party hereto and none shall be exclusive; provided however, that both Parties waive its immunity to suit by the other Party for any claim based upon this Agreement or immunity for liability to the other Party for a claim based upon this Agreement, and by the adoption of this Agreement subjects itself to the subject matter jurisdiction of a court situated in Bexar or Medina County, based upon a claim by the other Party to this Agreement based upon this Agreement, but not otherwise. In the event that any payment(s) required under this Agreement are not received by the due date, the payment obligee shall immediately advise the payment obligor of the non-payment in writing. If the payment obligor does not deliver payment within 365 days of receipt of written notice of non-payment, then all past due payments shall bear interest at the rate of six percent (6%) per annum from the due date until paid, provided however, that all interest calculated hereunder shall relate back and accrue from the date of receipt of written notice of non-payment. Non-payments which are cured within one year of receipt of written notice of non-payment shall be subject to the Late Charge set-forth in Section 4.3 hereof, but not interest.

9.2 Attorneys' Fees and Costs. In the event either Party defaults under this Agreement and, as a result of such default, the other Party employs an attorney to enforce the provisions of this Agreement, then the non-defaulting Party may recover from the defaulting Party reasonable attorneys' fees and expenses, if awarded by a court of competent jurisdiction. In the event of litigation between the Parties concerning this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and litigation expenses from the other Party, if awarded by a court of competent jurisdiction.

10. Authorization; Cooperation.

10.1 Authorization. BMA and BexarMet are empowered to enter into this Agreement, pursuant to Texas Water Code, Sections 11.036, 49.213, and Texas Revised Civil Statutes, Article 4413(32c), Section 5(a).

10.2 Approvals. Each Party represents and warrants to the other that the Party is fully authorized and empowered by applicable law to enter into this Agreement as a sustaining and binding legal obligation of the Party and that this Agreement does not violate or breach any applicable statute, order, rule, regulation, permit condition, bylaw, or board resolution applicable to the Party making the warranty and representation.

10.3 Cooperation. When the consent, approval or cooperation of either Party is needed with regard to any regulatory or financing initiatives, which support or implement the obligations under this Agreement, the other Party agrees that its consent and non-monetary support will not be unreasonably withheld or delayed.

11. General Provisions.

11.1 Notice. Any notice required to be delivered to any Party, pursuant to this Agreement, shall be delivered to the following addresses; provided, however, that either Party may change the address for receipt of notices by providing written notice of such change to the other Party:

TO BMA:

Bexar-Medina-Atascosa Counties Water Control
& Improvement District No. 1
Attention: President
P.O. Box 170
Natalia, Texas 78059

TO BEXARMET:

Bexar Metropolitan Water District
Attention: General Manager
2047 W. Malone
San Antonio, Texas 78225

11.2 Merger. This Agreement contains the entire agreement between BMA and BexarMet, and both Parties agree that this Agreement cannot be altered or varied by any prior, contemporaneous, or subsequent oral agreement, stipulation, representation, or understanding.

11.3 Interpretation. The headings contained in this Agreement are for convenience only and shall not enlarge or limit the scope or meaning of the various sections hereof. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise clearly requires.

11.4 Assignment. Without the consent of the other Party this Agreement may not be assigned, sold, or delegated in whole or in part for any purpose by either Party; provided, however, that BMA may assign this Agreement and delegate its performance obligations to any successor in interest in the ownership and/or operation of Medina Lake.

11.5 No Third Party Beneficiaries. The Parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein

shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto.

11.6 Force Majeure. If either Party shall be rendered unable, in whole or in part, to carry out its obligations under this Agreement, *then* the obligations, to the extent they are affected by such force majeure, shall be suspended during the continuance of the inability therein claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God strikes, lockouts or other industrial disturbances, acts as the public enemy, order of any kind of the government, of the United States or of any state thereof, or of any agency of the United States or any state, other similar or military authority, insurrections, riots, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals or dams, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party affected. The Party claiming "force majeure" shall use reasonable efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party affected shall be deemed to be fulfilled even though the existing or impending strike, lockout, or other industrial disturbance may not be settled, but could have been settled by acceding to the demand of the opposing person(s).

11.7 Governing Law and Venue. This Agreement shall be governed in all respects, including validity interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas if, and to the extent a lawsuit involving this Agreement is brought by either Party, the lawsuit may be brought in either Medina or Bexar County.

11.8 Waiver. Any waiver at any time by either Party, with respect to a default or other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter.

11.9 Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions of this Agreement.

11.10 Approvals. All approvals and agreements by either Party that are required or contemplated under this Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for the Party.


11.11 Facilitated Mediation. Further, it is specifically agreed, as an essential remedy precedent to suit, that the Parties invoke facilitated mediation and/or any other lawful alternative dispute resolution and/or settlement process that will serve to avoid litigation, reduce delay and forego

the extensive costs and fees associated with administrative or court based litigation. The Parties, therefore, shall have an affirmative duty to:


- a) provide written notice of claims or allegations;
- b) each appoint a board member and manager to represent the Party;
- c) each shall cooperate with the other to select a neutral third party to conduct negotiations in good faith to resolve any conflict;
- d) if the conflict cannot be resolved, appoint a mediator/facilitator to assist in the conflict's resolution before, or in connection with, initiating legal proceedings; and
- e) the Parties further agree that methods of conflict resolution shall be invoked within the context of administrative or judicial proceedings to reduce costs of litigation and facilitate prompt resolution of any controversy requiring interim or emergency orders for the necessity of providing continuous and adequate service to any or all of the customers affected in any controversy.

Executed in multiple originals this 5th day of November 2007.

BEXAR-MEDINA-ATASCOSA COUNTIES WATER
CONTROL & IMPROVEMENT DISTRICT NO. 1

By: 
Name: Frederick T. ("Tommy") Fey
Title: President, Board of Directors

BEXAR METROPOLITAN WATER DISTRICT

By: 
Name: Victor V. Villarreal
Title: President, Board of Directors
As per Board Approval October 29, 2007