

I. PURPOSE:

The purpose of this Report is to Estimate the Fair Market Value of lots located in Oak Glen Park, San Antonio, Bexar County, Texas. Said values are to be used in the incorporation of Denton Development Company, Inc.

II. DEFINITION OF MARKET VALUE:

Market value is the highest price, fairly determined, in terms of money, which could be commanded for property by a seller who is willing and able, but not obligated to sell, and is well informed as to the rights and benefits inherent in or attributable to the property, from a buyer who is willing and able, but not obligated to buy, and is also well informed as to the rights and benefits inherent in or attributable to the property, if the property is exposed to sale in the open market for a reasonable length of time.

III. LOCATION:

Subject Property is located around seven (7) miles North of the city center of San Antonio with the Lockhill Selma Road forming the South boundary. This road also forms the North boundary of Castle Hills. Addition is located within the city limits of the City of San Antonio, Bexar County, Texas.

IV. DESCRIPTION OF AREA:

Subject Property is located across the street from the best section of Castle Hills, which is around 90% developed with single family residences ranging in value from eighteen to sixty thousand dollars (\$18,000.00 - \$60,000.00), and is considered one of San Antonio's 100% residential areas.

V. MARKET:

The market in this area is very strong with sales being made before completion.

VI. UTILITIES:

Addition will be furnished with utilities as follows:

A - Water

By private water company to be approved by the FHA.

B - Natural Gas

By the City Public Service Board

C - Electric Energy

By the City Public Service Board.

D - Sanitary Sewers

Sewage disposal will be by Septic Tank to be approved
by Public Health Authority.

E - Telephone

By the Southwestern Bell Telephone Company.

F - Garbage Collection

By the City of San Antonio.

VII. STREETS:

To be curbed and paved according to the City of San Antonio
and accepted by the city for maintenance.

VIII. VALUATION:

Following is the value of the land covered in this Report:

<u>BLOCK 1</u>		<u>BLOCK 2</u>	
Lot 1	\$ 4,800.00	Lot 1	\$ 4,600.00
Lot 2	4,400.00	Lot 2	4,400.00
Lot 3	4,400.00	Lot 3	4,400.00
Lot 4	4,400.00	Lot 4	4,400.00
Lot 5	4,400.00	Lot 5	4,800.00
Lot 6	4,400.00		
Lot 7	4,400.00		
Lot 8	4,400.00		
Lot 9	4,600.00		
<u>BLOCK 3</u>		<u>BLOCK 4</u>	
Lot 1	\$ 4,300.00	Lot 1	\$ 4,500.00
Lot 2	4,300.00	Lot 2	5,000.00
Lot 3	4,300.00	Lot 3	5,000.00
Lot 4	4,300.00	Lot 4	5,000.00
Lot 5	4,300.00	Lot 5	5,000.00
Lot 6	4,500.00	Lot 6	5,000.00
Lot 7	4,800.00	Lot 7	5,000.00
Lot 8	4,000.00	Lot 8	5,000.00
Lot 9	4,400.00	Lot 9	5,000.00
Lot 10	4,400.00	Lot 10	5,000.00

<u>BLOCK 3</u>		<u>BLOCK 4</u>	
Lot 11	\$ 4,400.00	Lot 11	\$ 5,000.00
Lot 12	4,400.00	Lot 12	5,000.00
Lot 13	4,400.00	Lot 13	5,000.00
Lot 14	4,400.00	Lot 14	5,000.00
Lot 15	5,100.00	Lot 15	5,000.00
		Lot 16	5,000.00

<u>BLOCK 5</u>		<u>BLOCK 6</u>	
Lot 1	\$ 5,000.00	Lot 1	\$ 4,300.00
Lot 2	5,000.00	Lot 2	4,300.00
Lot 3	5,000.00	Lot 3	4,300.00
Lot 4	5,000.00	Lot 4	4,300.00
Lot 5	5,000.00	Lot 5	4,300.00
Lot 6	5,000.00	Lot 6	4,300.00
Lot 7	5,000.00	Lot 7	4,400.00
Lot 8	5,000.00	Lot 8	4,700.00
		Lot 9	4,700.00
		Lot 10	4,700.00
		Lot 11	4,700.00
		Lot 12	4,700.00
		Lot 13	<u>4,400.00</u>

Estimated Value All Land \$ 306,700.00

IX. JUSTIFICATION OF LAND VALUES:

The land values used in this Report are justified by sales of similar lots located in Castle Heights, which are not as desirable as Subject Property. See Exhibit "A" for Plat of same.

X. QUALIFICATIONS OF APPRAISERS:

Robert P. Cline, S.R.A.

Independent Appraiser; Realtor; Member of the Local, State and National Real Estate Boards.

Senior Member of the Society of Residential Appraisers.

Approved Appraiser for the Veterans Administration.

Has been active in the Real Estate and Appraisal Field for the past ten (10) years. At present serving as President of the San Antonio

Chapter of the Society of Residential Appraisers.

Floyd T. Snyder, S.R.A.

Valuation Consultant; Realtor; Member of the Local, State and National Real Estate Boards.

Senior member of the Society of Residential Appraisers.

Approved Appraiser for the Veterans Administration.

Has been active in the Real Estate and Appraisal Field for thirty (30) years.

Has held the following offices: Secretary, Treasurer and President of the San Antonio Chapter of Residential Appraisers; Governor and Vice President of the International Society of Residential Appraisers, now serving as International President of the Society of Residential Appraisers.

XI. CERTIFICATION:

We, the undersigned, do hereby certify:


That we have no interest, pecuniary or otherwise, present or contemplated, in the property involved in this Appraisal. That we believe the estimate of value on the above described property is

Three Hundred Six Thousand Seven Hundred Dollars

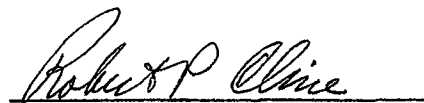
(\$306,700.00)

That in its estimation, we have endeavored to accurately ascertain, analyze, weigh, and interpret, all items of fact and general data having a bearing on the problem.

That no element or aspect of value known to us, having any effect upon the valuation, either favorably or detrimentally, has been intentionally overlooked, omitted from consideration, or eliminated, from this Appraisal.


Floyd T. Snyder, S.R.A.

February 10, 1955.


Robert P. Cline, S.R.A.

SECOND AMENDMENT

FILED
In the Office of the
Secretary of State of Texas

TO THE

DEC 28 1994

ARTICLES OF INCORPORATION
OF DENTON DEVELOPMENT COMPANY, INC. Corporations Section

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Second Amendment to its Articles of Incorporation which increases the number of outstanding shares, reduces the par value of its shares, and authorizes the exchange of shares for debt.

ARTICLE I

The name of the corporation is DENTON DEVELOPMENT COMPANY, INC.

ARTICLE II

The following amendment to the Articles of Incorporation was adopted by the shareholders and directors of the Corporation on December 23, 1994.

The Amendment changes Article Four (IV) of the amended Articles of Incorporation and the full text of the provision as amended is as follows:

Article Four (IV) is amended to read:

4. The aggregate number of shares which the corporation shall have authority to issue is Ten Million (10,000,000) shares of common stock with the par value of Ten Cents (\$.10) per share.

ARTICLE III

The number of shares of the Corporation outstanding at the time of such adoption was TWELVE THOUSAND (12,000) shares of one-dollar (\$1.00) par value common stock, all such shares being voting shares. The holders of all shares outstanding and entitled to vote on said amendment have signed a consent in writing unanimously adopting this amendment.

ARTICLE IV

The manner in which such amendment effects the amount of stated capital and the amount of stated capital as changed by such amendment is as follows:

Stated capital prior to amendment is \$12,000. After amending the Articles of Incorporation, stated capital will be decreased to \$1,200.

ARTICLE V

All issued and outstanding shares of \$1.00 par value common stock shall be exchanged for a like number of shares of \$.10 par value common stock, and the certificates evidencing the shares of \$1.00 par value common stock shall be cancelled and new certificates evidencing the \$.10 par value common stock shall be issued in exchange therefor.

Dated: December 23, 1994

DENTON DEVELOPMENT COMPANY, INC.

By: [Signature]
LLOYD A. DENTON, JR., President

By: [Signature]
ANN D. WELLS, Secretary

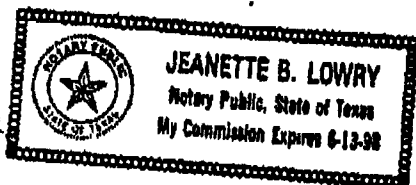
STATE OF TEXAS

COUNTY OF BEXAR

§
§
§

Before me, a notary public, on this day personally appeared LLOYD A. DENTON, JR., know to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 23rd day of December, 1994.



[Signature]
Notary Public in and for the State of Texas

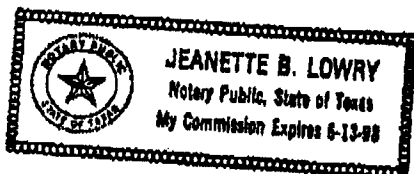
STATE OF TEXAS

COUNTY OF BEXAR

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Before me, a notary public, on this day personally appeared ANN D. WELLS, know to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 23rd day of December, 1994.



[Signature]
Notary Public in and for the State of Texas

a T Code ■ 13196

04065151081

Do not write in the space above

**Texas Franchise Tax
Public Information Report***Must be filed to satisfy franchise tax requirements*

Corporation name and address

DENTON DEVELOPMENT CO., INC.
3303 OAKWELL COURT #100
SAN ANTONIO, TX 78218

c Taxpayer identification number

17412480554

d Report year

2003

e PIR / IND ■

1, 2, 3, 4

Secretary of State file number or, if none,
Comptroller unchartered numberItem k on Franchise
Tax Report form,
page 1g ■
0012832660

The following information *must* be provided for the Secretary of State (SOS) by each corporation or limited liability company that files a Texas Corporation Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary.
The information will be available for public inspection.

If the preprinted information is not correct, please type or print the correct information. **Please sign below!**☒ Check here if there are currently **no changes** to the information preprinted in Sections A, B, and C of this report.

Corporation's Principal Office

3303 OAKWELL CT #100

Principal Place of Business

SAN ANTONIO

Section A Name, title, and mailing address of each officer and director.

Name	Title	Director	Social Security Number (optional)
LLOYD A DENTON JR	Pres	<input checked="" type="checkbox"/> Yes	450-80-8290
Mailing Address			Term expiration (mm-dd-yyyy)
3303 OAKWELL COURT #100 SAN ANTONIO, TX 78218			
ANN D WELLS	Secr	<input checked="" type="checkbox"/> Yes	463-72-1874
Mailing Address			Term expiration (mm-dd-yyyy)
3303 OAKWELL COURT #100 SAN ANTONIO TX 78218			
		<input type="checkbox"/> Yes	
Mailing Address			Term expiration (mm-dd-yyyy)
		<input type="checkbox"/> Yes	
Mailing Address			Term expiration (mm-dd-yyyy)
		<input type="checkbox"/> Yes	
Mailing Address			Term expiration (mm-dd-yyyy)
		<input type="checkbox"/> Yes	
Mailing Address			Term expiration (mm-dd-yyyy)

Section B List each corporation or limited liability company, if any, in which this reporting corporation or limited liability company owns an interest of ten percent (10%) or more. Enter the information requested for each corporation or limited liability company.

Name of Owned (subsidiary) Corporation	State of Incorporation	Texas SOS File Number	Percentage Interest
NONE LIVE OAK VILLAGE INC	TEXAS	0023523420	100%
Name of Owned (subsidiary) Corporation	State of Incorporation	Texas SOS File Number	Percentage Interest

Section C List each corporation or limited liability company, if any, that owns an interest of ten percent (10%) or more in this reporting corporation or limited liability company. Enter the information requested for each corporation or limited liability company.

Name of Owning (parent) Corporation	State of Incorporation	Texas SOS File Number	Percentage Interest
NONE			
Registered Agent and Registered Office Currently on File (See instructions if you need to make changes)			
Agent: ANN DENTON WELLS Office: 3303 OAKWELL CT #100 SAN ANTONIO TX 78218			
<input type="checkbox"/> Check here if you need forms to change this information.			
I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief and that a copy of this report has been mailed to each person named in this report who is an officer or director and who is not currently employed by this corporation or limited liability company or a related corporation.			
sign here	Officer, Director, or Other Authorized Person	Title	Date
	Ann Denton Wells	Secretary	3/3/04
Daytime Phone (area code and number)			
210-828-6418			IN

Exhibit I

Denton Communities

...developing a difference

FAX TRANSMITTAL

TO: Mr. Mike Albach, BexarMet
Via Facsimile 922-5152

DATE: September 10, 2003

FROM: Laddie Denton

RE: *Lookout Canyon and Agua Development*

Your memo of August 27, 2003, to Gene Powell was forwarded to me for response on these items:

1. Storage Tank. Given the size, details are relatively superfluous. So while we appreciate the opportunity to kibitz, whatever works best for BexarMet is fine. On the color, we usually request a dark (forest) green. Again, the height eliminates any dark green screening value, so we would suggest an off-white, cream or beige color. What do you usually do color-wise? And can we put LOOKOUT CANYON on the upper lip?

2. Agua Facility's Design. It appears we will be retaining Alamo Consulting Engineers (ACES) to do the design work you specified, and the related submissions, processing and oversight of construction. Paul Schroeder of ACES will be contacting you with some questions regarding the facilities and what you want to see. We hope to move along on this project rapidly and get the facilities approved and bid. We would appreciate whatever help you can provide Paul with his design questions.

And on a separate matter: we have been working with the Friesenhahn family for many years. Their tract adjoins Lookout Canyon on the south, Timberwood Park on the west,

Including this cover sheet, this fax is comprised of 2 page(s).

CONFIDENTIALITY NOTICE

THE PAGES OF THIS FAX TRANSMISSION CONTAIN CONFIDENTIAL INFORMATION INTENDED ONLY FOR USE OF THE INDIVIDUAL OR ENTITY NAMED. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY REVIEW, DISTRIBUTION, DISSEMINATION, COPYING OR OTHER USE OF THIS TRANSMISSION IS PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US AT ONCE AT THE NUMBER SHOWN BELOW SO WE CAN ARRANGE TO RETRIEVE THE TRANSMISSION AT OUR COST.

Mr. Mike Albach

September 10, 2003

RE: *Lookout Canyon and Agua Development*

and Borgfeld Road on the north; it is the site of the Agua well. We are moving into the predevelopment phase of planning with the Family. We will need to determine how, by whom, and at what cost this tract is serviced for water supply. It is our understanding that somehow Friesenhahn is in the SAWS service area, but can't be served. Obviously, the Friesenhahns and we would like to use "your/our" water. We would like to meet with you to discuss what we need to do to obtain service. This project would be 400-500 units, so it is not a small package.

Please advise on the above. Feel free to call and/or email me any questions. Thank you.

LAD:ss

Cc: Mr. Paul Schroeder (*Via e-mail*)

Exhibit J

LEASE,
WELL CONSTRUCTION
AND
WHOLESALE WATER SALES AGREEMENT

This Lease, Well Construction and Wholesale Water Sales Agreement ("Agreement") is made and entered into effective as of _____, 2003 ("Effective Date"), by and between **Agua Development L.L.C.**, a Texas limited liability company ("Agua"), and **Bexar Metropolitan Water District**, a water district organized under the laws of the State of Texas ("BexarMet").

RECITALS

Whereas, Anton B. and Marjorie Friesenhahn (herein referred to collectively as "Owner") are owners of that certain 253.13 acre tract in Bexar County, Texas, more particularly described in **Exhibit A** attached hereto and incorporated herein ("Property");

Whereas, Owner leased the groundwater rights attributable to the Property, together with the right to use the surface of the Property as reasonably necessary therefor, to Barrett Texas Interests, Ltd., a Texas limited partnership ("BTI"), as more particularly described in and pursuant to the Water Lease, dated effective as of July 14, 2000, between Owner and BTI ("Base Lease"), which Base Lease is evidenced by the Memorandum of Water Lease, of even date therewith, recorded in Volume 8508, Page 1176, Real Property Records of Bexar County, Texas;

Whereas, BTI assigned all of its interest in and to the Base Lease to Agua pursuant to the Assignment, dated effective as of September 15, 2000, recorded in Volume 8572, Page 2092, Real Property Records of Bexar County, Texas;

Whereas, BexarMet is a governmental agency of the State of Texas, a water conservation district and a body politic and corporate, created and operating pursuant to Article XVI, §59 of the Constitution of Texas, and TEXAS REVISED CIVIL STATUTES Art. 8280-126, as amended; and is a retail public water utility holding water Certificates of Convenience and Necessity issued by the Texas Natural Resources Conservation Commission (now known as the Texas Commission on Environmental Quality), which include the Property;

Whereas, Agua is willing to drill and develop a water well (the initial water well and any additional water well(s) subjected to the terms hereof are herein collectively referred to as the "Well", whether one or more) and other appurtenant pumping, storage, transmission and water production facilities (collectively, the "Facilities") on the Property for the withdrawal of and production of groundwater from the Trinity Aquifer ("Water"), in reliance upon the agreement of BexarMet to lease and operate the Well and Facilities and to purchase the Water as provided herein;

Whereas, BexarMet, having specialized knowledge in the operation of public drinking water wells and water works, desires to and will lease and operate the Well and Facilities after completion of development thereof by Agua and during the production of Water pursuant to this Agreement; and

Whereas, BexarMet desires to purchase and will take and beneficially use, without unnecessary waste, all Water produced from the Well, subject to all applicable rules and regulations of state and federal agencies and upon and subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, conditions, obligations, and benefits set forth in this Agreement, Agua and BexarMet agree as follows:

1. Term.

(a) Primary Term. This Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years (the "Primary Term"), unless terminated sooner or extended as provided herein.

(b) Option Term. Provided this Agreement has not terminated as provided herein and ~~no event of noticed, uncured default exists and no event has occurred which with the passage of time or giving of notice or both would constitute an event of default hereunder,~~ BexarMet may, at its option, renew this Agreement upon the terms and conditions set forth herein, for one (1) additional period of five (5) years (the "Option Term"). The option to renew this Agreement must be exercised by BexarMet by delivery of written notice to Agua at least one (1) year prior to expiration of the Primary Term. The Primary Term and/or the Option Term are herein sometimes collectively referred to as the "Term".

(c) Termination. This Agreement shall terminate upon the occurrence of any of the following:

(1) If at any time or times during the Term, the production capacity of the Well drops to below a monthly average of 50 gpm (as determined in accordance with **Section 2(e)** herein), or if the Water quality changes to the extent that it precludes use of the Water for drinking water in economic quantities after conventional chlorination treatment, then BexarMet may elect to terminate this Agreement by written notice of the decision to terminate this Agreement to Agua. Agua shall have the right, but not the duty, upon receipt of such notice, to remedy such quality and/or quantity deficiencies at Agua's sole cost and expense. If Agua fails to do so, BexarMet may discontinue production of Water from the Well and by further written notice to Agua terminate this Agreement effective sixty (60) days after Agua's receipt of written notice of such deficiency.

(2) Upon the election of the non-defaulting party if an event of default occurs under **Section 7** herein.

(3) Upon the election of either party to be effective at any time after _____, December 30, 2010, by written notice to the other party at least twelve (12) months prior to the effective date of termination.

If this Agreement is terminated at any time on or before December 30, 2007, due to any reason except Agua's default under **Section 7** herein, BexarMet shall pay to Agua within thirty (30) days after the Effective Date of termination of this Agreement, the sum equal to the difference between the Facilities Cost (as defined in **Section 2(d)** herein), and the total Base Payments actually received by Agua to the effective date of termination pursuant to Section 5 herein.

2. Construction of Well and Facilities.

(a) Well. Agua has completed construction of the Well on the Property as described and depicted on **Exhibit B** attached hereto and incorporated herein. Owner has granted a Sanitary Control Easement around the Well Site, as recorded in Volume 8925, Page 1283, Real Property Records of Bexar County, Texas. The Well has been approved for interim use by the Texas Commission on Environmental Quality ("TCEQ"), as evidenced by TCEQ's letter dated September 19, 2002 ("Interim Use Approval"), a copy of which is attached hereto as **Exhibit C** and incorporated herein. Agua shall be responsible, at its sole expense, for obtaining final approval from TCEQ for placing the Well in service in accordance with the conditions set forth in the Interim Use Approval and all applicable regulations ("Final Approval"). The Well shall be deemed completed and accepted by BexarMet upon receipt by Agua of the Final Approval issued by TCEQ.

(b) Additional Wells. Agua may, at its option and expense, drill additional wells on the Property at any time and from time to time. Such additional wells shall be and remain the sole property of Agua, and shall not be subject to the terms of this Agreement unless Agua elects, by written notice to BexarMet, to include any additional well as a Well as defined herein, and to subject such well to the terms and conditions set forth herein.

(c) Facilities Plans. Agua shall, at its expense, construct the Facilities as described in **Exhibit D** attached hereto and incorporated herein. Agua and BexarMet acknowledge that the estimated costs of design, construction and permitting of the Facilities is not exceeding \$ 225,000.00 ("Cost Estimate"). The Facilities shall be constructed in accordance with the plans and specifications therefore approved by Agua and BexarMet as provided herein ("Facilities Plans"). Within fifteen (15) days after the Effective Date, BexarMet shall deliver to Agua conceptual plans and specifications for the Facilities, including all operating requirements of BexarMet ("BexarMet Requirements"). Within thirty (30) days after receipt of BexarMet's Requirements, Agua shall cause to be prepared and delivered to BexarMet the proposed Facilities Plans prepared by an

engineer selected by Agua and reasonably acceptable to BexarMet ("Engineer"). BexarMet shall have ten (10) days after receipt of the Facilities Plans to review same and provide Agua with any written objections thereto. Failure by BexarMet to object to the Facilities Plans in the time and manner provided herein shall constitute BexarMet's approval of the Facilities Plans as submitted by Agua. If BexarMet timely objects to the Facilities Plans, Agua shall use reasonable efforts to address such objections, provided that in no event shall Agua be obligated to implement any cure that would materially delay the start of construction of the Facilities and/or increase the Cost Estimate for the Facilities. If Agua is unable or unwilling to cure any such objections, Agua shall notify BexarMet in writing and this Agreement shall terminate effective as of the date of such notice, and neither party shall have any further rights, duties or obligations hereunder, except for those matters which expressly survive termination of this Agreement.

(d) Construction of Facilities. After approval of the Facilities Plans by Agua and BexarMet, Agua shall enter into a contract ("Facilities Contract") with one of the third party contractors identified on **Exhibit D** attached hereto or other contractor selected by Agua and reasonably acceptable to BexarMet ("Contractor") for the construction of the Facilities. The Facilities Contract shall provide for completion of construction of the Facilities within 270 days after commencement thereof at a cost not to exceed the Cost Estimate. The Facilities shall be deemed completed and accepted by BexarMet upon receipt by Agua of a certificate from the Engineer stating that the Facilities have been substantially completed in accordance with the Facilities Plans. Upon final completion of the Facilities, Agua shall deliver to BexarMet a statement certifying the total costs of design, construction and permitting of the Facilities ("Facilities Cost").

(e) Production Capacity. After completion of each Well, the production capacity of each Well shall be determined annually by a registered professional engineer acceptable to Agua and BexarMet ("Capacity Engineer"), based upon aquifer performances tests performed in accordance with accepted best hydro geological practices and regulatory and/or force majeure limitations. The length of the pump test(s) will be agreed upon based on the recommendation of the Capacity Engineer. The annual estimated sustainable production capacity so determined for the Well is herein referred to as the "Annual Production Capacity." Agua and BexarMet acknowledge and agree that the initial Annual Production Capacity for the Well for the first year of the Term is _____ gpm.

3. Lease, Wholesale Water Sales, and Operation of Premises.

(a) Lease and Water Sales. Effective upon the date of completion of the Well and Facilities (whichever is later) as evidenced and in accordance with **Section 2** herein ("Acceptance Date"), Agua and Bexar Met agree as follows:

(1) Agua leases the Well and the Facilities (collectively, the "Premises") to BexarMet and,

(2) Agua agrees to sell to BexarMet the Water produced therefrom and from

the Well.

(3) BexarMet leases and agrees to operate the Premises and

(4) Bexar Met agrees to accept and/or purchase not less than 325,851 gallons (or 226.3 gpm) of water per day produced therefrom from the Well ("Minimum Water Purchase") and from

(5) From and after the Effective Date, Bexar Met agrees to pay to Agua the Base Payment (as defined in Section 5 herein) for the Term, upon and subject to the terms of this Agreement.

(b) Additional Water. Bexar Met, at its sole discretion, by written request to Agua, may purchase additional Water if such additional Water can be produced by the existing Well(s), subject to the same terms and conditions as for the Minimum Water Purchase component of this Agreement. Further, BexarMet, at its sole discretion, may make a written request to Agua for additional Water in excess of the production capacity of the existing Well(s). Agua, at its sole discretion, may provide the additional Water from one or more additional wells, upon terms and conditions mutually acceptable to Agua and BexarMet, and set forth in a written amendment to this Agreement executed by both parties.

(c) Excess Water Capacity. Notwithstanding the foregoing, Agua reserves the right to use, sell, lease or otherwise dispose of, all Water produced from the Well(s) in excess of the Minimum Water Purchase quantity ("Excess Water Capacity"), unless and to the extent that BexarMet has exercised its option to purchase all or any part of the Excess Water Capacity by written notice to Agua as provided herein. Agua further reserves the right and privilege to use the Well(s) and Facilities for the production, use, sale, lease or other transfer of the Excess Water Capacity, to the extent reasonably necessary or convenient for such purpose. In the event Agua elects to use the Well(s) and Facilities for the production, use, sale, lease or other transfer of the Excess Water Capacity, Agua shall reimburse Bexar Met for a prorate portion (based on Water quantity) of all costs associated with the maintenance of the Well(s) and Facilities.

BexarMet, at its sole discretion, may make a written request to Agua for additional Water in excess of the production capacity of the existing Well(s). Agua, at its sole discretion, may provide the additional Water from one or more additional wells, upon terms and conditions mutually acceptable to Agua and BexarMet, and set forth in a written amendment to this Agreement executed by both parties. (d) Operation of Premises.

From and after the Acceptance Date, BexarMet shall be solely responsible for the operation of the Premises in accordance with the terms of this Agreement. BexarMet shall conduct, direct and have full control over all operations pertaining to the Well, Facilities, and the Easement Areas as permitted and required by, and within the limits of this Agreement. In its performance of services hereunder, BexarMet shall be an independent contractor and lessee, and not subject to the control or direction of Agua. BexarMet shall not be deemed, or hold itself out as, the agent of Agua with authority to bind Agua to any obligation or liability assumed or incurred by Bexar Met as to any third party. BexarMet shall conduct its activities under this Agreement as a reasonably prudent waterworks

operator in a good and workmanlike manner, with due diligence and dispatch, in accordance with good engineering and utilities practice, in compliance with applicable law and regulation, and in accordance with all terms and conditions of this Agreement.

(be) Permitted Uses. The Premises will be used solely by BexarMet and solely for the purpose of the extraction, pumping, treatment, storage, withdrawal and transportation of Trinity Aquifer groundwater from the Well and construction, installation, operation, maintenance and replacement of the Well, the Facilities, and the Easement Areas (as herein defined) (collectively, the "Permitted Uses"). Possession of the Premises shall be delivered to BexarMet on the Acceptance Date. BexarMet agrees that neither it nor any person or persons upon the Property with its permission shall create or allow to persist any nuisance, private or public, temporary or permanent, or do or permit any unlawful act, or do any act which is in violation of this Agreement or the Base Lease.

(cf) Waiver of Surface Rights. Notwithstanding the foregoing and subject to the terms, conditions, limitations, restrictions and reservations set forth herein, BexarMet shall have the superior right to use the surface of only the Easement Areas (as herein defined), for the Permitted Uses and in the exercise of its rights hereunder. All uses of the surface estate by BexarMet are subject to the prior written approval by Agua and the execution and delivery by Owner, Agua and BexarMet of appropriate easements or other use agreements, restricting such use to specified easement areas on the Property (collectively, the "Easement Areas"), for the placement and construction of access roads, water pipelines, electric lines, telephone lines, and other improvements proposed by BexarMet to be constructed on the Property in connection with the development of the Well and Facilities and withdrawal of the Water therefrom. All rights of access of BexarMet for ingress and egress shall be exercised only over dedicated public roads, except as otherwise expressly provided in any easement agreements. BexarMet hereby waives and releases, on behalf of itself and its successors and assigns, all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon or to use the surface of the Property or any part thereof, including, without limitation, the right to enter upon the surface of the Property for purposes of developing, producing and/or storing the Water in and under, and that may be produced from, the Well on the Property or any other purpose incident thereto ("Surface Rights"), except for any such entry or use in, on and under the Easement Areas in accordance with this Agreement and any easement agreement executed pursuant hereto.

(dg) Reservations of Rights. Agua hereby reserves for itself, and Owner, and their respective successors and assigns, and all subsequent owners of all or any part of the Property, (i) the right to plat, develop, use and sell the Property for any lawful purpose, and in connection therewith to grant easements or other rights with respect to the Property, including the Well, the Facilities and the Easement Areas, as Agua deems necessary or desirable or as required by applicable governmental authorities for utilities, drainage, retention ponds and for such other purposes as are necessary, desirable or incidental to development of the Property, and (ii) all rights necessary, convenient or incidental to the production, use, sale, lease or other transfer of the Excess Water Capacity as provided in

Section 3(a) herein. The rights reserved herein shall be and remain superior to the rights herein granted to BexarMet, except as otherwise expressly provided in this Agreement for the Permitted Uses and in any easement agreement executed by Agua and BexarMet in accordance with this Agreement.

(eh) **Improvements.** BexarMet shall not install or construct any improvements on the Property or the Easement Areas including, without limitation, any water pipelines, interconnection facilities, storage or treatment facilities, or transportation, distribution or utility systems or facilities, without the prior written approval of Agua of the plans and specifications therefor and the location thereof, which consent shall not be unreasonably withheld, delayed or conditioned.

If incurred by or on behalf of BexarMet, BexarMet shall promptly pay, when due, all items which may result in the placement of a lien on the Property, the Well, the Facilities, or the Easement Areas when due. If BexarMet fails to pay any such item, including, but not limited to, any tax, charge or assessment, or any mechanic's or materialmen's expenses, or if a lien in connection therewith is placed upon the Property, the Well, the Facilities, or the Easement Areas, Agua shall have the right to make such payment of such item and BexarMet hereby covenants to reimburse Agua upon demand, for any amount so expended or paid, with interest thereon from the date of such payment until the date of such reimbursement, at the per annum rate equal to the "Prime Rate," as quoted on the first (1st) business day of each calendar month in the Wall Street Journal, Southwest Edition, plus two percent (2%), as adjusted on the first (1st) business day of each calendar month; provided, however, that in no event shall the interest rate exceed the maximum rate of interest allowed by applicable law.

Upon termination of this Agreement or any release or termination of BexarMet's rights to use the Well, the Facilities and/or Easement Areas, BexarMet shall, at BexarMet's sole expense, within ninety (90) days after the effective date of such termination or release, remove all personal property and fixtures placed by BexarMet on the Well site and/or Easement Areas, unless otherwise agreed in writing by Agua. Notwithstanding the foregoing, BexarMet shall not be required to remove any underground fixtures or facilities, including pipelines and casings, that are retired, plugged and abandoned in accordance with all applicable laws, rules and regulations. The terms and provisions of this Section shall expressly survive the termination, release or expiration of this Agreement or of any rights or obligations hereunder.

(fi) **Groundwater Rights.** BexarMet covenants and agrees that the real and personal property rights and title to all groundwater, being all underground, percolating, artesian and other waters from any source, including any and all reservoirs, formations, depths and horizons beneath the surface of the earth in, under, or that may be produced from the Property is to remain vested solely, exclusively and absolutely in Agua, specifically including all rights and benefits accruing from historical production, use and usage, usage rights, titles, claims and interests, and any and all permits, licenses or other governmental approvals that now or hereafter pertains or accrues to such groundwater

production and use. All such historical usage and permits are to remain titled exclusively in Agua and remain attached to the Well's point of withdrawal on the Property. Notwithstanding the provisions of this Section, BexarMet may operate the Well to withdraw Water from the Property solely for the Permitted Uses in accordance with the terms of this Agreement, provided, however, that such use pursuant to this Agreement shall never constitute conduct that matures a cause of action for title by limitations or any other cause of action based on groundwater withdrawals.

(gi) Title to Severed Water. Title to all Water produced from the Well hereunder shall be and remain in Agua until it is delivered to the BexarMet Meter as defined in **Section 5(d)** herein ("Point of Delivery"), at which point title to such Water shall pass to BexarMet.

(hk) Base Lease. Agua and BexarMet acknowledge and agree that this Agreement and the rights and obligations of the parties hereto are subject to the terms, conditions and limitations set forth in the Base Lease, as modified by the terms of the Subordination, Non-Disturbance and Attornment Agreement, of even date herewith, among Owner, Agua and BexarMet ("SNDA").

4. Operating, Maintenance and Other Costs.

(a) Operating Costs. BexarMet shall be responsible for and shall pay for all utilities used on or in connection with the operation of the Premises. BexarMet shall bear all costs associated with the maintenance of the Well and Facilities, subject to reimbursement by Agua in accordance with Section 3(c) herein with respect to the Excess Water Capacity and Section 4(c) herein with respect to Major Maintenance and Repairs. BexarMet shall be solely responsible for all lifting, pumping, production, transportation, treatment and marketing costs of Water produced from the Well and delivered to the Point of Delivery hereunder, and Agua shall not be required to pay, and the amounts to be paid to Agua hereunder shall never bear, directly or indirectly, any such costs.

(b) Minor Maintenance and Repairs. During the Term hereof, BexarMet shall, at its sole expense, perform in a prudent and timely manner, necessary Minor Maintenance and Repairs on the Well, the Facilities and Easement Areas. For purposes of this Agreement, "Minor Maintenance and Repairs" shall mean the tasks that one BexarMet maintenance person can perform during one hour or less, at the time of a regularly scheduled routing inspection, with the tools, parts, and supplies that are normally carried on that person's vehicle, and shall include, without limitation, making minor adjustments and repairs to valves, pumps, motors, instruments, switches, chlorinators, and other components in order to allow the Well and Facilities to operate within the proper pressures and chlorine residuals, ~~at and that have a charge cost~~ of \$2,000.00 or less (as computed in accordance with BexarMet's standard rates in accordance with **Section 4(d)** herein). BexarMet shall furnish to Agua on or before the 15th day of each calendar month during the Term, a written report specifying the Minor Maintenance and Repairs performed for the previous calendar month.

(c) **Major Maintenance and Repairs.** During the Term hereof, BexarMet shall, subject to reimbursement by Agua in accordance with **Section 4(d)** herein, also perform in a prudent and timely manner, necessary Major Maintenance and Repairs on the Well, the Facilities and Easement Areas. For purposes of this Agreement, "Major Maintenance and Repairs" shall mean tasks that one BexarMet maintenance person cannot perform during one hour or less, at the time of a regularly scheduled routine inspection with the tools, parts and supplies that are normally carried on that person's vehicles, at and that have a charge cost of more than \$2,000.00 (as computed in accordance with BexarMet's standard rates in accordance with **Section 4(d)** herein).

With respect to any proposed Major Maintenance and Repairs, BexarMet shall obtain written bids for such work from at least two (2) independent contractors and shall submit same to Agua together with BexarMet's total cost if such work is to be performed by BexarMet's own personnel, for Agua's approval. All such work shall be performed by the lowest bidder (including BexarMet) unless otherwise expressly approved in writing by Agua. Agua shall be timely informed prior to the commencement of any such work and ~~no such work shall be performed without the presence of Agua's designated representative, unless otherwise expressly agreed by Agua.~~ be afforded a reasonable opportunity to be present during the performance of such work.

BexarMet shall notify Agua at least two (2) business days prior to the scheduled date for any Major Maintenance and Repairs and obtain the written consent of Agua prior to the performance of any Major Maintenance and Repairs, which consent shall not be unreasonably withheld, delayed, or conditioned. Upon completion thereof, BexarMet shall promptly furnish to Agua a written report specifying the work performed and the total cost thereof, including the amount to be paid by Agua in accordance with **Section 4(d)** herein.

(d) **Reimbursement of Maintenance Costs.** Agua will pay or reimburse to BexarMet, the sum calculated at the rates hereinafter provided, as compensation to BexarMet for (i) personnel hours expended by BexarMet maintenance personnel; (ii) equipment use time; and (iii) actual expenses incurred by BexarMet for replacement parts, machinery, facilities components, equipment, etc., incurred in the actual performance and directly related to the actual performance of Major Maintenance and Repairs only (collectively, the "Maintenance Costs"), calculated as follows:

(1) **Personnel.** BexarMet personnel time will be billed at Sixteen and 36/100 Dollars (\$16.36) per man-hour for regular time (8:00 a.m.-5:00 p.m.) and Eighteen Dollars (\$18.00) per man hour for differential time (5:00 p.m. - 8:00 a.m.), plus overtime when applicable. Personnel rates hereunder may be increased when BexarMet's actual salaries and hourly rates increase, effective thirty (30) days after written notice to Agua of such increase, provided that no rate may be increased more than once in any calendar year and no such increase shall exceed the CPI Increase (as defined in **Section 4(d)(5)** herein) for such year.

(2) Equipment Use. BexarMet's equipment use will be billed at Four and 50/100 Dollars (\$4.50) per working hour, and at cost for any equipment that BexarMet must rent. This hourly rate may be increased when BexarMet's actual equipment costs increase, effective thirty (30) days after written notice to Agua of such increase, provided that no rate may be increased more than once in any calendar year and no such increase shall exceed the CPI Increase (as defined in **Section 4 (d)(5)** herein) for such year.

(3) Expenses and Costs. BexarMet will bill Agua "at cost" for actual expenses, which are defined as the actual cost to BexarMet of replacements parts, machinery, facilities components, equipment, and chemicals, and other supplies used to accomplish the maintenance and repairs, including any rentals, shipping, delivery and/or expedited service charges assessed by a supplier or otherwise incurred by BexarMet.

(4) Invoice/Payment. BexarMet will invoice Agua monthly for the Maintenance Costs not later than the fifteenth (15th) day of each month for maintenance and repairs performed by BexarMet in the previous calendar month which shall be paid by Agua to BexarMet not later than ten (10) business days after receipt by Agua of such invoice. Each invoice will detail actual work performed, parts, facilities components, equipment and machinery replaced and equipment used.

(5) CPI Increase. For purposes of this Agreement, "CPI Increase" shall mean the increase in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor, U. S. City Average for All Items for All Urban Customers (hereinafter referred to as the "CPI-U") for the previous calendar year. If the CPI-U referred to above shall no longer be published, then the index most closely resembling said Consumer Price Index which is published by an agency of the federal government at such time shall be used for purposes of computing the cost of living adjustments called for in this Agreement. If Agua or BexarMet are unable to agree on a suitable substitute index, or if no such index is published, Agua and BexarMet shall by mutual agreement determine and state such rate adjustment. If Agua and BexarMet are unable to so agree, the rate for the previous year shall remain in effect until such adjusted rate is determined.

(e) Taxes, Fees and Other Governmental Assessments. BexarMet shall pay all user fees, well registration fees, permit fees or other fees when due to applicable governmental authority having jurisdiction, including any underground or groundwater district fees and assessments pertaining to the Well, Facilities, the Property, or the Water. BexarMet shall also be responsible for ad valorem taxes on the Premises, if any, severance taxes, and any other water drilling or production taxes. Agua shall be responsible for any ad valorem taxes assessed against Agua's leasehold interest. Whenever Agua shall be required to pay, collect, or remit any fee, assessment, or charge on Water received by BexarMet, then BexarMet shall promptly pay or reimburse Agua for

such fee, assessment, or charge in the manner directed by Agua.

5. Consideration.

(a) Consideration. For and in consideration of the rights and privileges granted to BexarMet herein, BexarMet shall pay to Agua the Base Payment calculated in accordance with **Subsection (b)** below. BexarMet will remit the required Base Payment to Agua in arrears no later than the 25th day of each calendar month during the Term, beginning on the 25th day of the next calendar month after the Effective Date.

(b) Base Payment. The monthly Base Payment shall be the product of (i) the Rate (as defined in **Subsection (c)** herein, multiplied times the total Water Quantity (as defined in **Subsection (d)** herein), for each calendar month during the Term.

(c) Rate. The Rate for purposes of calculating the Base Payment shall be determined in accordance with this Section. The initial Rate for the first year after the Effective Date shall be ~~\$0.0017~~ 0.0017 per gallon. On each anniversary date of the Effective Date during the Term, the Rate shall be adjusted based upon the PPI Increase (as defined herein); provided that in no event shall the adjusted Rate be less than the initial Rate. On the commencement of the Option Term, the Initial Rate for the first year of the Option Term shall be adjusted based upon the greater of (i) any PPI Increase, or (ii) the then market rate for the wholesale sale of similarly treated Trinity Aquifer water in the South Texas region on terms and conditions comparable to this Agreement, as determined by an appraiser or other consultant with expertise in sales of Trinity Aquifer water acceptable to Agua and BexarMet. If the parties are unable to agree on an appraiser, each party shall select its own appraiser within ten (10) days, each of which appraisers shall select a third appraiser within ten (10) days after their designation. The appraisers shall submit their written reports specifying the market rate within thirty (30) days after the appointment of the third appraiser. The market rate shall be the numerical average of the market rates reported by the three appraisers. The market rate determined in accordance with this Section shall be conclusive and binding upon Agua and BexarMet for the purpose of establishing the Rate under this Agreement. On each subsequent anniversary date during the Option Term, the Rate shall be adjusted based upon the PPI Increase; provided that in no event shall the adjusted Rate be less than the initial Rate for the first year of the Option Term.

For purposes of this Agreement, "PPI Increase" shall mean the increase in the Producer Price Index of the Bureau of Labor Statistics of the United States Department of Labor ("PPI") for the previous calendar year. If the PPI shall no longer be published, then the index most closely resembling said price index which is published by an agency of the federal government at such time shall be used for purposes of adjusting the Rate as provided in this Agreement. If Agua or BexarMet are unable to agree on a suitable substitute index, or if no such index is published, Agua and BexarMet shall by mutual agreement determine and state such Rate adjustment. If Agua and BexarMet are unable to so agree, the Rate for the previous year shall remain in effect until such adjusted Rate is

determined.

(d) Water Quantity. Included in the Facilities shall be, and BexarMet shall operate, maintain, and read a meter or meters that record Water delivered to the Point of Delivery (the "BexarMet Meter"). BexarMet shall keep accurate records of all measurements of Water under this Agreement, and shall furnish to Agua with its Base Payment, a report specifying the daily measurements for the calendar month covered by such Base Payment. For purposes of this Agreement, "Water Quantity" shall mean the total number of gallons of Water delivered to the Point of Delivery for each calendar month during the Term as reflected on the BexarMet Meter (as adjusted as provided herein); provided that for purposes of calculating the Base Payment, the Water Quantity for any month shall not be less than the product of 325,851 gallons multiplied times the total number of calendar days in such calendar month.

Agua shall have access to the BexarMet Meter during normal business hours with twenty-four (24) hours notice, and upon written request of Agua, BexarMet will give Agua copies of all such meter records prepared and maintained by BexarMet. This access shall include authorization for Agua to install, inspect, adjust, or test the Agua Meter (defined below). Agua reserves the right to, and BexarMet shall allow and coordinate, the installation of an additional suitable flow meter on the outflow side of BexarMet's Meter (the "Agua Meter"), which, if installed, will be at the cost of Agua and will not in any material way hinder BexarMet's use of the Well and Facilities or BexarMet's Meter. If requested in writing by Agua and not more than once in each calendar quarter, on a date as near the end of a calendar month as practical, BexarMet shall calibrate the BexarMet Meter in the presence of an Agua representative, and Agua and BexarMet shall jointly observe any adjustments that shall be necessary. BexarMet shall give Agua notice of the time when any such calibration is to be made and, if a representative of Agua is not present at the time set, BexarMet may proceed with the calibration and adjustment in the absence of any representative of Agua, and shall promptly provide Agua with a written report detailing such inspection and calibration.

The accuracy of any meter shall be determined by application of testing procedures endorsed by ACTM, AWWA or other technical oversight body applicable to the specific measuring device in question, under the supervision of a registered professional engineer acceptable to BexarMet and Agua. If, upon any test of the BexarMet Meter, the percentage of inaccuracy of such metering equipment is found to be in excess of two (2%) percent, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one half ($\frac{1}{2}$) of the time elapsed since the last date of calibration, but in no event further back than a period of 6 months. If the BexarMet Meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the Water delivered through the period the BexarMet Meter is out of service or out of repair shall be estimated and agreed upon by Agua and BexarMet upon the basis of the best data available including the Agua Meter. If Agua and BexarMet fail to agree on this

amount of Water delivered during such period, the amount of Water delivered may be estimated by: (i) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) estimating the quantity based on deliveries during the preceding periods under similar conditions when the BexarMet Meter was registering accurately. All books and records pertaining to this Agreement shall be open and available for copying, inspection, and audit by Agua.

6. Covenants and Agreements.

(a) Further Assurances. Agua and BexarMet shall execute and deliver to the other any document or instrument that Agua or BexarMet reasonably determines to be necessary or useful to fully carry out the transactions and sales covered by this Agreement, including any pending or future applications for permits, amendments to permits or purchase of any permits relating to the Well and Facilities carried out in conformance with applicable governmental authority now or hereafter having authority over the drilling of water wells, the spacing of water wells, the production of groundwater, or the sale of water within or outside the boundaries of any governmental authority. With respect to regulatory approvals to effectuate the purposes of this Agreement, whenever this Agreement requires any approval or consent to be hereafter given by either party, each party agrees that such approval or consent shall not be unreasonably withheld, conditioned or delayed. BexarMet shall have the authority to file a copy of this Agreement or a memorandum thereof in any public office or in accordance with any governmental regulations, transfer program rules or filing and recording requirements for wholesale water supply agreements.

(b) Compliance. This Agreement is subject to all applicable federal, state and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction. Agua and BexarMet each agree to make a good faith effort to support proposed laws and regulations which would be consistent with the performance of this Agreement in accordance with its terms. BexarMet agrees to conform to all regulatory requirements to report pumping volumes, water quality information and such other data and information as may now or in the future be required by any governmental or regulatory body having jurisdiction for the continuation and establishment of pumping rights under any laws or regulation now existing or that in the future may exist. To the extent filings are in the future required to establish water production volumes for purposes of issuance of permits or for water conservation purposes, BexarMet shall provide Agua with all available records and data as may be necessary to establish or preserve Agua's historical production rights. In any such permitting process, BexarMet and Agua shall make a good faith effort to accurately maximize the pumping volume to which the Well is entitled based upon the capacity and production history of the Well and all other data available to BexarMet and Agua. BexarMet's actions in making any reports of production volume, water quality, water use, historic use for permitting or any other purpose, shall be deemed to have been submitted

by BexarMet as agent for Agua.

(c) CONDITION OF PREMISES AND WATER. BEXARMET REPRESENTS AND WARRANTS THAT IT IS A WATER PURVEYOR HAVING SPECIAL EXPERTISE IN THE AREA OF WATER DEVELOPMENT AND DISTRIBUTION, INCLUDING THE STANDARDS OF QUALITY APPLICABLE TO DRINKING WATER UNDER STATE AND FEDERAL LAW AND REGULATION; THAT IT IS NOT RELYING UPON ANY STATEMENT OF REPRESENTATION OF AGUA, AS TO THE QUALITIES, QUANTITIES OR CHARACTERISTICS OF THE WATER; AND THAT IT WILL UNDERTAKE SUCH TESTS AND INVESTIGATIONS AS IT MAY DEEM NECESSARY AND APPROPRIATE TO ASSURE THAT THE WATER IT ACCEPTS IS SUITABLE FOR ITS INTENDED PURPOSE. BEXARMET EXPRESSLY ACKNOWLEDGES THAT AGUA IS NOT A WATER PURVEYOR AND IS ONLY PROVIDING GROUNDWATER ON A WHOLESALE BASIS AS SET FORTH HEREIN. BEXARMET HAS SATISFIED ITSELF THAT SUCH WATER IS PRESENTLY SUITABLE FOR ITS PURPOSES.

AGUA MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE WELL, THE FACILITIES, THE EASEMENT AREAS, THE PROPERTY, OR THE WATER. AGUA MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO COMPLIANCE WITH REGULATIONS OR LAWS PERTAINING TO THE ENVIRONMENT, AND BEXARMET EXPRESSLY ACKNOWLEDGES SUCH WAIVER. AGUA FURTHER EXPRESSLY DENIES AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE ENVIRONMENTAL CONDITIONS ON THE SURFACE OR SUBSURFACE OF THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, AND ANY SURROUNDING PROPERTY, OR THE COMPLIANCE THEREOF WITH REGULATIONS OR LAWS PERTAINING TO THE ENVIRONMENT.

AGUA MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AS TO THE ACCURACY OR COMPLETENESS OF ANY DATA, REPORTS, RECORDS, PROJECTIONS, INFORMATION OR MATERIALS MADE AVAILABLE OR FURNISHED TO BEXARMET IN CONNECTION WITH THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, OR THE WATER, INCLUDING, WITHOUT LIMITATION, ANY DESCRIPTION OF THE INTERESTS, STATUS OF THE TITLE TO THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, OR THE WATER, PRICING ASSUMPTIONS OR QUALITY OR QUANTITY OF WATER RESERVES (IF ANY) ON AND UNDER THE PROPERTY OR THE ABILITY OR POTENTIAL TO PRODUCE WATER, OR THE ENVIRONMENTAL CONDITION OF THE INTERESTS OR ANY OTHER MATTERS CONTAINED IN THE DATA OR ANY OTHER MATERIALS FURNISHED OR MADE AVAILABLE TO BEXARMET BY AGUA OR ITS AGENTS OR REPRESENTATIVES. ANY AND ALL SUCH DATA, RECORDS, REPORTS, PROJECTIONS, INFORMATION AND OTHER MATERIALS FURNISHED BY AGUA OR OTHERWISE MADE AVAILABLE TO BEXARMET WERE AND ARE PROVIDED TO BEXARMET AS A CONVENIENCE AND SHALL NOT CREATE NOR GIVE RISE TO ANY

LIABILITY OF OR AGAINST AGUA. ANY RELIANCE ON THE USE OF THE SAME SHALL BE AT BEXARMET'S SOLE RISK. BEXARMET AGREES THAT IT HAS HAD ADEQUATE AND COMPLETE OPPORTUNITY TO STUDY THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, AND THE WATER AND TO DETERMINE FOR ITSELF ANY INFORMATION OR DATA WHICH BEXARMET NEEDS OR WANTS CONCERNING THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, AND THE WATER.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BEXARMET AGREES FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, TO HOLD HARMLESS AND INDEMINFY OWNER AND AGUA, AND THEIR RESPECTIVE MEMBERS, MANAGERS, EMPLOYEES AND AGENTS AND SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, ~~DEAMNDS~~DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS AND COSTS THEREOF, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES FOR OR ON ACCOUNT OF DAMAGES CAUSED BY ANY WATER (OTHER THAN EXCESS WATER CAPACITY OR WATER TAKEN BY AGUA) PRODUCED FROM THE WELL OR TAKEN BY BEXARMET, THE QUALITY OF ANY SUCH WATER, BEXARMET'S OPERATIONS ON THE PROPERTY, THE FACILITIES, THE WELL, THE EASEMENT AREAS OR OTHERWISE WITH RESPECT TO THE WATER, OR ANY OTHER MATTER CONCERNING THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, OR THE WATER. AGUA MAKES NO WARRANTY AS TO THE QUANTITY AND/OR QUALITY OF THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, OR THE WATER. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, AS A MATERIAL PART OF THE CONSIDERATION OF THIS AGREEMENT, AGUA AND BEXARMET AGREE THAT BEXARMET IS TAKING THE WATER "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY BY AGUA THAT THE WATER IS MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE. BEXARMET ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO THE PROPERTY, THE WELL, THE FACILITIES, THE EASEMENT AREAS, OR THE WATER, BUT IS RELYING UPON ITS OWN EXAMINATION OF SUCH MATTERS.

7. Default.

(a) Event of Default. The occurrence of any one of the following events shall constitute an event of default under this Agreement:

(1) Any party fails to pay any sums due under this Agreement when due, and such failure continues for ten (10) days after the due date thereof.

(2) Any party fails to comply with any term or covenant of this Agreement, other than as provided in (1) above, and does not cure such failure within thirty (30) days after written notice thereof; provided, however, if the nature of the failure to comply is such that more than thirty (30) days is required to cure the failure, such

party will not be in default if it commences to cure such failure within such 30-day period and thereafter diligently prosecutes the same to completion.

(3) Any party makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors; or if there shall be filed by or against any party, in any court, pursuant to any state or federal law, a petition in bankruptcy, or there shall be commenced a case under the Bankruptcy Code by or against any party, or a petition filed for insolvency or for reorganization or for the appointment of a receiver or trustee of all or any portion of such party's property or assets.

(b) Remedies. Upon the occurrence of any event of default hereunder, the non-defaulting party may exercise any and all remedies available to it in law or in equity, and shall be cumulative, subject to the limitation of liability set forth in **Section 7(e)** herein.

(c) Waiver and Amendment. Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by Agua or BexarMet shall not be deemed a waiver by BexarMet or Agua of the right in the future to demand strict compliance and performance of any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by Agua and BexarMet. BexarMet's authorized representative for purposes of any notices under or execution of this Agreement or any amendment thereto shall be Thomas C. Moreno, General Manager/CEO.

(d) Force Majeure. ~~The~~Notwithstanding anything to the contrary expressly or impliedly contained herein, the express and implied covenants and agreements in this Agreement shall be subject to all valid and existing laws, regulations, rules and orders, and this Agreement shall not be terminated, in whole or in part, nor shall either party be held liable in damages for failure to comply therewith if compliance is prevented by, or if such failure is the result of any existing or future law, regulation, permitting report, rule, order, pumping limit or proration schedule, whether or not based in whole or in part on any legal preferential use provisions, or by act of God, war, terrorism, civil unrest, strike, interference, weather or drought event, or other casualty, or any other force majeure beyond the reasonable control of either party. Both parties agree that the performance under this Agreement is excused and this Agreement shall be extended until a reasonable time after the force majeure event ceases to exist. If either party is denied its use of all or a portion of the Water or rights hereunder to the extent and by reason of any present or future laws, court action, regulations, rules or governmental action or other acts outside the control of such party, it shall be excused from its obligations hereunder for so long as these circumstances exist. Notwithstanding the foregoing, no event of Force Majeure shall extend the Term of this Agreement.

(e) Limitation of Liability. Notwithstanding anything herein to the contrary, except in the event of willful misconduct, fraud or gross negligence by Agua, Bexar Met shall look only to Agua's estate and interest in and to the Premises for the satisfaction of any right of BexarMet arising out of this Agreement or for the collection of judgment or other judicial process or arbitration award requiring the payment of money by Agua. No other property or assets of Agua, its agents, members, managers, employees, or affiliates shall be subject to levy, lien, execution, attachment, or other enforcement procedure for the satisfaction of any rights or remedies under or with respect to this Agreement, the relationship of the parties hereunder or under law, BexarMet's use and occupancy of the Premises, or any other liability of Agua to BexarMet.

8. Insurance. During the Term, BexarMet shall continuously maintain the insurance coverages specified in **Exhibit E** attached hereto and incorporated herein. ~~All insurance required to be maintained hereunder shall be written by an insurance company or companies satisfactory to Agua and licensed to do business in Texas and shall be in form and content satisfactory to Agua, and shall name Agua as an additional insured.~~ No party subject to the provisions hereof shall violate or knowingly permit to be violated any provisions of the policies of insurance described herein. All insurance policies shall be provided by a company or companies licensed to do business in Texas with a rating of not less than A- in the last available Best's Rating Guide or as otherwise approved by Agua. All such policies shall include clauses whereby each underwriter agrees to waive its rights of subrogation against the Owner and Agua. The limits of liability shown for each type of insurance coverage to be provided by BexarMet pursuant hereto shall not be deemed to constitute a limitation of liability for claims hereunder or otherwise. Notwithstanding anything herein to the contrary, BexarMet may, to the extent permitted by applicable law, provide self-insurance for the insurance coverages specified herein, upon delivery to Owner and Agua of a written evaluation of the self-insurance plan, in form acceptable to the Owner and Agua, confirming that such self-insurance plan provides comparable or greater protection to the Owner and Agua as the coverage specified.

Certificates of insurance acceptable to Agua shall be filed with Agua upon execution of this Agreement by BexarMet. All required insurance shall be maintained without interruption from the Effective Date of this Agreement. The certificates and the insurance policies shall contain a provision stating that coverages afforded under the policies will not be terminated, materially modified or allow to expire until at least thirty (30) days' prior written notice has been given to the Owner and Agua.

9. Indemnity.

(a) **RELEASE AND INDEMNITY.** BEXARMET AGREES ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, THAT IT RELINQUISHES AND DISCHARGES AND WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND PROTECT AGUA AND OWNER, AND THEIR RESPECTIVE

OFFICERS, DIRECTORS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS, CONSULTANTS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL CLAIMS, EXPENSES, COSTS, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, CONTRACT OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, ALL COSTS OF DEFENSE, SUCH AS FEES AND CHARGES OF ATTORNEYS, EXPERT WITNESSES, AND OTHER PROFESSIONALS INCURRED AND ALL COURT, ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR INCIDENT TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT ANY CONDITION OF BEXARMET'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON BEXARMET'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY AGUA OR BEXARMET HEREUNDER, INCLUDING BUT NOT LIMITED TO, ANY SUCH CLAIM FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, CONSEQUENTIAL DAMAGE, OR ECONOMIC LOSS AND ANY CLAIM THAT MAY ARISE IN CONNECTION WITH THE QUALITY, QUANTITY, USE, MISUSE, IMPOUNDMENT, DIVERSION, TRANSPORTATION AND MEASUREMENT OF WATER; INSTALLATION, INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT; AND/OR BEXARMET'S OPERATION OF THE PREMISES OR PURCHASE OF THE WATER; ~~ANY CONDITION OF BEXARMET'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON BEXARMET'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY AGUA OR BEXARMET HEREUNDER.~~

(b) Environmental Matters. During the Term, BexarMet shall maintain the Well, Facilities and Easement Areas and conduct all operations in an environmentally sound manner, in accordance with all applicable regulations of the Texas Commission on Environmental Quality ("TCEQ", formerly known as Texas Natural Resources Conservation Commission), the Environmental Protection Agency and any other governmental authorities. Neither party shall use, store, transport or dispose of any hazardous materials or wastes upon or in the Premises, or Easement Areas except to the extent such substances are required wastes for actual operation and/or maintenance of the Well, Facilities and/or water treatment in connection with the Well and Facilities, and any such substances shall be used, stored and thereafter disposed of off of the Property, Premises and Easement Areas in a safe manner, in compliance with all applicable governmental regulations. Upon the occurrence of a spill or release of waste or any hazardous materials on the Property, Premises or Easement Areas, BexarMet shall promptly report same to Agua and, if required by law, to the appropriate governmental agency having jurisdiction over the particular type of spill or release which has occurred, and then promptly abate and clean-up the release at the expense of the party causing said spill or release. BexarMet shall assure that all contractors comply with the terms of this Subsection. In the event BexarMet is notified of any environmentally harmful or dangerous conditions on the Property, Premises or Easement Areas resulting from BexarMet's operations, including

conditions that create an imminent threat of a release that could pose an unjustified risk of harm to human health or the environment, BexarMet shall promptly take any actions required to clean-up and correct such dangerous or harmful conditions, in accordance with applicable laws, rules and regulations and sound engineering practices, and shall promptly notify Agua of such notice and actions.

BEXARMET HAS THE ABSOLUTE RESPONSIBILITY AND LIABILITY FOR THE CLEAN-UP OF ALL POLLUTION OR CONTAMINATION CAUSED BY BEXARMET'S OPERATIONS AND THE RECLAMATION OF THE PROPERTY, PREMISES AND EASEMENT AREAS, INCLUDING THE BEARING OF ALL COSTS AND EXPENSES THEREOF. AGUA SHALL HAVE NO RESPONSIBILITY TO INSPECT OR OVERSEE BEXARMET'S OPERATIONS OR TO IDENTIFY OR CORRECT ANY POTENTIALLY HARMFUL, DANGEROUS OR DAMAGING CONDITIONS. NEITHER BEXARMET NOR ANY OF BEXARMET'S CONTRACTORS SHALL HAVE ANY RIGHT OF CONTRIBUTION OR INDEMNITY FROM AGUA FOR ANY MATTERS RELATING TO BEXARMET'S OPERATIONS ON THE PROPERTY, PREMISES OR EASEMENT AREAS OR CONDITIONS ON THE PROPERTY, PREMISES OR EASEMENT AREAS NOT DIRECTLY CAUSED BY AGUA, AND BEXARMET DOES HEREBY RELEASE AND INDEMNIFY AND HOLD AGUA HARMLESS FROM ALL DAMAGES, LOSSES AND LIABILITIES ARISING OUT OF BEXARMET'S OPERATIONS ON THE PROPERTY, THE PREMISES, AND THE EASEMENT AREAS, TO THE FULLEST EXTENT PERMITTED BY LAW.

10. Estoppel Certificate. BexarMet agrees to furnish, from time to time, within ten (10) days after written request from Agua, the Owner or any lender or prospective lender, a certificate certifying to Agua, the Owner, and/or such lender the following:

- (a) This Agreement is in full force and effect;
- (b) Except as disclosed in such certificate, this Agreement (as reflected in a copy of this Agreement attached to the certificate) is unmodified;
- (c) There is no offset against any amounts owing under this Agreement to BexarMet;
- (d) Amounts owing or to become owing to BexarMet under this Agreement have not been and will not be prepaid for more than one (1) month in advance;
- (e) Except as disclosed in such certificate, to the knowledge of BexarMet, there is no existing default under this Agreement by reason of some act or omission by Agua;
- (f) Except as disclosed in such certificate, there is not existing default by Agua under this Agreement, and no event has occurred or condition exists which, with the passage of time or the giving of notice, or both, would constitute a default by BexarMet under this Agreement;

(g) Except as disclosed in such certificate, Agua has performed all obligations required of Agua in connection with this Agreement; and

(h) Such other matters as may be reasonably required by Agua, Owner, and/or any such lender.

11. Miscellaneous.

(a) Non-Assignability. Any assignment of rights or delegation of duties under this Agreement by BexarMet is void without the prior written consent of Agua, which may be withheld for any reason or no reason.

(b) Attorney's Fees. If BexarMet or Agua is a prevailing party in any legal proceeding brought under or with relation to this contract or transaction, such party shall be additionally entitled to recover court costs, reasonable attorney's fees and all other litigation and alternative dispute resolution fees or expenses from the non-prevailing parties.

(c) Entire Agreement. This Agreement and the Exhibits attached hereto constitute the sole and only agreement of BexarMet and Agua and supersedes any prior understanding or oral or written agreements between Agua and BexarMet respecting the subject matter of this Agreement.

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

(e) No Third Party Beneficiaries. Nothing contained herein shall vest any rights, benefits, or rights of enforcement or entitlement to damages in any party other than Agua and BexarMet. Neither this Agreement nor any part or provision hereof shall ever be considered a third party beneficiary contract or agreement.

(f) Captions and Headings. The captions and headings used herein are for reference purposes only and shall not affect the meaning or interpretation of the terms and provisions of this Agreement.

(g) Place of Performance. All amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Bexar County, Texas, said Bexar County, Texas, being the place of performance agreed to by the parties to this Agreement.

(h) Authority. BexarMet shall submit written evidence in the form of sessions laws, bylaws, charters, resolutions or other written documentation specifying the authority of BexarMet's representative to sign this Agreement.

(i) Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, by delivering the same in person to such party. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as set forth on the signature page for each party hereto.

(j) Recordation of Memorandum of Agreement. Upon the request of Agua or BexarMet, the parties will execute and acknowledge a Memorandum of this Agreement setting forth the basic terms of this Agreement in form and substance reasonably satisfactory to the parties, to be recorded in the Real Property Records of Bexar County, Texas.

(k) Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

[COUNTERPART SIGNATURE PAGES FOLLOW]

**COUNTERPART SIGNATURE PAGE TO
LEASE,
WELL CONSTRUCTION
AND WHOLESALE WATER SALES AGREEMENT**

AGUA:

AGUA DEVELOPMENT, L.L.C., a Texas limited liability company

By Its Manager:

La Burrita II, L.L.C., a Texas limited liability company

By: _____
Mark G. McCoy, Manager

Notice Address:

Agua Development, L. L. C.
P. O. Box 171190
San Antonio, Texas 78217
Attn: Mark G. McCoy
Telephone: (210) 829-7831
Fax: (210) 829-7830

With a copy to:

Jamie M. Wilson
Kerr, Wilson & Negrón, P.C.
750 E. Mulberry, Suite 510
San Antonio, Texas 78212
Telephone: (210) 738-8750
Fax: (210) 738-8788
(which shall not be deemed notice to Agua)

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2003, by Mark G. McCoy, Manager of La Burrita II, L.L.C., a Texas limited liability company, as Manager of Agua Development, L. C., a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

**COUNTERPART SIGNATURE PAGE TO
LEASE,
WELL CONSTRUCTION
AND WHOLESALE WATER SALES AGREEMENT**

BEXARMET:

BEXAR METROPOLITAN WATER DISTRICT

By: _____
Thomas C. Moreno
General Manager/Chief Executive Officer

Notice Address:
Bexar Metropolitan Water District
Thomas C. Moreno, General Manager/CEO
P. O. Box 245994
San Antonio, Texas 78224-5994
Telephone: (210) 354-6500
Fax: (210) 922-5152

With copy to:
West & West Attorneys
North O. West
2929 Mossrock, Suite 204
San Antonio, Texas 78230
Telephone: (210) 340-2200
Fax: (210) 340-2577
(which shall not be deemed notice to BexarMet)

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____,
2003, by Thomas C. Moreno, General Manager/Chief Executive Officer of Bexar
Metropolitan Water District, in the capacity therein stated.

Notary Public, State of Texas

EXHIBITS:

Exhibit A – Property Description

Exhibit B – Well Site

Exhibit C – TCEQ Interim Use Approval

Exhibit D – Facilities and Approved Contractors

Exhibit E – Required Insurance

M:\data\jmw\denton\agua\Lease well and water agr5.doc

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

WELL SITE

EXHIBIT C

TCEQ INTERIM USE APPROVAL

EXHIBIT D

FACILITIES AND APPROVED CONTRACTORS

EXHIBIT E

REQUIRED INSURANCE

Commercial General Liability Insurance:

- (a) \$2,000,000 Bodily Injury and Property Damage for Each Occurrence
- (b) \$2,000,000 Products/Completed Operations Aggregate
- (c) \$5,000,000 General Aggregate
- (d) \$1,000,000 Personal and Advertising Injury
- (e) \$250,000 Fire Damage
- (f) \$100,000 Medical Expense
- (g) Coverage shall include the following:
 - (i) Occurrence Basis;
 - (ii) Premises operations;
 - (iii) Contractual Liability;
 - (iv) Products/Completed Operations;
 - (v) Broad Form Property Damage; and
 - (vi) Independent Contractors.
 - (vii) Such policy shall include all of the coverages which may be included in coverages A, B and C contained in the Standard Texas Form Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence", as distinguished from a "claims made", basis and shall be continued for a period of one (1) year after termination or expiration of the Agreement.

Automobile Liability Insurance: Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of BexarMet, with minimum combined single limit in the amount of not less than \$1,000,000 per occurrence. The Owner, Agua and their respective partners, managers, members, directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds, ATIMA (As Their Interests May Appear).

Workers' Compensation and Employer's Liability Insurance: Statutory Limits with All States Endorsement and minimum Employer's Liability Limits will be provided as follows:

- (a) \$500,000 Bodily Injury with Accident – Each Accident;
- (b) \$500,000 Bodily Injury by Disease – Policy Limit; and
- (c) \$500,000 Bodily Injury by Disease – Each Employee.

Excess (Umbrella) Insurance: Minimum limit of not less than \$5,000,000 per occurrence/aggregate.

Document comparison done by DeltaView on Tuesday, November 18, 2003 3:53:35 PM

Input:	
Document 1	file://M:/data/jmw/denton/agua/Lease well and water agr5.doc
Document 2	file://M:/data/jmw/denton/agua/Lease well and water agr6.doc
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	63
Deletions	34
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	103

Exhibit K

AGENDA
MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
Tuesday, September 13, 2005, 4:00 P.M.
Market Street Building
1st Floor Board Room
1001 East Market
San Antonio, Texas

1. **MEETING CALLED TO ORDER.**
2. **Announcements.**
 - A. **The San Antonio Water System Board of Trustees will, during the meeting, close the meeting and hold an executive session pursuant to the Texas Open Meetings Act, Government Code, which permits closed meetings pursuant to Section 551.071 for purposes of consulting with its attorneys, Section 551.072 - deliberating about real property, Section 551.073 - deliberating about gifts and donations, Section 551.074 - deliberating about personnel matters and Section 551.076 - deliberating about security devices to discuss matters as executive session matters in this agenda. The Board of Trustees may, at any time during the Meeting, close the meeting and hold an executive session pursuant to Sections 551.071 to 551.074 and 551.076 of the Texas Open Meetings Act to discuss and/or deliberate any of the matters to be considered during the Meeting.**
3. **Minutes.**
 - A. **Approval of the Minutes of the San Antonio Water System Board of Trustees Regular Meeting of August 16, 2005.**
 - B. **Approval of the Minutes of the San Antonio Water System Board of Trustees Workshop/Special Meeting of August 8, 2005.**
 - C. **Approval of the Minutes of the San Antonio Water System Board of Trustees Special Meeting of August 24, 2005 held at 4:30 P. M.**
 - D. **Approval of the Minutes of the San Antonio Water System Board of Trustees Special Meeting of August 24, 2005 held at 5:30 P. M.**

SAN ANTONIO WATER SYSTEM
HANDICAPPED ACCESSIBILITY STATEMENT

The San Antonio Water System building and meeting room are handicapped accessible. An entry ramp is located on the Commerce Street side of the building. Deaf persons must request an interpreter 72 hours prior to the scheduled meeting. Call the Executive Assistant at 704-7486 or 704-1852/TDD, for assistance.

4. **Ceremonial Items:**
 - A. **Recognition of SAWS Finance Department for winning the Distinguished Budget Award from the Government Finance Officers Association.
(DOUG EVANSON - DAN CROWLEY)**
5. **Citizens To Be Heard.**
6. **Board of Trustees - Committee Reports.**
 - A. **Management Services.**
 - B. **Property Planning.**
 - C. **Technical Services.**
 - D. **Water Resources.**
 - E. **Environmental, Health and Safety.**

CONSENT AGENDA ITEMS

Items 7– 33

ITEMS CONCERNING THE PURCHASE OF EQUIPMENT, MATERIALS AND SUPPLIES

7. **Resolution accepting recommendations regarding the contracting for certain services, equipment, materials, and supplies, and authorizing the acceptance of bids as follows: (VICK GARMON)**
 - A. **Award of Contracts for the Purchase of Materials, Equipment and Services.**
 1. **Acceptance of the bid of Grande Truck Center to provide: Two each – 15,000 GVWR trucks with a 6,000 lb., crane mounted on a reinforced utility bed, Bid No. 05-5010, for a total of \$107,330.00. (These units are part of the vehicle equipment replacement program and will be assigned to the Dos Rios WRC Maintenance area).**
 - B. **Award of Annual Service and Supply Contracts. Estimated annual purchases are based on unit prices bid. Actual totals may vary from estimate.**
 1. **Acceptance of the bid of United Rentals Trench Safety to provide: Vertical Shores Parts and Service, Bid No. 05-2065, for a total of \$53,875.00. (This contract will be utilized for the purchase of parts and service of vertical shores to provide excavation safety protection for designated SAWS employees. This contract will be effective October 1, 2005 through September 30, 2006).**
 2. **Acceptance of the bid of USA Bluebook to provide: Rosemount Equipment Parts, Bid No. 05-3049, for a total of \$58,111.20. (This contract will be utilized for the purchase of Rosemount Parts for the SAWS SCADA System. This contract will be effective October 1, 2005 through September 30, 2006).**

3. Acceptance of the bid of Texas Disposal Systems to provide: Storage Container Rental/Disposal, Bid No. 05-2046, for a total of \$30,600.00. (This contract will be utilized to provide storage container units, hauling and disposal of contents generated at various locations for the Kick the Can Program and any other SAWS programs as may be required. Under the Kick the Can Program old toilets, as they are removed from apartments, are stored in the containers for hauling and disposal. This contract will be effective October 1, 2005 through September 30, 2006).
4. Acceptance of the bid of Allied/BFI Waste Services of San Antonio to provide: Garbage Disposal Services, Bid No. 05-0332, for a total of \$59,299.92. (This contract will be utilized to provide hauling, dumping and maintenance services for all the containers (dumpsters) used by SAWS. This contract will be effective October 1, 2005 through September 30, 2006).
5. Acceptance of the bid of SAT Radio Communications, Ltd., dba Industrial Communications to provide: Motorola Communication Equipment, Bid No. 05-2062, for a total of \$60,000.00. (SAWS will utilize City Public Service's 800 MHZ Motorola Smartnet Trunking Radio Communication System. This contract will cover the maintenance and repair to keep Motorola communication equipment operating at factory recommended specifications. This contract will be effective October 1, 2005 through September 30, 2006).
6. Acceptance of the bid of Indexx Distribution, Inc., to provide: Colilert Reagent Packs, Bid No. 04-4017, for a total of \$26,000.00. (This contract will be utilized for the purchase of Colilert Reagent Packs for monitoring the presence of total coliform and E. coli in potable water. This contract extension will be effective October 1, 2005 through September 30, 2006).
7. Acceptance of the bid of Massengale Armature Works, Inc., to provide: Purchase of Electric Motors, Bid No. 04-4022, for a total of \$69,195.72. (This contract will be utilized for the purchase of electric motors. This contract extension will be effective October 1, 2005 through September 30, 2006).
8. Acceptance of the bid of San Antonio Armature Works to provide: Purchase of Electric Motors, Bid No. 04-4022, for a total of \$51,536.99. (This contract will be utilized for the purchase of electric motors. This contract extension will be effective October 1, 2005 through September 30, 2006).
9. Acceptance of the bid of Basic Industries of South Texas to provide: Insulation, Bid No. 03-3002, for a total of \$42,700.00. (This contract will be utilized for material and labor for insulating piping at various SAWS locations. This contract extension will be effective October 1, 2005 through September 30, 2006).
10. Acceptance of the bid of BFI to provide: Grit Hauling & Disposal Service, Bid No. 02-2043, for a total of \$30,000.00. (This contract will be utilized to provide containers for storage, hauling and disposal of grit generated by SAWS Recycling Centers at specified locations. This

contract extension will be effective October 1, 2005 through September 30, 2006).

11. Acceptance of the bid of Continental Battery to provide: Automotive Storage Batteries, Bid No. 02-0267, for a total of \$35,000.00. (This contract will be utilized for the purchase of batteries to provide power for operation of SAWS vehicles such as light trucks, automobiles, heavy and off-road equipment. This contract extension will be effective October 1, 2005 through September 30, 2006).
 12. Acceptance of the bid of Alamo AG-Con Equipment, Inc., to provide: Ford New Holland Products, Howse Terrain King Mechanical Mowers, K.W. Windrow Turner, Okada, Bradcot and Morbark Chippers Parts and Service, Bid No. 03-0367, for a total of \$90,000.00. (This contract will be utilized for the purchase of Ford New Holland Products, Howse, Terrain King Mechanical Mowers, K.W. Windrow Turner, Okada, Bradcot and Morbark Chippers parts and service. This contract extension will be effective October 1, 2005 through September 30, 2006).
 13. Acceptance of the bid of Acme Safe & Lock Co., to provide: Maintenance & Repair of Security Access and Control Equipment, Bid No. 02-2073, for a total of \$90,000.00. (This contract will be utilized for the maintenance and repair of security access and control equipment at various SAWS locations. This contract extension will be effective October 1, 2005 through September 30, 2006).
- C. Authorization to Utilize the City of San Antonio's Competitive Bidding Process for Annual Contracts. Estimated annual purchases are based on unit prices bid. Actual totals may vary from estimate.
1. Acceptance of the bid of Madera Paper to provide: Hand Wipes, Bid No. 03-3095, for a total of \$40,000.00. (This City of San Antonio contract will be utilized for hand wipes used in various types of maintenance operations and facilities throughout the City. This contract extension will be effective October 1, 2005 through September 30, 2006).
- D. Authorization to Utilize the City of San Antonio's Competitive Bidding Process for Biennial Contracts. Estimated annual purchases are based on unit prices bid. Actual totals may vary from estimate.

No items for this Meeting.

- E. Award of Biennial Service and Supply Contracts. Estimated annual purchases are based on unit prices bid. Actual totals may vary from estimate.
1. Acceptance of the bid of Praxair Distribution, Inc., to provide: Welding Gases and Welding Supplies, Bid No. 05-0206, for a total of \$42,114.90. (This contract will be utilized for the purchase of welding gases and welding supplies on an as needed basis as requested by SAWS for use with the welding shop and contract welder on SAWS projects. This contract will be effective date of award, September 13, 2005 through September 30, 2007).

- WBE 2. Acceptance of the bid of Geofill Material Technologies, LLC to provide: Slipping Grout, Bid No. 05-5052, for a total of \$210,000.00. (This contract

will be utilized for the purchase of Slipping Grout on an as needed basis as requested by SAWS used in the slip lining process. This contract will be effective date of award, September 13, 2005 through September 30, 2007).

3. Acceptance of the bid of Ameriform, Inc., to provide: Purchase of Work Uniforms, (Change Order No. 2) Bid No. 05-5050, for a total of \$117,651.05. (This contract will be utilized for the purchase of uniforms to be used by designated SAWS employees. This contract will be effective date of award, September 13, 2005 through December 31, 2007).

CAPITAL IMPROVEMENT CONTRACTS

IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Developer Customer Contracts

8. A Resolution approving a Utility Service Agreement to provide wastewater service (27 Wastewater Equivalent Dwelling Units) to the Shops at Stone Oak, an 8.393-acre tract located at the northwest corner of Stone Oak Parkway and Huebner Road, being developed by Shops of Stone Oak, L.L.P., Developer. (KELLEY NEUMANN – SAM MILLS)
9. A Resolution approving a Utility Service Agreement to provide wastewater service (6 Wastewater Equivalent Dwelling Units) to Gathering Oaks, a 3.210-acre tract located southeast of the intersection of Ranch Oak and Gathering Oak, being developed by Donald J. Kuyrkendall, Developer. (KELLEY NEUMANN – SAM MILLS)
10. A Resolution approving a partial reimbursement in the amount of \$32,757.00 to F.C. Properties One Ltd., for the Stone Oak I On-Site Oversize Improvements as required by the Third Addendum to the Mud Creek Participation Agreement, pursuant to City of San Antonio Ordinance No. 71800; authorizing the expenditure of \$32,757.00 from the System's Service Recovery Account within the System's Renewal and Replacement Fund for such reimbursement, authorizing the President/Chief Executive Officer to pay such partial reimbursement in the amount of \$168,909.00 to F.C. Properties One Ltd., for the Stone Oak I On-Site Oversize Improvements. Reimbursement is: \$168,909.00. (KELLEY NEUMANN – SAM MILLS)

REPLACEMENTS

Governmental Relocations and Replacements

11. A Resolution approving the expenditure of funds in the amount of \$375,734.00 for the replacement and adjustment of water and wastewater facilities by the City of San Antonio in connection with the Durango: San Marcos to Trinity Project, approving construction contingency expenses related to the project work in an amount not to exceed \$37,573.40, approving the total expenditure of funds in an amount not to exceed \$413,307.40, approving an amount not to exceed \$196,891.20 be made available and expended from the System's Project Fund for the sewer project work and related construction contingencies, approving an amount not to exceed \$216,416.20 be made available and expended from the System's Project Fund for the water project work and related construction contingencies, authorizing the

President/Chief Executive Officer to pay to the City of San Antonio an amount not to exceed \$413,307.40 for the project work and related construction contingencies. This project is located in Council District 5. Total expenditures are: \$413,307.40. (KELLEY NEUMANN – CINDY KOVACIC)

12. A Resolution amending Resolution No. 04-259 by approving the expenditure of additional funds in an amount not to exceed \$5,378.30 payable to the City of San Antonio for the additional project work in connection with the Courtland: Main to McCullough and Ogden: Dewey to Ashby Project, approving an additional amount not to exceed \$5,378.30 be made available and expended from the System's Project Fund for the additional project work, ratifying the actions of the Vice-President of Facilities Engineering and Construction in approving additional reimbursement to the City of San Antonio in the amount of \$5,378.30 for the additional project work, authorizing the President/Chief Executive Officer to reimburse an amount not to exceed \$5,378.30 to the City of San Antonio for the additional project work. Total expenditures are: \$5,378.30. (KELLEY NEUMANN – CINDY KOVACIC)

Production, Transmission and Treatment Improvements

13. A Resolution approving Recapitulation Change Order No. 2 in the decreased amount of \$25,247.20 to the construction contract with Insituform Technologies, Inc., in connection with the Robinhood: Nacogdoches to New Braunfels Water Transmission Main Project, returning the amount of \$25,247.20 and the construction contingency balance of \$1,711.25 for a total amount of \$26,958.45 to the System's Project Fund, authorizing the President/Chief Executive Officer to execute Recapitulation Change Order No. 2 and to close the contract with Insituform Technologies, Inc. Total reduction is: \$26,958.45. (KELLEY NEUMANN – ASHOK KAJI)

Water and Sewer Line Extensions

14. A Resolution accepting the bid of R. L. Jones, LP, in the amount of \$185,622.10 for the Dumbarton: Copinsay to Southeast Military Drive Replacement Project, awarding a construction contract to R. L. Jones, LP, in the amount of \$185,622.10 for the project work, approving the expenditure of funds in the amount of \$185,622.10 for the water project work, approving construction contingency expenses in an amount not to exceed \$18,562.21 in connection with the water project work, approving total expenditures in an amount not to exceed \$204,184.31 from the System's Project Fund for the project work and related construction contingencies, authorizing the President/Chief Executive Officer to execute a construction contract with R. L. Jones, LP, and to pay R. L. Jones, LP, the amount of \$185,622.10 for the project work. This project is located in Council District 3. Total expenditures are: \$204,184.31. (KELLEY NEUMANN – CINDY KOVACIC)
15. A Resolution accepting the bid of R. L. Jones, LP, in the amount of \$170,595.25 for the Eureka: Goliad to Dead End Replacement Project, awarding a construction contract to R. L. Jones, LP, in the amount of \$170,595.25 for the project work, approving the expenditure of funds in the amount of \$170,595.25 for the water project work, approving construction contingency expenses in an amount not to exceed \$17,595.25 in connection with the water project work, approving total expenditures in an amount not to exceed \$188,190.50 from the System's Project Fund for the project work and related construction