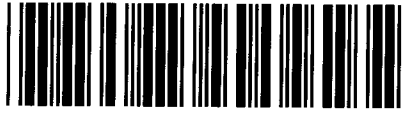


Control Number: 43378



Item Number: 20

Addendum StartPage: 0

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2018 APR 29 PM 12:34

PUBLIC UTILITY COMMISSION
FILING CLERK

PUC DOCKET NO. 43378

**APPLICATION OF THE CITY OF
MANOR TO AMEND ITS WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 10947** §
§
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§

**PUBLIC UTILITY
COMMISSION OF TEXAS**

**CITY OF MANOR'S RESPONSE TO COMMISSION STAFF'S FIRST REQUEST TO
THE CITY OF MANOR
QUESTION NOS. STAFF 1-1 THROUGH 1-3**

COMES NOW the City of Manor, Texas, and files this City of Manor's Response to Commission Staff's First Request to the City of Manor Question Nos. Staff 1-1 through 1-3 (the "Response") and responds as follows:

Staff 1-1 Please provide copies of the purchase water agreements from Blue Water LP and any other entity from whom Applicant is purchasing water.

Response Please see attached Further Amended and Restated Water Supply Agreement between Blue Water Project 130 LP and the City of Manor, dated effective as of June 1, 2014, and the Wholesale Water Service Agreement between the City of Austin and the City of Manor, dated February 13, 2001. **Witness:** Frank Phelan, City Engineer

Staff 1-2 Has the Utility System within the proposed CCN area (referenced by restated, revised, and amended agreement regarding the creation and operation of the

000001

20

Presidential Glen Municipal Utility District) been conveyed to the City for operation and maintenance?

Response The utilities have not yet been installed within the proposed CCN area. At the time of platting, the developer will be required to obtain City approval of construction plans for the utilities to be installed within the proposed CCN area, as well as any required off-site improvements. The developer shall be required to either post fiscal to guarantee completion of the utilities, or complete the utilities to obtain approval of a final plat for the CCN area. After completion of the utilities in accordance with approved construction plans and applicable City ordinances, and after passing inspection conducted by the City Engineer, the City will accept the utilities for maintenance and operation. **Witness:** Frank Phelan, City Engineer

Staff 1-3 Provide documentation that demonstrates that the City is in compliance with the violation cited by the TCEQ on April 24, 2014 for failure to have a plant operations manual.

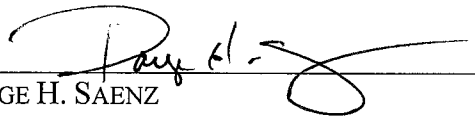
Response Please see attached City of Manor Water Department Operation and Maintenance Manual. **Witness:** Mike Tuley,

WHEREFORE, PREMISES CONSIDERED, the City of Manor, Texas, files this City of Manor's Response to Commission Staff's First Request to the City of Manor Question Nos. Staff 1-1 through 1-3 and requests the PUC and all parties take due notice.

Respectfully submitted,

000002

KNIGHT & PARTNERS
223 W. Anderson Lane, Ste. A-105
Austin, Texas 78752
(512) 323-5778
(512) 323-5773 (FAX)

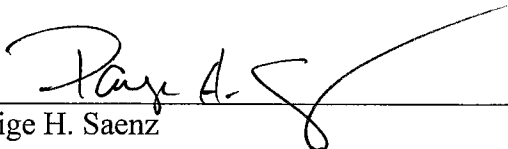


PAIGE H. SAENZ
STATE BAR NO. 24026513
PAIGE@CITYATTORNEYTEXAS.COM

**ATTORNEYS FOR THE CITY OF
MANOR**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document will be served on all parties of record on April 29, 2015, in accordance with PUC Procedural Rule 22.74.



Paige H. Saenz

000003

VERIFICATION

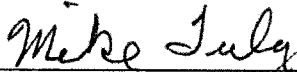
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary, on this day personally appeared Mike Tuley, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is Mike Tuley. I am the Public Works Director for the City of Manor, Texas. I am capable of making this verification. I have read the Response to the Commission Staff's First Request to the City of Manor, Staff 1-3. The facts stated in it are within my personal knowledge and are true and correct."

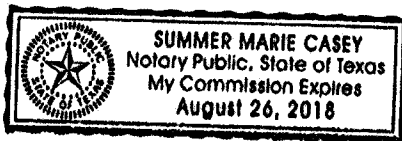
"Further Affiant sayeth not."


Signed on this the ____ day of April 28th, 2015.



Mike Tuley, Public Works Director
City of Manor

SWORN TO AND SUBSCRIBED BEFORE me by Mike Tuley on April 28, 2015.





NOTARY PUBLIC, IN AND FOR THE
STATE OF TEXAS
My commission expires:

VERIFICATION

THE STATE OF TEXAS

§
§
§


COUNTY OF WILLIAMSON

BEFORE ME, the undersigned notary, on this day personally appeared Frank T. Phelan, P.E., the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is Frank T. Phelan, P.E.. I am employed by Jay Engineering Company, Inc., which functions as the City Engineer for the City of Manor, Texas. I am capable of making this verification. I have read the Responses to Commission Staff's First Request to the City of Manor, Staff 1-1 and Staff 1-2. The facts stated in it are within my personal knowledge and are true and correct."

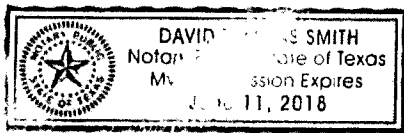
"Further Affiant sayeth not."

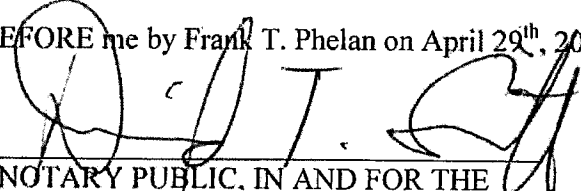
Signed on this the 29th day of April 2015.



Frank T. Phelan, P.E., City Engineer's Office

SWORN TO AND SUBSCRIBED BEFORE me by Frank T. Phelan on April 29th, 2015.





NOTARY PUBLIC, IN AND FOR THE
STATE OF TEXAS
My commission expires:

000005

Further Amended and Restated Water Supply Agreement

This Further Amended and Restated Water Supply Agreement (the "Agreement") is entered into between Blue Water Project 130 LP ("Blue Water"), a Texas limited partnership (successor in interest herein to Blue Water Systems LP) and the City of Manor, Texas ("Manor"), a Texas home rule municipality (also referred to individually herein as "Party", or in the plural, the "Parties") for the purpose of amending, and completely restating and replacing, effective as of June 1, 2014 (the "Effective Date"), that certain "Amended and Restated Water Supply Agreement" dated August 29, 2011, (the "Prior Agreement") between Blue Water and Manor.

RECITALS

Manor and Blue Water have heretofore entered into the Prior Agreement.

Manor and Blue Water now desire to further amend, and completely restate and replace, the Prior Agreement effective as of the Effective Date by entering into this Agreement and provided further that Manor agrees not to exercise any right to obtain additional Option Water (as hereafter defined) under the Prior Agreement. The parties hereby find and determine that the changes agreed to in this Agreement are agreed to as the result of, and constitute, fair and adequate consideration exchanged between the parties.

Manor is a retail potable water provider in Travis County, Texas, within the area described later in these Recitals (the "Service Area").

Blue Water is engaged in the business of acquiring and developing groundwater resources and production systems within Texas, including groundwater resources and associated production systems within the Carrizo-Wilcox Aquifer.

Manor holds a Certificate of Convenience and Necessity ("CCN") No. 10947 issued by the Texas Commission on Environmental Quality ("TCEQ") to provide water utility service. Under this Agreement, the Service Area will be defined by the CCN service area of the City of Manor, the city limits, and the extraterritorial jurisdiction of the City ("ETJ") and the wholesale customers of the City, as the CCN, ETJ and wholesale contracts may be amended from time to time.

Under the Prior Agreement, Manor has the right to reserve, retain, preserve, have and enjoy the contract right to take a water supply of up to 0.615 million gallons per day ("MGD") of potable water from Blue Water to meet the demands of Manor's customers in the Service Area, and Manor was to pay for (i) 0.115 MGD of that water whether taken or not as hereafter provided and (ii) 0.5 MGD of that water only on the basis of water actually taken by Manor and, in addition, Blue Water granted to Manor an option for an additional amount of water up to 2.0 MGD (the "Option Water") on the terms provided therein and Blue Water agrees to provide such

potable water from sources it has acquired and will acquire, and from production facilities it has constructed, and will construct, at its own cost and in a timely manner, in certain areas located within the Carrizo-Wilcox Aquifer in Burleson and Milam Counties, Texas (the "Groundwater Area"). Manor's right to obtain Option Water under the Prior Agreement is terminated as of the date of execution of this Agreement.

Pursuant to this Agreement, Manor desires that effective June 1, 2014, (i) it obtain a supply of an additional 0.285 MGD of water such that as of June 1, 2014, Manor will be entitled to receive, and obligated to pay for, a total of 0.400 MGD of water whether taken or not as hereafter provided; (ii) that thereafter, Manor automatically obtain an additional 0.075 MGD of additional water each year for the next nine years commencing on June 1 of each ensuing year after the Effective Date (for a total of 1.075 MGD of Take or Pay Water as of June 1, 2023); and (iii) that Manor obtain a right of first refusal to acquire water in an additional amount of 2.0 MGD (the "RFR Water").

In addition to the initial Delivery Point identified in the Prior Agreement (hereafter, the "Initial Delivery Point"), the parties have already added an additional "Delivery Point" to receive the water hereafter referred to as the "Second Delivery Point." Blue Water agrees to continue to provide water to Manor at the Initial Delivery Point and the Second Delivery Point pursuant to the terms of this Agreement.

NOW, THEREFORE, it is hereby agreed between the Parties as follows:

AGREEMENT

1. Blue Water has acquired groundwater resources by lease(s) ("Lease" or "Leases") from private landowners and related Groundwater Permits ("Permits") from the Post Oak Savannah Groundwater Conservation District (the "District") in the Groundwater Area. Blue Water agrees to provide the potable water to Manor contracted for under this Agreement.

2. From and after the Effective Date, during the "Term" of this Agreement (as hereinafter defined) and subject to the terms and conditions of this Agreement, Blue Water shall provide potable water to Manor in the volumes and amounts as provided in the following subsection (a) below, and Manor shall have the right of first refusal to acquire additional water (the "RFR Water") as provided in subsection (b) below.

(a) **Take or Pay Water.** Blue Water will make available and provide to Manor, and Manor shall pay for, 0.400 MGD of potable water on a take or pay basis whether the water is used or not at the rates and within the times provided in this Agreement (the "Take or Pay Water"); provided that Manor shall not be charged for water provided under this Agreement on a take or pay basis, and shall be charged only for water actually delivered to Manor, during such times that Blue Water is unable to provide



water in the volumes and levels allocated to Manor under this Agreement. On June 1st of each year after the Effective Date, such amount shall automatically increase by 0.075 MGD such that by June 1, 2023, the amount shall be 1.075 MGD; provided, however, if Blue Water has sufficient capacity in its System, Manor may accelerate the annual increases of Take or Pay Water during the first nine years of this Agreement up to 1.075 MGD by giving Blue Water written notice of Manor's desire to accelerate the increase in the Take or Pay Water and the amount of the desired increase. Upon receipt of the request for an accelerated increase, Blue Water shall make available to Manor the additional accelerated amount of water requested by Manor if such increased accelerated amount is available in the Blue Water System. The term "Take or Pay Water" shall include said accelerated increases in the Take or Pay Water up to the maximum of 1.075 MGD as provided in this Section 2(a), and any additional RFR water for which Manor exercises its right of first refusal to take under Section 2(b).

(b) **RFR Water.** Blue Water grants Manor, during the period beginning on the Effective Date and ending at the time hereafter provided, the right of first refusal to add up to an additional 2.0 MGD (2,240 acre-feet per year) of water to the Take or Pay Water as provided in this subsection (b) (the "RFR Water"). The capacity of the Blue Water conveyance pipeline is 18 MGD. During the term of this Agreement until such time that Manor is taking a total of 2.0 MGD of RFR Water, each time that (i) Blue Water receives a bona fide offer (the "Offer") from a third party to acquire long-term water (pursuant to a proposed binding contract that will require Blue Water to supply water to such third parties for a period of 20 years or more) and (ii) if in making such contract Blue Water would have long-term contracts (for a period of 20 years or more) with the new proposed customer and other then-existing customers including Manor requiring Blue Water to supply water in a total amount in excess of 16 MGD, Blue Water shall give written notice of the Offer to Manor. Upon receipt of such notice, Manor shall have the right for 60 days to notify Blue Water that Manor desires to enter into a contract with Blue Water for additional RFR Water under substantially the same terms and conditions as the Offer (the "RFR"); provided that Manor may choose to take more water than set forth in the Offer up to the lesser of 2 MGD of water or the remaining capacity in the Blue Water Conveyance pipeline, cumulative of all RFR's exercised by Manor under this subsection. If Manor so notifies Blue Water, then Blue Water shall enter into the contract with Manor for the amount of water set forth in the Offer or up to the lesser of 2 MGD of water or the remaining capacity in the Blue Water Conveyance pipeline, cumulative of all RFR's exercised by Manor under this subsection, on substantially the same terms and conditions as the Offer. If Manor does not so notify Blue Water within said 60 day period, then the RFR for the additional water set forth in the Offer shall expire. Blue Water may then enter into a contract with the third party making the Offer after the expiration of the RFR if and to the extent Blue Water has capacity in its System to supply the third party. If Manor and Blue Water enter into a contract for the additional RFR Water, Blue Water shall have a period of one (1) year after entering into such contract to begin providing the additional RFR Water to Manor subject to designation

and design of a delivery point for the RFR Water agreeable to both parties. Manor shall not be required to pay for the RFR Water until such time that the delivery point for the RFR Water is operational. Notwithstanding the foregoing, if no new delivery point is needed, Manor shall begin receiving the additional water, and begin paying for same, at the time that Blue Water is able to provide the additional RFR Water.

The up to 1.075 MGD of Take or Pay Water shall be delivered at an Hydraulic Grade Line (HGL) of 691' AMSL at the Manor side of the RPZ assembly (except as set forth in the parenthetical below) at the Initial Delivery Point (as hereinafter defined) (the parties recognizing that no more than 0.5 MGD can be delivered at the Initial Delivery Point and at the HGL of 691' AMSL until Manor constructs additional facilities on its side of said Delivery Point); provided, however, if Manor exercises the RFR for all or a part of the additional 2 MGD of RFR Water as provided in Section 2(b) of this Agreement, the water shall thereafter be provided at the Initial Delivery Point at a minimum pressure of 35 psi without regard to the Hydraulic Grade Line (HGL) of 691' AMSL. Water shall also be delivered at the Second Delivery Point so long as the "wheeling" agreement with Manville WSC remains in effect as discussed herein. Further, the parties understand and agree that Blue Water's obligation to supply Take or Pay Water or RFR Water shall only require Blue Water to supply such water to Manor at a rate (expressed in gallons per day) not to exceed the rate produced by taking the annual amount of the Take or Pay Water and RFR Water, as appropriate, and dividing such annual amount by 365 days per year to arrive at a maximum delivery rate expressed in gallons per day. Blue Water shall have the right to install flow restriction valve(s) and related equipment at the Delivery Point(s) (and at any other delivery points agreed to in the future as herein provided) to limit the flow of water to said maximum daily amount. The number of acres of Leases held by Blue Water to support the Take or Pay Water, and RFR Water during such time that Blue Water is supplying the RFR Water to Manor, at any given time during the term of this Agreement is hereafter referred to as the "Leased Acres." Blue Water may from time to time release Leased Acres or add additional Leased Acres in the Groundwater Area so long as Blue Water has Leased Acres sufficient to reserve and provide the Take or Pay Water, and the RFR Water during such time that Blue Water is supplying the RFR Water, to Manor, in addition to all other water Blue Water is contracted to provide pursuant to contract with third parties, in accordance with the Groundwater Permits and any other permits/approvals pursuant to this Agreement. Additionally, Blue Water shall obtain and maintain any necessary permits and/or approvals ("Permits") from the District to drill, operate, produce and transport the Take or Pay Water, and RFR Water during such time that Blue Water is supplying the RFR Water to Manor, for use by Manor in the Service Area.

3. Blue Water, at its sole expense, shall be responsible for constructing, operating and maintaining, or causing to be constructed, operated and maintained, any facilities and/or property necessary or appropriate to withdraw, collect, treat, transport and store the Take and Pay Water, and the RFR Water during such time that Blue Water is supplying the RFR Water to Manor, (hereinafter sometimes collectively referred to as the "potable water") obtained from the Leases to the Initial Delivery Point(s) as shown on Exhibit A-1 hereto (the "Delivery System") for delivery to Manor. The Initial Delivery Point is located at a meter located just south of the

Shadow Glen elevated storage tank site in Travis County. In addition to the Initial Delivery Point, the parties understand that Blue Water has contracted with Manville Water Supply Corporation ("Manville") to utilize Manville's facilities to "wheel" up to 0.5 MGD until March 13, 2017, from the Blue Water facilities to a second delivery point located on the east side of Manor's water system at the point shown on Exhibit A-2 hereto (the "Second Delivery Point"). Collectively, the Initial Delivery Point, the Second Delivery Point and any future delivery points hereafter agreed to between the parties are referred to as the "Delivery Points". Title to, possession of and control of the potable water shall remain with Blue Water until the potable water reaches the Delivery Points at which time title to, and possession and control of, the potable water shall pass to Manor. Manor agrees that any potable water furnished by Blue Water will be withdrawn and placed to beneficial use only in accordance with all applicable regulatory requirements in the Service Area, including any requirements of the Groundwater Permits and/or other permits/approvals.

Manor, at its sole expense, shall be responsible for constructing, operating and maintaining any pumping, storage, treatment and distribution facilities or properties to receive the potable water at the Delivery Points and to make the same available for use by Manor and its customers. Manor agrees to consult with Blue Water's engineers in the design of any such facilities located in the Delivery Points to ensure the design is compatible with Blue Water's facilities. Notwithstanding anything herein to the contrary, Blue Water understands and agrees that Manor intends, and shall have the right, to transmit and sell the water purchased by Manor pursuant to this Agreement to its wholesale and retail customers in the Service Area.

4. Blue Water will own, operate and maintain the meters located at the Delivery Points. The meters shall be tested for accuracy by, and at the expense of, Blue Water, at least once each calendar year at intervals of approximately every twelve (12) months, and a report of such test shall be furnished to Manor within thirty (30) days after completion of the test. The meters shall also be calibrated by, and at the expense of Blue Water, at any time a meter is not found to be operating within five (5) percent high or low of accuracy. Blue Water shall give Manor at least two (2) weeks notice, in advance, to allow Manor to witness the test. In addition, the meters may be tested and calibrated at any other reasonable time by either Party to this Agreement, provided that the Party making the test or calibration shall notify the other Party in writing at least two (2) weeks in advance and allow the other Party to witness the calibration. The expense of such additional test or calibration shall be borne by the Party requesting the test if a meter is found to be within American Water Works Association (AWWA) standards for the type and size of meter and by Blue Water if a meter is found to not be within American Water Works Association (AWWA) standards for the type and size of meter.

If, as a result of any test, a meter is found to be registering inaccurately (in excess of American Water Works Association (AWWA) standards for the type and size of meter), the readings of the meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon or, if no such period is known or agreed upon, the shorter of:

(1) a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or

(2) a period extending back one half of the time elapsed since the last previous test; and the records of the readings, and of all payments which have been made on the basis of such readings, shall be adjusted accordingly. Nothing in this Agreement shall prevent Manor from installing a meter or meters at or in the vicinity of the Blue Water meters to check the accuracy of Blue Water's meters. The parties may agree on additional Delivery Points by amendments to this Agreement in the future.

5. Manor shall pay for the Take or Pay Water at the rates and within the time periods provided in this section, as follows:

For the right to have Blue Water make available Take-or-Pay Water as provided by this Agreement, Manor agrees to pay monthly to Blue Water, from and after the Effective Date, an amount of money equal to the product of (i) the "Rate" (as hereafter defined) times (ii) the amount of Take or Pay Water (expressed in terms of 1,000 of gallons per day) regardless of whether any water is actually used by Manor; provided that Manor shall not be charged for water provided under this Agreement on a take or pay basis, and shall be charged only for water actually delivered to Manor, during such times that Blue Water is unable to provide water in the volumes and levels allocated to Manor under this Agreement.

As used in this Agreement the term "Rate" means the following: a rate of \$3.51 per thousand gallons, for the first period of this Agreement ending December 31, 2014 (the "Initial Rate"), and for each ensuing twelve (12) month period thereafter beginning January 1 of the next ensuing year, (1) the product of multiplying the rate specified above (i.e., \$3.51 per thousand gallons) times a fraction, the denominator of which shall be the Consumer Price Index- All Urban Consumers, 1982-1984 = 100) published by the Bureau of Labor Statistics of the U. S. Department of Labor, South Region (or if such index shall cease to be published, then a regularly published index derived by using the same or substantially the same data and methodologies) for the initial month of this Agreement and the numerator of which shall be the same index for the month in which the Rate is recalculated, plus (2) an appropriate pro-rata increase spread proportionately over all affected Blue Water customers to reflect the increased amounts incurred by Blue Water for (i) any increase in costs of Blue Water for obtaining groundwater from the leases and the permits under the terms of the leases or permits from the District in excess of those costs as they exist at the date of execution of this Agreement, (ii) any increase in energy related costs or costs of electricity incurred by Blue Water for pumping the potable water to the Delivery Point(s) in excess of the rate per KWH as it exists at the date of execution of the Agreement (iii) any additional costs incurred by Blue Water to treat the water (other than cooling and chlorination costs), after the Effective Date, mandated by new regulatory requirements so that at the Delivery Point(s) the water is capable of meeting potable water standards, and (iv) any additional ad valorem taxes incurred by Blue Water after the

Delivery Date, in connection with the pumping, collection, storage and transmission rights, facilities and appurtenances owned by Blue Water and used to provide water to Manor under this Agreement. Adjustments to the Rate shall be made no more than once per year and shall go into effect on January 1st of the year in which the rate adjustment is implemented. Blue Water shall give the City written notice of the rate adjustment at least sixty days before the adjustment will go into effect.

In addition, Manor agrees to pay Blue Water for the actual amounts charged by Manville to "wheel" or be available to "wheel" water from Blue Water to Manor at the Second Delivery Point after June 1, 2014, which is currently \$0.25 per thousand gallons.

Beginning on July 1, 2015 and on or about July 1 of each following year, Blue Water shall determine the volume of water actually taken by Manor for the period beginning June 1 of the previous year through May 30 of the current year. If the volume of water actually taken by Manor exceeds the amount of Take or Pay Water that Manor is required to pay for during that period of time whether taken or not under Section 2(a) (the "Excess Water"), Manor shall pay for the Excess Water at the Rate in effect for the period of time during which the Excess Water was taken.

The amounts owed by Manor hereunder shall be due and payable thirty (30) days after receipt by Manor of an invoice from Blue Water. Any unpaid amounts after the due date shall bear interest at the lesser of twelve (12) percent per annum or the maximum rate allowed by law under Chapter 2251, Texas Government Code, unless any amount invoiced by Blue Water is disputed by Manor, which amount shall be the basis of mediation between the parties and which amount shall not be subject to the interest rate referenced herein unless such amount, or any portion thereof, is found to be owed by Manor pursuant to the mediation.

6. Water provided to the Delivery Points by Blue Water shall be potable and meet the minimum criteria for water suitable for public consumption established from time to time by any state or federal agency with jurisdiction. If the quality of the groundwater produced from wells in the Groundwater Area producing water for Manor pursuant to this Agreement shall change such that the potable water does not meet this agreed standard, then Blue Water shall (a) notify Manor immediately and in writing within one (1) day after Blue Water becomes aware of such condition and specify the reasons for the failure of the water to meet the necessary conditions, if known, and (2) be responsible for any additional costs incurred to cause the water to meet the quality agreed to in this Section.

7. Manville System. Manor acknowledges that Blue Water's water is being delivered to the Second Delivery Point on the east side of Manor's System via Blue Water's wheeling agreement with Manville using the Manville System. Notwithstanding anything in this Agreement to the contrary, Blue Water's obligation to deliver water to the Second Delivery Point is contingent in all respects upon the existence of, and Manville's compliance with, said

wheeling agreement. Manor understands that the initial wheeling agreement with Manville expires March 13, 2017. Blue Water will use good faith efforts to renew said wheeling agreement but cannot guarantee that same will be renewed or extended. Blue Water is in no way responsible in law or equity for disruptions in service to Manor due to a problem with the Manville System or the refusal of Manville to renew or extend the wheeling agreement. Blue Water will work with Manville and Manor to expedite a return to normal service after any disruption caused by the Manville System.

8. If either Party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Agreement, then such obligations of that Party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of either Party hereto, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch, and shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of either Party hereto. This section shall not be applicable, however, to breaches of this Agreement related to obligations to meet quality standards or quantity amounts for the water to be supplied hereunder.

9. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby; provided, however, in such event the Parties mutually covenant and agree to attempt to implement the unenforceable, invalid or unlawful provision in a manner which is enforceable, valid or lawful.

10. There are no oral agreements between the Parties hereto with respect to the subject matter hereof. This Agreement shall be subject to change or modification only with the mutual written consent of Manor and Blue Water.

11. Blue Water warrants and represents as follows:

(a) Each of the persons executing this Agreement on behalf of Blue Water is duly authorized to do so. Blue Water has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement. This Agreement constitutes the valid and legally binding obligations of Blue Water and is enforceable against Blue Water in accordance with its terms; and neither the execution or delivery of this Agreement nor the performance of Blue Water's obligations under this Agreement

violates, or will violate, any contract or agreement to which Blue Water is a party or by which Blue Water is otherwise bound;

(b) The water quality data provided on **Exhibit B** hereto is an accurate representation of test results obtained by Blue Water on its initial production well producing water from the Leases dated 10/23/03 and 3/14/05;

(c) Blue Water has obtained permits from the District, attached hereto as **Exhibit C** and incorporated by reference, authorizing the drilling, operation, production and transport of 20,000 acre-feet of groundwater per year from, six (6) wells utilizing the Leases, and the transfer of the groundwater from the District to Travis County;

(d) The Leases are valid and in full force and effect and are binding on the Parties thereto; Blue Water has an ownership interest in the development rights in, and will maintain, the Leases in at least the amount necessary to maintain the Permits and support the applications referred to in subparagraphs "b" and "c" above; and such Leases are, and Blue Water will use its best efforts to ensure that such Leases remain, valid and binding on the Parties thereto, in full force and effect; Blue Water is entitled to all of the production rights as Lessee under the Leases; Blue Water will not hypothecate, encumber or otherwise pledge its ownership rights in the Leases without the prior written consent of Manor, which consent shall not be unreasonably withheld, delayed or conditioned if the purpose of same is to secure financing for Blue Water to meet its financial obligations under this Agreement and the financing agreement adequately protects the ability of Manor to obtain the benefits of this Agreement;

(f) Blue Water has not entered into, and will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement,

(g) Blue Water is financially capable of performing its obligations under this Agreement.

(h) If Blue Water discovers that any of its warranties and representations shall be, or become, and untrue, then Blue Water shall (a) notify Manor in writing as soon as possible but no later than ten (10) days after Blue Water becomes aware of such condition, and Blue Water shall specify the nature of the untrue warranty or representation and (b) shall immediately remedy such untrue warranty or representation, and (c) Blue Water shall be responsible for any additional costs incurred by Blue Water and/or Manor to remedy such untrue warranty or representation. If Blue Water fails to remedy such untrue warranty or representation as soon as reasonably possible, Manor may, after providing written notice to Blue Water of within ten (10) days, take actions reasonably required to remedy such untrue warranty or representation, if material, and Blue Water shall reimburse Manor an amount equal to two times all costs incurred by Manor in connection with remedying

such material, untrue warranty or representation. If Manor is not reasonably satisfied with Blue Water's efforts to remedy the untrue warranty or representation, Manor shall provide Blue Water with ten (10) days written notice of its election to terminate this Agreement, without prejudice to Manor.

12. Manor warrants and represents as follows:

- (a) each of the persons executing this Agreement on behalf of Manor is duly authorized to do so;
- (b) Manor has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement;
- (c) this Agreement constitutes the valid and legally binding obligation of Manor and is enforceable against Manor in accordance with its terms;
- (d) neither the execution or delivery of this Agreement nor the performance of Manor's obligations under this Agreement violates, or will violate, any contract or agreement to which Manor is a party or by which Manor is otherwise bound;
- (e) Manor will not enter into, any other agreements that will impair its ability to comply with its obligations under this Agreement.

13. Manor covenants that all moneys required to be paid by Manor under this Agreement shall constitute an operating expense of Manor's waterworks system authorized by the Constitution and laws of the State of Texas. Manor further covenants and agrees to compute, ascertain, fix, levy and collect such rates and charges for the facilities and services provided by it which will be consistent with this Agreement and adequate to permit Manor to make prompt and complete payments pursuant to this Agreement so long as Blue Water is in compliance with the terms of this Agreement.

14. Manor agrees to maintain other water supplies as alternative, supplemental and emergency backup sources in the event the District restricts Blue Water's usage under the Permits so long as alternative, backup supplies are technically, legally and economically feasible

15. Unless otherwise notified in writing by the other, the addresses of Manor and Blue Water are and shall remain as follows:

Manor:

City of Manor
P.O.Box 589- 387
201-E-Parsons St. 105 E. Eggleston St.
Manor, Texas 78653
Attn: City Manager

With copy to:

Paige Saenz
City Attorney
Knight & Partners
223 West Anderson Lane, Suite A105
Austin, Texas 78752

Blue Water:
Blue Water Systems LP
Stonebridge Plaza One
9606 North Mopac, Suite 125
Austin, Texas 78759
Attn: Ross M. Cummings

16. This Agreement may be assigned by either Party to any other entity with notice to and subject to the prior, written approval of, the other Party. However, the assignor shall remain liable hereunder, unless released in writing by the other Party, which release shall not be unreasonably withheld or delayed.

17. Whenever this Agreement requires a Party to give an approval or consent or to take an action, the Parties agree that such consent, approval or action will not be unreasonably withheld, delayed or conditioned.

18. This Agreement shall be for a term of twenty-five (25) years from the effective date of the Agreement (the "Term"); provided, however, beginning one (1) year prior to expiration of the term of this Agreement, the Parties agree to negotiate in good faith for an extension of this Agreement under substantially the same terms and conditions as provided herein with such changes as may be appropriate under the then-existing circumstances. Notwithstanding any other provision in this Agreement, Manor shall have the right to enforce by specific performance, terminate or renegotiate this Agreement if Blue Water violates or breaches any provision of this Agreement.

19. The recitals are incorporated herein and made a part of this Agreement as if incorporated verbatim.

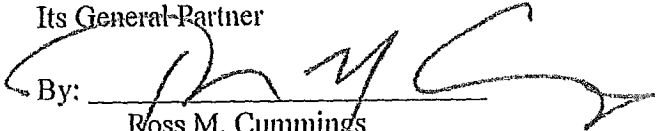
EXECUTED TO BE EFFECTIVE THE 1st DAY OF June, 2014

CITY OF MANOR

By: [Signature]
Name: STEVE SHANKS
Title: City Manager
Date: 6/23/2014

Pat

BLUE WATER 130 PROJECT LP
a Texas limited partnership
By: Blue Water 130 Project GP, LC
Its General Partner

By: 
Ross M. Cummings
President

Date: 5/27/14

WHOLESALE WATER SERVICE AGREEMENT

THE STATE OF TEXAS)
) **KNOW ALL BY THESE PRESENTS:**
COUNTY OF TRAVIS)

THIS AGREEMENT is made and entered into by and between **the City of Austin, Texas** (the "**City**"), a Texas municipal corporation, and **the City of Manor, Texas**, a Texas municipal corporation ("**Manor**" or "**Customer**").

WHEREAS, the City and Manor desire to enter into a new water service agreement setting out new terms and conditions for the City's provision of wholesale water service to Manor;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual undertakings herein contained, the parties agree as follows:

**ARTICLE I.
DEFINITIONS**

Unless expressly provided otherwise, the following terms shall have the meanings set out below:

1.01. City Water Facilities or City System: all water treatment, transmission and distribution facilities, lines, mains, valves, pipes, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components that comprise the public water system of the City.

1.02. Commission: the Texas Natural Resource Conservation Commission or its successor agency.

1.03. Director: the Director of the City's Water and Wastewater Utility.

1.04. Customer Water Facilities or Customer System: the water lines, mains, valves, pipes, reservoirs, pump stations, residential, commercial, and industrial connections and any other parts or components that comprise the Customer's potable water system.

1.05. Metering Facilities: means the meter, meter vault, meter loop, housing or pit, and all metering equipment and appurtenances required to measure wholesale water service to the Customer at the Point of Delivery.

1.06. Point of Delivery: the point(s) designated and approved under this Agreement at which the Customer may withdraw water from the City System for distribution within the Customer's water system as more particularly described below.

1.07. Water: potable water meeting the requirements of the Texas Natural Resource Conservation Commission for human consumption and other domestic uses.

1.08. Wholesale Service Area: the area described on **Exhibit A** to which the City has agreed to provide potable water on a wholesale basis under this Agreement.

ARTICLE II. DELIVERY OF WHOLESALE WATER SERVICE

2.01. Maximum Volume and Rate of Flow. Subject to the conditions set forth in this Agreement, the City agrees to sell, and Customer agrees to purchase from the City on a wholesale basis, water required for domestic, commercial and industrial uses within that portion of the Customer' Water System shown on **Exhibit A** only (the "**Wholesale Service Area**") in an amount up to a monthly average of **one and one-half (1.5) million gallons per day (MGD)** and at a rate not exceeding **1,042 gallons per minute (GPM)** and at a minimum pressure of not less than thirty five (35) pounds per square inch ("**PSI**") at the master meter located at the point of delivery. It is agreed by both parties that a monthly average of **one and one-half (1.5) million gallons per day** is the maximum level of service to which the Customer is entitled under this Agreement.

The parties agree that when use by the Customer reaches or exceeds seventy five per cent (75%) of the maximum level of one and one-half MGD established hereunder based on a monthly average for any monthly billing period during the term of this Agreement, the parties shall negotiate with regard to an appropriate adjustment of the maximum service level described hereunder. Any increase in that maximum service level provided hereunder must be made by written amendment of this Agreement which shall be subject to review and approval by the Austin City Council and the City Council of the Customer and the ability of the City's Water System to provide such additional water service as determined by the Director. Nothing herein shall be construed to imply an entitlement to an increase in the level of water service from the City.

In the event that the City is unable or unwilling to provide the increased level of water service requested by the Customer, the Customer may endeavor to secure supplemental water service from another provider.

2.02. Primary Supply for Wholesale Service Area Intended. Customer and the City acknowledge that this Agreement is intended to provide the primary source of potable water for operation of that portion of the Customer's Water System within the Wholesale Service Area shown on **Exhibit A** during the tenure hereof and shall not be construed to provide for supplemental, backup, peak-load or as-available service. However, notwithstanding that a part of the Wholesale Service Area shown on **Exhibit A** may include property that is within the City's ETJ, it is not the intention of this Agreement that Manor will provide retail water service to any such property unless the City requests Manor, in writing, to serve such property. In the event that Manor commences retail

water service to properties within the City's ETJ, and the City later installs permanent water facilities capable of providing retail water service to the area in question, then, at the option of the Director and upon written notice to the Customer, such areas shall be deleted from the Wholesale Service Area and thereafter served at retail by the City. Upon the exercise of such option by the Director, all internal water lines previously installed within the areas in question shall become the property of the City, together with all easements or property rights applicable thereto, and the City shall thereafter be responsible for all costs and expense for the ownership, operation and maintenance of same. The Customer agrees to provide such instruments of conveyance as the Director shall determine necessary to evidence the City's ownership of such internal water lines and easements. ___

2.03. Manner of Delivery. During the tenure hereof, Customer desires to provide retail water service within the Wholesale Service Area by means of Customer Water Facilities connected to the City's Water Facilities located in proximity to the Wholesale Service Area as more particularly shown on **Exhibit A**.

2.04. Requirement For Air Gap; Customer Use of Groundwater; Adoption of Cross-Connection Program. The City agrees to deliver to the Customer potable water meeting state standards for water quality. Customer shall be solely responsible for the quality and chemical characteristics of water delivered from its ground storage tank and water distribution system to its retail customers within the Wholesale Service Area. Customer agrees that it will maintain an air gap between the Customer Water System and the City's Water System at all times. This Agreement shall not be construed to prohibit the Customer's use of its groundwater wells provided that Customer will not suffer or permit any cross-connection between the Customer System and the City's System and will be solely responsible for compliance with all applicable regulations and the quality of water resulting from mixing of the water provided by the City and Customer's well water and any other water not provided by the City. In the event that Customer elects to mix groundwater and potable water from the City's System, Customer shall be solely responsible for undertaking appropriate measures to ensure the compatibility of its disinfection method with that employed by the City, and all other chemical characteristics of the waters so commingled, to prevent any danger to public health and to ensure that the product of the waters so commingled meet all applicable federal and state regulations for safe drinking water and water hygiene.

Customer shall be solely responsible for the adoption of an appropriate cross-connection control program for retail connections to the Customer System within the Wholesale Service Area in accordance with applicable federal, state and local laws governing the same.

2.05. Point of Delivery. The agreed Point of Delivery is shown on **Exhibit A** attached hereto and made a part hereof for all purposes. The existing Point of Delivery may be changed at any time by agreement in writing between the Director and the Customer's authorized representative before the commencement of construction.

If a change in the Point of Delivery is requested by the Customer, the Customer shall bear the expense of changing the Point of Delivery. If a change in the Point of Delivery is requested by the City, the City shall bear the expense of changing such Point of Delivery. The City shall make all modifications to the City's Water System made necessary by a change in the Point of Delivery. The Customer shall make all modifications to the Customer Water Facilities made necessary by a change in the Point of Delivery.

2.06. Water Capital Recovery Fees. During the term of this Agreement, Customer agrees to collect the City's Water Capital Recovery Fee for each service unit of new development connected to the Customer System within the designated Wholesale Service Area commencing upon the physical connection of the Customer System to the City's System in accordance with this Agreement. The amount of the Water Capital Recovery Fee and the number of service units for each connection shall be determined in accordance with the City's Capital Recovery Fee Ordinance as amended from time to time.

Commencing upon the physical connection of the Customer System to the City's System, Customer agrees to remit to the City on a monthly basis the City's Water Capital Recovery Fees collected by the Customer for service units of new development that are connected to the Customer's System within the Wholesale Service Area within each monthly period together with a written report of connections made within each such monthly period. Customer and the City agree that the collection and remittance of the City's Water Capital Recovery Fee shall be discontinued after the connection of 4,285.7 service units of new development to the Customer System (being the total of the service units equivalent to one and one-half million gallons per day assuming 350 gallons per day average consumption for each service unit). —

If by amendment of this Agreement, the maximum level of wholesale water service under this Agreement is increased above the current maximum level of one and one-half million gallons per day, then the collection and monthly remittance of the City's Water Capital Recovery Fee for each service unit of new development connected to the Customer System shall resume until the City's Water Capital Recovery Fee has been collected and remitted to the City for the total number of service units equivalent to the amended maximum level of wholesale service (based on the agreed average consumption of 350 gallons per day per service unit).

2.07. Nondiscrimination. Wholesale water service to Customer from the City shall not be unreasonably discriminatory and shall be consistent with the City's policies, ordinances and regulations as amended from time to time.

ARTICLE III. COMPLIANCE WITH STATE LAWS AND CITY REGULATIONS

3.01. Compliance With Laws. Customer shall comply with all applicable laws and regulations of the State of Texas and the City relating to its activities under this

Agreement including, without limitation, the Texas Local Government Code, Texas Water Code, and the Austin City Code, as amended from time to time.

3.02. Legal Lots Required. Customer shall not sell taps or otherwise permit the connection of water service to any customer within the Wholesale Service Area unless the property is in compliance with the provisions of Chapter 212, Texas Local Government Code, as amended. The City and Customer recognize that, to the extent such property falls within the City's extraterritorial jurisdiction ("ETJ"), the regulations of the City of Austin, including without limitation, the City's Land Development Code and other regulations, may apply to such subdivision of property.

3.03. No Resale of Wholesale Water Outside Wholesale Service Area or in Certificated Service Area of Third Party. Customer agrees that it will not sell or deliver water obtained from the City under this Agreement to any area or legal person outside the Wholesale Service Area designated under this Agreement without the prior written consent of the Austin City Council. Customer further agrees that it will not provide water service to an area located within the certificated service area of a third party without the prior written consent of that third party notwithstanding that the area may be depicted as part of the Wholesale Service Area under this Agreement.

3.04. Curtailment and Conservation Restrictions. Delivery of potable water to meet the requirements of the Customer is subject to and limited by the City's available system supply and system treatment and transportation capabilities. The City shall have the right to curtail or ration wholesale service to the Customer in times of high system demand in the event that the City imposes such curtailment or water rationing on other wholesale customers of the City.

3.05. Curtailment of Service for Maintenance, Capital Replacement or Emergency Operations. The City shall have the right at all times to curtail water service hereunder in the event of a required maintenance operation, replacement of equipment or emergency for a reasonable period necessary to complete such maintenance or replacement operations, effect emergency repairs or otherwise respond to emergency conditions.

3.06. Cooperation During Maintenance or Emergency. Customer agrees to cooperate with the City during periods of emergency or required maintenance or replacement of equipment and, if necessary, Customer shall, at its sole expense, discontinue, cycle, test, inspect, or otherwise operate and maintain its pumps or other Customer Water Facilities in a manner determined by the Director to be necessary to the safe and efficient completion of such operations.

3.07. Adoption of Water Conservation Rules. On or before the expiration of 90 days from the effective date of this Agreement, Customer agrees to adopt and enforce water conservation and management rules no less stringent than the City's emergency and peak day water management provisions in Chapter 4-2, Article II, of the Austin City Code, as amended, prior to initiation of service under this Agreement. If these provisions are amended by the City in the future, the City will give written notice to Customer of the amendments and Customer will amend its rules to include similar provisions.

The Parties acknowledge that an amendment to Customer's tariff may be required in order for Customer to amend its rules to include any amendments to the City's water conservation and management rules. Customer agrees to file an application for such a tariff amendment within 30 days of receiving notice of a change in the City's rules, and to use reasonable, good faith efforts to obtain approval of the amendment. The City agrees to cooperate with Customer in its efforts to obtain any such required tariff amendment. Customer agrees to provide the City with a copy of its water conservation and management regulations and amendments thereto following enactment within 30 days after adoption.

ARTICLE IV. WATER RATES, CHARGES AND BILLING

4.01. Wholesale Water Rates. Customer agrees to pay the City for all water delivered to the Customer in accordance with the wholesale water rate established from time by the Austin City Council for the Customer's rate classification.

4.02. Customer Water Rates and Charges. Customer shall determine and charge its retail water customers such rates, fees and charges as the Customer shall determine in accordance with the requirements of applicable law. Customer agrees that, during the term of this Agreement, Customer shall fix and collect such rates, fees and charges for retail water service as are necessary from time to time so as to produce revenues in an amount equal to at least (i) all of the operation and maintenance expenses of the Customer System, including without limitation, the cost of wholesale water from the City hereunder and, when and as applicable, Customer's cost and expense for raw water, and (ii) all other amounts as required by law and the provisions of the orders, ordinances or resolutions of the Customer and the Commission authorizing the issuance of indebtedness or other obligations of the Customer now or hereafter outstanding, including amounts required to pay all principal of and interest on such bonds, notes and other obligations of the Customer.

4.03. Customer Connection Fees. The City acknowledges that Customer has the right, to the extent allowed under applicable law, to assess and collect such Customer impact fees, capital recovery fees, connection fees, meter fees, or other service fees, rates, or charges and that this Agreement shall not be construed to require, limit, or restrict the authority of the Customer to implement the same. Customer shall be solely

responsible for ensuring that its retail rates, fees and charges are sufficient and determined and collected in accordance with applicable law.

4.04. Utility Service Regulations Applicable. The City shall deliver wholesale water and charge the Customer in accordance with the terms of this Agreement. Customer shall make payment to the City for wholesale water delivered hereunder in accordance with this Agreement and the City's Utility Service Regulations, as amended from time to time by the City Council.

4.05. Billing and Payment. City shall render a bill to the Customer not more than once per month and each such bill shall set forth the quantity of water delivered to the Customer as determined by the City's periodic readings of the master meters installed at the points of delivery. Each such bill shall also include the total amount owed to the City based on the metered quantity of wholesale water delivered multiplied by the City's wholesale water rate for the Customer's rate class, as amended from time to time. If the Customer in good faith questions the amount of the bill, Customer shall follow the procedures therefor established in the City of Austin Utility Customer Service Regulations.

4.06. Effect of Default or Non-Payment. Failure of the Customer to make payment as specified herein or other default by the Customer in the performance of its covenants and obligations hereunder will, at the option of the City, terminate all obligations of the City under this Agreement.

ARTICLE V. METERING FACILITIES

5.01. Installation of Metering Facilities Required. Water consumed by the Customer shall be measured by Metering Facilities of a design, size, location and configuration approved by the Director and the Customer's Engineer.

5.02. Meter Installations. The master meter and related facilities, including a meter loop, a meter house or pit, and appurtenances, required for properly measuring the quantity of water delivered to the Customer shall be installed at the agreed Point of Delivery shown on **Exhibit A**. Customer, at its sole expense, shall provide and install the meter vault, meter loop, and meter house or pit, and appurtenances, unless such expense is related to the City's desire to change the point of delivery in which event the City shall bear such expense. The City, at the Customer's expense, shall provide and install the master meter and, following the installation, inspection, and acceptance of same, the Metering Facilities shall be the property of the City for all purposes hereunder.

The City, at its own expense, shall operate and maintain the Metering Facilities and shall calibrate the same upon request by the Customer provided, however, that the cost

of calibrating the metering equipment shall be borne by the Customer if requested more frequently than once every twelve (12) months.

Any meter registering not more than two per cent (2%) above or below the test result shall be deemed to be accurate. Unless otherwise agreed in writing, if the master meter fails to register accurately for any period, City's charge for the amount of water furnished during such period shall be determined in accordance with the City's Utility Service Regulations as in effect at the date of this Agreement. The master meter shall be read by the City at least once for each monthly billing cycle.

5.03. City Inspection and Acceptance of Metering Facilities by City. The Metering Facilities to be constructed by the Customer shall be subject to inspection and final acceptance by the City prior to the initiation of wholesale water service under this Agreement.

ARTICLE VI. WASTEWATER BILLINGS

6.01. Customer to Provide Data For City Wastewater Billings. For customers that receive retail water service from the Customer but receive wastewater service from the City, the City shall be permitted to use the Customer water billing (consumption) data for each such customer to calculate the City wastewater bill and Customer agrees to timely provide such information or records as are kept by the Customer for this purpose.

6.02. Customer to Continue To Provide Data For City Wastewater Billings After Termination. In the event of termination of this Agreement for any reason, Customer shall continue to timely provide to the City the Customer water billing (consumption) data for each retail water customer to allow the City to calculate City wastewater billings to Manor customers receiving City wastewater service even though the City is no longer responsible for supplying wholesale water service.

ARTICLE VII. CONSTRUCTION OF FACILITIES

7.01. Construction by Customer. Unless otherwise agreed in writing, Customer shall also be solely responsible for design, engineering, financing, construction, installation, inspection, operation, maintenance, repair and replacement of all internal capital facilities for the transmission and distribution of water from the Point of Delivery to its retail customers within the Wholesale Service Area.

7.02. No Private Lines. Customer shall ensure that there are no privately owned water lines, mains, or appurtenances installed, maintained or utilized by third persons in the public rights-of-way within the Wholesale service area.

7.03. Approval of Plans and Specifications. All Customer Water Facilities within the Wholesale Service Area shall be constructed or installed to the design standards and specifications of the Customer and the State of Texas.

Notwithstanding the above, plans and specifications for the Metering Facilities and appurtenances shall comply in all respects with City standards and specifications and the plans and specifications for same shall be subject to review and approval by the Director prior to the commencement of construction.

7.04. Construction, Operation and Maintenance of Customer Water Facilities. Unless otherwise agreed in writing, it is understood and acknowledged that the Customer is solely responsible for the design, engineering, financing, construction, and inspection of all Customer Water Facilities within the Wholesale Service Area, and that, upon completion of construction thereof, the Customer shall be the sole owner of such Customer Water Facilities. It shall be the responsibility of the Customer to operate and maintain its Customer Water Facilities in a safe and efficient manner and in accordance with generally accepted utility practices and the requirements of applicable law.

7.05. Notification of Commencement of Meter Construction. After the required approvals of plans and specifications for the Metering Facilities are obtained but prior to commencement of construction, Customer shall provide written notice to the Director of the date on which construction of same is scheduled to commence to allow the City to assign an inspector.

7.06. As-Built or Record Drawings For Metering Facilities Upon Completion of Construction. Within 180 days following completion and final acceptance of the Metering Facilities, Customer shall provide to the Director as-built drawings or record drawings for the completed Metering Facilities.

7.07. Required Rights-of-Way. The Customer shall be responsible for obtaining any easements or rights-of-way necessary for the construction of all Customer Water Facilities and the Metering Facilities and appurtenances.

7.08. Right of Entry. During the term of this Agreement, the City shall have the right of entry and access at all times to facilities comprising or connected to the Customer Water System for any purpose related to providing wholesale water service hereunder or activities preparatory or incident hereto, to inspect the Customer Water Facilities and the Metering Facilities, to investigate the source of operational or maintenance problems or for preventative purposes intended to detect, minimize or avert operational or maintenance problems.

7.09. Operation and Maintenance. The City shall be responsible for operation and maintenance of all City Water Facilities constructed for the purpose of transporting water to the Point of Delivery. Unless otherwise agreed in writing, Customer shall be responsible for operation and maintenance of all Customer Water Facilities constructed

for transportation and delivery of water to its retail customers whether within or outside the Wholesale Service Area.

7.10. Option to Participate in Oversizing. Notwithstanding the foregoing, Customer shall provide City with at least six (6) months notice of the Customer's intent to construct or expand its Customer Water Facilities and, within such period, City shall have the option to request the oversizing of same for the benefit of other customers of the City's regional water system.

7.11. Oversizing Costs. In the event that the City elects to request and the Customer agrees to proceed with the requested oversizing of Customer Water Facilities, the City and the Customer shall, by separate written agreement approved by the respective governing bodies of each party and executed prior to the expenditure of funds therefor, provide for the design, construction, inspection, operation and maintenance, ownership and use of such oversized capital facilities in addition to such other and further matters appertaining thereto as may be of mutual interest. In no event shall the City's right to ownership and use of the oversized facilities be less than the oversized capacity for which the City is providing funding as determined by the Director.

ARTICLE VIII. SERVICE AREA AND LIMITATIONS ON SERVICE

8.01. Limitation of Service to Wholesale Area. Customer acknowledges that, as the provider of potable water service on a regional basis, the City must retain the ability to plan, fund and operate City Water Facilities needed to serve not only the Customer but all other customers of the City's regional water system and that the expansion of customer service areas by any customer without the consent of the City detrimentally affects the capability of the City to plan, fund and operate the City Water System for the benefit of all City customers. Accordingly, wholesale water service from the City under this Agreement is conditioned upon and shall terminate and expire automatically in the event that the Customer, without the prior written consent of the City:

(a) increases the area that receives potable water from the City by constructing or installing water lines or facilities to transport potable water received from the City outside the Wholesale Service Area; or

(b) provides retail water service to areas outside the Wholesale Service Area using potable water obtained from the City; or

(c) otherwise enlarges in any manner the area served with water obtained from the City without the prior written consent of the City; or

(d) knowingly connects or continues to provide water service any customer who, in turn, sells water obtained from the City under this Agreement to another entity or legal person located outside of the Wholesale Service Area; or

(e) the Customer creates, merges into, converts to, or requests annexation into any form of water district or other political subdivision without the prior written approval of the City Council.

8.02. Area Restrictions as Condition Precedent to Continuance of Wholesale Service. The limitations stated herein shall be construed as a contractual requirement for consent by the City to the enlargement of the City's required performance hereunder and a condition precedent to further performance by the City hereunder.

8.03. Reciprocal Service Covenant. City and Customer agree that, upon the request of the other, temporary water service will be provided to retail customers along or adjacent to the service area of the requesting entity until the requesting entity is able to construct its lines and mains necessary to service such customers provided that:

(a) the non-requesting entity has lines and mains within a reasonable distance and is capable of providing such retail service;

(b) the non-requesting entity agrees to provide such retail service on a temporary basis;

(c) provision of such retail service will not result in a need for substantial construction or diminution in retail service to its own customers;

(d) the non-requesting entity providing temporary retail service may place such limitations on the level and geographic scope of such temporary retail service as is deemed in the best interest of such non-requesting entity;

(e) the customer receiving such retail service agrees to accept the same from the non-requesting entity and pay applicable fees, costs and charges necessary to extend such temporary retail service;

(f) provision of such temporary retail service does not violate applicable law, the provisions of any agreement respecting the provision of utility service to the area or the provisions of any certificate of convenience and public necessity (CCN) respecting utility service area boundaries.

ARTICLE IX. TERM AND RENEWALS

9.01. Term of Agreement. This Agreement shall be effective from the date of due execution by the authorized representatives of the City and Customer and shall continue in effect for a period of **twenty five (25)** years unless earlier terminated in accordance with the provisions hereof.

9.02. Option to Require Customer Source for Raw Water; Termination for Failure to Provide Customer Source of Raw Water. After the expiration of 15 years from the effective date of this Agreement, the City may, at the option of the Director on 12 months written notice to the Customer, require the Customer to provide its own source of raw water for the City to treat and transport to the Customer in lieu of the City employing its own water right or contract supply of raw water for this Agreement. The alternative source of raw water obtained by the Customer must be from the Lower Colorado River at Austin, Texas, and must be accessible to the City at a point or points of diversion approved by the Director, and if necessary, LCRA, to allow the City to employ its existing intake structures for withdrawal of the Customer's raw water from the River without additional expense to the City. Since the City will be withdrawing raw water from the Colorado River on the Customer's behalf for treatment and transportation to the Customer, the terms and conditions relating to the Customer's alternative raw water source must be acceptable to the City and shall be subject to review and approval by the Director in advance of the execution thereof.

If the Customer has not secured an alternative source of raw water on terms acceptable to the Director on or before the expiration of the 12 month notice period described above, the City may terminate this Agreement on 24 months written notice to the Customer on the expiration of which this Agreement shall terminate and expire without further notice and shall be of no further force and effect. In the event of termination under this Article, the Customer shall be solely responsible for all costs associated with securing an alternative source of treated water. If the Customer has commenced and is proceeding in good faith toward the completion of contractual arrangements to secure an alternative source of raw water supply within the 12 month notice period described above, but cannot reasonably complete such contractual arrangements by the expiration of the 12 month notice period, and the Customer makes written request for an extension of the time for completion of such arrangements before the expiration of the 12 month notice period, the Director may extend the time for the Customer to complete its contractual arrangements for a reasonable period not to exceed 180 days.

In the event that the City requires the Customer to provide its own source of raw water for treatment and transportation under this Agreement, the City will begin the use of the raw water supplied by the Customer in the fiscal year next succeeding the Director's approval of the Customer's arrangements for alternative raw water supply and the City agrees to recompute the wholesale water rate applicable to the Customer to delete the City's cost of raw water from the wholesale rate applicable to the Customer.

9.03. Voluntary Termination. Without prejudice to any provision hereof setting forth terms for automatic expiration or expiration in the event of default by the Customer, this Agreement may also be terminated by mutual agreement of the parties or at the option of either party by giving thirty six (36) months written notice to the other party. In the event that either party elects to terminate this Agreement by giving thirty six (36) months written notice, the Customer shall exercise reasonable diligence to timely secure an alternative supply of treated water prior to the effective date of such termination. In the event of termination hereunder for any reason, the City shall not be responsible for any

costs and expenses of the Customer related, directly or indirectly, to securing alternative water service to the Customer. In the event that the Customer provides less than thirty six (36) months notice of termination hereof, the Customer shall pay the City for each month such notice is deficient, not as a penalty but as liquidated damages, an amount equal to the City's billings for water service for the corresponding month in the year preceding such deficient notice.

9.04. Default Process. The following provisions shall apply in the event of Default:

(a) **Default Proceedings for Non-Payment of Delinquent Bill.** If the City has not received payment from Customer within 30 days from the due date of the monthly bill, the bill will be considered delinquent, unless contested in good faith as provided above. In the event of a delinquency by the Customer in the payment of its monthly bill, the City will give written notice to the Customer of such delinquency and, if the Customer fails to make payment the delinquent amount within 30 calendar days from the date of receipt of the written notice, then the City may, at its discretion, temporarily terminate or limit service to Customer until payment is made; provided, however, that the Customer will have the right to continue to receive service during a good faith appeal of a disputed bill as provided in the City's Utility Service Regulations.

In the event a default in payment of a delinquent bill remains uncured by the Customer for a period of 90 calendar days, and there is no good faith appeal of a disputed bill pending, then the City shall have the right, at the City's sole option, to (i) permanently restrict service to the Customer under this Agreement, (ii) require the Customer to stop making new retail connections to the Customer System within the Wholesale Service Area after giving the Customer thirty (30) calendar days notice of its intent to do so and opportunity for the Customer to cure, or (iii) pursue such other and further remedies as the City shall deem appropriate to the circumstances.

(b) **Process for Defaults Other Than Non-Payment of Delinquent Bill.** If one Party believes that the other Party is in Default of any other provision of this Agreement, the non-defaulting Party will give written notice to the other Party, specifying the event of Default and extending the defaulting Party 90 days to cure the Default or, if the curative action cannot reasonably be completed within 90 days, 90 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 90 day period for notice and opportunity to cure must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to an alleged Default. The non-defaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in non-binding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 90 day period, or if curative action is not commenced or diligently pursued in the case of curative action that

cannot reasonably be completed in 90 days, the non-defaulting party may pursue all remedies, at law or in equity, that it deems appropriate to redress such default.

9.05. Changes in Law Affecting the Rights of Other Party. The City may terminate this Agreement on thirty (30) days written notice to the Customer if, during the tenure of this Agreement, the Customer directly sponsors, requests, lobbies for, or secures the adoption of state or federal legislation that impairs, undermines, restricts, eliminates, or otherwise adversely affects the rights of the City under this Agreement. The Customer may terminate this Agreement on thirty (30) days written notice to the City if, during the tenure of this Agreement, the City directly sponsors, requests, lobbies for, or secures the adoption of state or federal legislation that impairs, undermines, restricts, eliminates, or otherwise adversely affects the rights of the Customer under this Agreement.

Notwithstanding the above, the tender of comments or analyses with regard to proposed legislation or rules of a government agency affecting this Agreement shall not give rise to an ability to terminate this Agreement pursuant to this Section. In the event that the Customer secures adoption of legislation modifying or declaring this Section unlawful for any reason, this Agreement will terminate and expire automatically on the day prior to the effective date of such legislation.

9.06. Renewal. This Agreement may be renewed or extended by mutual agreement of the parties in writing for such additional periods as may be approved by the governing bodies of the Customer and the City.

ARTICLE X. PERFORMANCE AND FORCE MAJEURE

10.01. Performance By City. In every instance where the City is given a right by this Agreement to furnish any facilities or material or to do or perform any act in the Customer, the City shall in good faith make every reasonable effort to furnish any such facilities or material but shall never be required to do so.

10.02. Effect of Force Majeure. In the event that either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, whether in whole or in part, then the obligations of that party, to the extent affected by the force majeure, shall be suspended during the continuance of the inability provided, however, that due diligence is exercised to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure, relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, criminal conduct or sabotage, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods,

or other documents or information necessary or incidental to the provision of potable water to the Customer hereunder.

11.05. Provision of Further Documents. Customer shall execute and deliver such other and further legal documents or instruments as are necessary to effectuate the purposes and intent of this Agreement.

11.06. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

11.07. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof for all purposes, constitutes the entire agreement between the parties relative to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, covenants or warranties, whether oral or in writing, respecting the subject matter hereof.

11.08. Amendment. No amendment of this Agreement shall be effective unless and until it is duly approved by the governing bodies of each party and reduced to a writing signed by the authorized representatives of the City and the Customer.

11.09. Independent Contractor. City shall have the status of an independent contractor hereunder and shall be solely responsible for the proper direction of its employees hereunder and the City's employees shall not be considered employees or borrowed servants of the Customer for any reason.

11.10. No Third Party Beneficiary. This Agreement shall be construed as a contract respecting the performance of utility services and nothing herein shall be construed to confer any property right, privilege or benefit on any person or entity not a party hereto or otherwise create any vested right or third party beneficiary relationship.

11.11. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Travis County, Texas.

11.12. Venue. Venue for any suit arising under this Agreement shall be in Travis County, Texas.

11.13. Assignment. Neither party may assign its rights and obligations hereunder without the prior written consent of the other.

11.14. **Duplicate Originals.** This Agreement may be executed in duplicate originals each of equal dignity.

11.15. **Effective Date.** This Agreement shall be effective from and after the date of execution by the respective authorized representatives of the City and the Customer.

IN WITNESS WHEREOF, the authorized representatives of the City and the Customer have executed this Agreement as of the date(s) set forth below.

APPROVED AS TO FORM:

John P. Prentice
Assistant City Attorney

THE CITY OF AUSTIN:

By: *Roger Chan*
Roger Chan
Assistant City Manager

Date: February 20, 2001

APPROVED AS TO FORM:

Bob J
Attorney for Customer

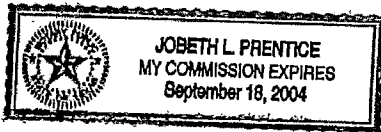
THE CITY OF MANOR:

By: *Jose Sanchez, Jr.*
Jose Sanchez, Jr., Mayor

Date: 2/13/2001

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT is acknowledged before me on this 20th day of February 2001, by Roger Chan, Assistant City Manager, of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



Jobeth L. Prentice
Notary Public, State of Texas

Printed/Typed Name of Notary

My Commission Expires: _____

EXHIBIT A
DEPICTION OF WHOLESALE SERVICE AREA AND POINT OF DELIVERY

City of Manor

WATER DEPARTMENT

OPERATION AND MAINTENANCE MANUAL

James Torres
Water and Wastewater Superintendent
August 27, 2014

This manual is designed to inform **City of Manor Water Department** personnel of operation and maintenance requirements for **City of Manor Water Supply**. Daily, Monthly, Quarterly, yearly and other maintenance requirements are outlined in the following synopsis. All actions are to be recorded on Daily Sheet and Monthly log book and retained for future use. Operation and Maintenance Manuals as well as construction drawings for all pieces of equipment are also available at each well location in the event further information is required.

Gilbert Lane Clear Well

Daily:

- Inspect Water Storage and check levels;
- Read Well #1 , Well #2, Well#3, water meter and distribution master water meter readings and record in the Daily log;
- Check Weight and record Chlorine weigh in the Daily log;
- Check Weight and record LAS weigh in the Daily log;
- Test for (Free Chlorine or Chloramines) , and Mono and record
- Check all operations at the pump house ventilation, heat, lights, Distribution pumps, LAS pumps and chlorinators to assure proper operation
- Check all sites and surrounding areas for trash, litter, unauthorized activities report any unauthorized activities as required in the emergency response plan and local police or authorities as necessary;

FM 973 Intermitted Well

Daily:

- Inspect Water Storage and check levels;
- Read Distribution master water meter readings and record in the Daily log;
- Check all sites and surrounding areas for trash, litter, unauthorized activities report any unauthorized activities as required in the emergency response plan and local police or authorities as necessary;

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402 West Parsons Ground Storage Tank

Daily:

- Inspect Water Storage and check levels;
- Read Distribution master water meter readings and record in the Daily log;
- Inspect and check SCADA System;

Distribution System

- Test for Free Chlorine or Chloramines (City of Manor)

Sunday	201 E. Parsons	Monday	502 E. Wheeler
Tuesday	11820 Bastrop	Wednesday	16709 Trevin
Thursday	310 W. Murray	Friday	11811 Navastota
Saturday	400 W Parsons		

- Test for Free Chlorine or Chloramines (Manville WSC)

Sunday	13312 Prairie	Monday	18113 Canopy
Tuesday	12705 Bella	Wednesday	12318 Jamie
Thursday	19424 Smith Gin	Friday	18320 Maxa
Saturday	14300 Pebble Run		

- Read Distribution master water meter readings and record in the Daily log at Stonewater, Bell Farm, And carriages Hills;

Monthly;

- Mow, brush cut, and all areas surrounding storage tanks wells and associated infrastructure;
- Assure that the integrity of all fencing is secure;
- Check signals from all telemetry;
- Inventory all spare parts for service brass, repair clamps, curb boxes, chemical feed equipment, and hydrant parts. Assure that inventory is retained in the log book. Maintain the minimum number of parts as required. Replace all material shortfalls ASAP.
house or search the internet and download copies;
- Assure that all MSDS sheets are updated and retained at the pump houses;
- Flush all dead-end hydrants;

Quarterly;

- Service's Pumps and motors;

Yearly;

- Inspect Water Tanks;
- Test master, wells, and distribution meter;

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PUC DOCKET NO. 43378

APPLICATION OF THE CITY OF
MANOR TO AMEND ITS WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 10947

§
§
§
§

PUBLIC UTILITY
COMMISSION OF TEXAS

CITY OF MANOR'S RESPONSE TO COMMISSION STAFF'S FIRST REQUEST TO
THE CITY OF MANOR
QUESTION NOS. STAFF 1-1 THROUGH 1-3

COMES NOW the City of Manor, Texas, and files this City of Manor's Response to Commission Staff's First Request to the City of Manor Question Nos. Staff 1-1 through 1-3 (the "Response") and responds as follows:

- Staff 1-1** Please provide copies of the purchase water agreements from Blue Water LP and any other entity from whom Applicant is purchasing water.
- Response** Please see attached Further Amended and Restated Water Supply Agreement between Blue Water Project 130 LP and the City of Manor, dated effective as of June 1, 2014, and the Wholesale Water Service Agreement between the City of Austin and the City of Manor, dated February 13, 2001. **Witness:** Frank Phelan, City Engineer
- Staff 1-2** Has the Utility System within the proposed CCN area (referenced by restated, revised, and amended agreement regarding the creation and operation of the

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Presidential Glen Municipal Utility District) been conveyed to the City for operation and maintenance?

Response The utilities have not yet been installed within the proposed CCN area. At the time of platting, the developer will be required to obtain City approval of construction plans for the utilities to be installed within the proposed CCN area, as well as any required off-site improvements. The developer shall be required to either post fiscal to guarantee completion of the utilities, or complete the utilities to obtain approval of a final plat for the CCN area. After completion of the utilities in accordance with approved construction plans and applicable City ordinances, and after passing inspection conducted by the City Engineer, the City will accept the utilities for maintenance and operation. **Witness:** Frank Phelan, City Engineer

Staff 1-3 Provide documentation that demonstrates that the City is in compliance with the violation cited by the TCEQ on April 24, 2014 for failure to have a plant operations manual.

Response Please see attached City of Manor Water Department Operation and Maintenance Manual. **Witness:** Mike Tuley,

WHEREFORE, PREMISES CONSIDERED, the City of Manor, Texas, files this City of Manor's Response to Commission Staff's First Request to the City of Manor Question Nos. Staff 1-1 through 1-3 and requests the PUC and all parties take due notice.

Respectfully submitted,

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City of Manor WATER DEPARTMENT OPERATION AND MAINTENANCE MANUAL

James Torres
Water and Wastewater Superintendent
August 27, 2014

This manual is designed to inform **City of Manor Water Department** personnel of operation and maintenance requirements for **City of Manor Water Supply**. Daily, Monthly, Quarterly, yearly and other maintenance requirements are outlined in the following synopsis. All actions are to be recorded on Daily Sheet and Monthly log book and retained for future use.

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- Check Weight and record LAS weigh in the Daily log;
- Test for (Free Chlorine or Chloramines) , and Mono and record
- Check all operations at the pump house ventilation, heat, lights, Distribution pumps, LAS pumps and chlorinators to assure proper operation
- Check all sites and surrounding areas for trash, litter, unauthorized activities report any unauthorized activities as required in the emergency response plan and local police or authorities as necessary;

FM 973 Intermitted Well

Daily:

- Inspect Water Storage and check levels;
- Read Distribution master water meter readings and record in the Daily log;
- Check all sites and surrounding areas for trash, litter, unauthorized activities report any unauthorized activities as required in the emergency response plan and local police or authorities as necessary;

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402 West Parsons Ground Storage Tank

Daily:

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- Read Distribution master water meter readings and record in the Daily log;
- Inspect and check SCADA System;

Distribution System

- Test for Free Chlorine or Chloramines (City of Manor)

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house or search the internet and download copies;
- Assure that all MSDS sheets are updated and retained at the pump houses;
- Flush all dead-end hydrants;

Quarterly;

- Service's Pumps and motors;

Yearly;

- Inspect Water Tanks;
- Test master, wells, and distribution meter;

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