

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 9-Redemption of Bonds (Continued)

<u>Redemption Date – May 1</u>	<u>Principal Amount</u>
2016	\$ 1,920,000
2017	2,030,000
2018	2,150,000
2019	2,275,000
2020	2,410,000
2021	2,550,000
2022	2,700,000

The Bonds maturing on May 1, 2025, will be subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date – May 1</u>	<u>Principal Amount</u>
2023	\$ 2,395,000
2024	2,545,000
2025	2,705,000

The \$65,335,403 Bexar Metropolitan Water District, Waterworks System Revenue Bonds, Series 1998, are subject to mandatory and optional redemption prior to maturity as follows:

Mandatory Redemption

The Current Interest Bonds maturing on May 1, 2022 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date – May 1</u>	<u>Principal Amount</u>
2019	\$ 2,050,000
2020	2,155,000
2021	2,260,000
2022	2,375,000

The Current Interest Bonds maturing on May 1, 2025 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 9-Redemption of Bonds (Continued)

<u>Redemption Date – May 1</u>	<u>Principal Amount</u>
2023	\$ 2,955,000
2024	3,105,000
2025	3,265,000

The Current Interest Bonds maturing on May 1, 2038 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date – May 1</u>	<u>Principal Amount</u>
2036	\$ 6,305,000
2037	6,620,000
2038	6,950,000

Capital Appreciation Bonds

The Capital Appreciation Bonds are subject to redemption in whole or in part in principal amounts at maturity of \$5,000 or any integral multiple thereof, on May 1, 2008, or any date selected by the District thereafter at the redemption prices set forth below for the accreted value to the date fixed for redemption. If less than all the Capital Appreciation Bonds are to be redeemed, the District will determine the maturity or maturities and the amounts therewith to be redeemed and will direct the Paying Agent/Registrar to call the Capital Appreciation Bonds by lot, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

<u>Dates</u>	<u>Redemption Prices</u>
May 1, 2008 through April 30, 2009	103.00%
May 1, 2009 through April 30, 2010	102.50%
May 1, 2010 through April 30, 2011	102.00%
May 1, 2011 through April 30, 2012	101.50%
May 1, 2012 through April 30, 2013	101.00%
May 1, 2013 through April 30, 2014	100.50%
May 1, 2014 and thereafter	100.00%

The \$29,366,424 Bexar Metropolitan Development Corporation, Water Facility Contract Revenue Bonds, Series 1998, are subject to mandatory and optional redemption prior to maturity as follows:

**Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003**

Note 9-Redemption of Bonds (Continued)

Optional Redemption

The Current Interest Bonds maturing on or after May 1, 2009 are subject to redemption in whole or in part in principal amounts of \$5,000 or any integral multiple thereof, on May 1, 2008, or on any date selected by the Corporation thereafter, at the redemption prices set forth below plus accrued interest to the date fixed for redemption. If less than all the Current Interest Bonds are to be redeemed, the Corporation will determine the maturity or maturities and the amounts therewith to be redeemed and will direct the Trustee to call the Current Interest Bonds by lot, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

<u>Dates</u>	<u>Redemption Prices</u>
May 1, 2008 through April 30, 2009	102.00%
May 1, 2009 through April 30, 2010	101.00%
May 1, 2010 and thereafter	100.00%

Mandatory Redemption

The Current Interest Bonds maturing on May 1, 2025, are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date - May 1</u>	<u>Principal Amount</u>
2024	\$ 1,635,000
2025	1,720,000

The Current Interest Bonds maturing on May 1, 2028 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date - May 1</u>	<u>Principal Amount</u>
2026	\$ 1,805,000
2027	1,895,000
2028	1,990,000

The \$57,700,000 Waterworks System Revenue Refunding Bonds, Series 2002, are subject to mandatory redemption prior to maturity as follows:

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 9-Redemption of Bonds (Continued)

Mandatory Redemption

The Term Bonds maturing on May 1, 2026 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date - May 1</u>	<u>Principal Amount</u>
2021	\$ 1,825,000
2022	1,915,000
2023	2,010,000
2024	2,110,000
2025	2,215,000
*2026	2,325,000

The Term Bonds maturing on May 1, 2032 are subject to mandatory redemption at par plus accrued interest in the following amounts on the following dates:

<u>Redemption Date - May 1</u>	<u>Principal Amount</u>
2027	\$ 2,440,000
2028	2,570,000
2029	2,700,000
2030	2,840,000
2031	2,985,000
*2032	3,135,000

*Stated Maturity

Note 10-Commercial Paper Notes

On July 1, 2002, the Board of Directors approved \$50,000,000 of "Bexar Metropolitan Water District Commercial Paper Notes" for the purpose of financing project costs or eligible projects for the District's water system and to refinance, renew, or refund the notes issued by the Commercial Paper Notes.

The District has covenanted in the Commercial Paper Note program to maintain at all times credit facilities with banks or other financial institutions which would provide available borrowing sufficient to pay the principal of the Commercial Paper Notes.

**Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003**

Note 10-Commercial Paper Notes (Continued)

The borrowings under the Commercial Paper Notes are equally and ratably secured by and are payable from (1) the proceeds from the sale of the bonds and (2) borrowing under and pursuant to the credit agreement. The District and Bayerische Hypo-Und Verinsbank AG (the bank) have entered into a revolving credit agreement pursuant to which the Bank is obligated under the credit agreement to loan to the District an aggregate amount not to exceed \$55,547,946 for the purpose of paying amounts due under the Commercial Paper Notes. Any borrowings under the credit agreement is equally and ratably secured by and payable from the above mentioned sources pledged for payment of the Commercial Paper Notes and from a pledge of the Net Revenues of the District, such pledge being subordinate to the pledge of Net Revenues securing all Senior Lien Obligations.

The District issued \$10,000,000 of notes under this program which were outstanding at April 30, 2003. Interest rates on the notes are 1.35% with maturities from 61 to 166 days. Amounts and structure of long-term debt repayment is unknown at this time.

Note 11-Compliance With Debt Service Requirements

Interest and Sinking Fund Requirements

Bond covenants require funds be established for the purpose of paying the principal and interest on notes and bonds when due. These interest and sinking fund requirements are funded in equal monthly amounts to satisfy the annual debt service payments of all notes and bonds. At April 30, 2003, amounts were sufficient to pay bond principal and interest amounts due on May 1.

Contingency Fund Deposits

An improvement and contingency fund was established in 1995 as a bond covenant for the District's Revenue Bonds Series 1995. The District was required to make 36 consecutive monthly installments of \$41,667 until the fund contained \$1,500,000. This improvement and contingency fund had a balance at April 30, 2003 of \$1,501,518.

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 11-Compliance With Debt Service Requirements (Continued)

Debt Service Coverage Ratio

For the year ending April 30, 2003, the District's Debt Service Coverage Ratios were as follows:

	<u>District</u>	<u>Development Corporation</u>
Operating Revenues	\$ 38,766,984	\$ 3,716,052
Non-operating Revenues	3,703,016	137,234
Gross Revenues	<u>42,470,000</u>	<u>3,853,286</u>
Operating Expenses	35,040,506	1,792,556
Depreciation	(6,919,168)	(758,335)
Interest Expense on Capital Lease and Other	267,827	--
Net Expenses	<u>28,389,165</u>	<u>1,034,221</u>
Net Revenues	<u>\$ 14,080,835</u>	<u>\$ 2,819,065</u>
Development Corporation Non-operating Revenues	137,234	
Net Revenues Available for Coverage	<u>\$ 14,218,369</u>	
Debt Service		
Revenue Parity Bonds	<u>\$ 9,216,694</u>	
Debt Service Coverage		
Revenue Bonds		<u>1.54</u>
Subordinate Debt Service		
Junior Lien Revenue Bonds (TWDB)	\$ 125,000	
Commercial Paper Interest Expense	<u>279,547</u>	
Net Debt Service	<u>\$ 9,621,241</u>	
Total Debt Service Coverage		<u>1.48</u>

**Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003**

Note 12-Contingent Liabilities

The District is a defendant in several lawsuits alleging personal injury or property damage. These suits are expected to be covered by insurance and have been forwarded to the District's insurance companies. The District is involved in litigation of rate and franchise issues. The outcome of this cannot be determined at this time. Accordingly, no liability has been recorded in these financial statements.

The District is also a defendant in lawsuits which seek to restrict pumpage by the District. Since the only cost to the District would be for attorneys fees, no liability has been reflected in these financial statements. These could have a material affect on the District if pumping losses were permanent.

The District collects assessments for other entities through the billing process and remits these amounts to the various entities based on amounts collected. At April 30, 2003, there were amounts due from and payable to two of these entities.

Note 13-Supplemental Water Projects

The supplemental water project account represents deferred charges for professional fees associated with water conservation studies and possible future acquisitions by the District. The deferred charges will be capitalized and amortized or expensed depending upon the future benefit to the District.

Note 14-Self-Insurance - Employees

The District provides medical, dental and prescription drug coverage at no cost to all employees and eligible dependents. The plan is administered by GE Financial Assurance, and provides for a series of co-payments and percentage coverage of selected medical expenses. The plan will pay up to \$50,000 in any calendar year for covered individuals. The administrator pays benefits beyond this amount. Expenses for this program in the fiscal year ended April 30, 2003 were \$1,707,392. At April 30, 2003 there were 45 single individuals and 225 family groups covered under this plan. Because the amount of future losses cannot be reasonably estimated, no reserve has been established nor included in the financial statements.

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 15-Defined Benefit Pension Plan

Effective Date and Plan Year

The effective date of the plan is March 1, 1973. The effective date of the restated plan is March 1, 1996. The most recent amendment was adopted May 24, 1999. The plan year is March 1 to February 28.

Eligibility

Employees are eligible to enter the plan on March 1 and September 1 next following completion of 12 months of employment and attaining age 21. Participating employees accrue benefits if they work at least 1,000 hours per plan year.

Contributions

Prior to March 1, 1996, participating employees contributed 3.2% of the first \$6,000 of earnings plus an additional 6% of the excess over \$6,000. The employer contributes whatever amounts are needed in addition to the accumulated mandatory employee contributions made prior to March 1, 1996 to fund plan benefits.

On March 1, 1996, employees were required to contribute 5% of their salary on a tax deferred basis. These pretax contributions (IRC 414(h)) are used to buy an additional benefit in the plan.

Effective May 1, 2002, accumulated mandatory employee contributions will be treated and used to buy an additional benefit in the plan. The interest credits will be the same as used for the 414(h) contributions.

Amount of Retirement Benefit

Prior to March 1, 1996, the normal retirement benefit was a monthly retirement income equal to 60% of basic monthly earnings reduced proportionately for less than 15 years of service. Basic monthly earnings used to determine benefits was the average of the participant's monthly earnings over the last five complete calendar years.

Effective March 1, 1996, the normal retirement benefit is a monthly retirement income equal to 40% of basic monthly earnings reduced proportionately for less than 20 years of service. Basic monthly earnings used to determine benefits is the average of the participant's monthly earnings over the last ten complete calendar years after December 1, 1990.

**Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003**

Note 15-Defined Benefit Pension Plan (Continued)

In no event shall a participant have a lesser benefit than the benefit calculated on the adoption date of the restatement.

Maximum Benefit

The maximum annual benefit payable at Social Security Normal Retirement Age as a straight life annuity is \$160,000. The maximum limitation for other forms is adjusted to be actuarially equivalent in accordance with the plan document, and is also subject to various legal adjustments and limitations specified in the plan document.

Normal Retirement

Normal retirement age is the earlier of (1) age 65 or (2) the "Rule of 90" age (the age at which the sum total of the participant's age and years of vesting service equal 90), but not before age 60.

Early Retirement

Early retirement is age 55.

Late Retirement

Retirement may be postponed beyond the normal retirement date. Retirement benefits will continue to be earned according to the benefit formula.

Death Benefit

If a participant has a surviving spouse and dies prior to the time his benefit payments (on account of his retirement or disability) commence, a qualified preretirement survivor annuity shall be provided to such surviving spouse equal to the present value of the accrued benefit.

A qualified preretirement survivor annuity is an annuity for the life of the surviving spouse commencing on the later of (1) the date of the participant's death and (2) the earliest date on which the participant could retire, in an amount equal to the amount the surviving spouse could have received had the participant (a) retired on such date, (b) accrued benefits equal to his accrued benefit on the date of his death, (c) elected a 50% joint and survivor annuity, and (d) died on the day following the date he retired.

**Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003**

Note 15-Defined Benefit Pension Plan (Continued)

Disability Benefit

A participant who becomes disabled will continue to accrue retirement benefits during disability, based on his monthly salary at the time of disability until retirement age at which time retirement benefits will be available.

Annuity Forms

The normal annuity form is a monthly income payable for 120 months Certain and Life. At the participant's option, retirement income may be paid without a certain period, with a different certain period, on a joint and survivor basis, or in a lump sum. Election of an optional annuity form may be made at any time before retirement. For any annuity form (other than the subsidized joint and survivor form), the amount of income is adjusted so the cost to the fund is the same as it would have been under the normal annuity form.

Participants actively employed on or after January 6, 1997 may elect to receive a fully subsidized joint and survivor annuity. This option matches the 120 month Certain and Life annuity, except that it is supplemented by 50% continuation to a surviving spouse after the 120 month certain period expires.

Post-Retirement Medical Insurance Premium Benefit

Effective March 1, 1996, participants who terminate employment after January 6, 1997 and commence to receive a monthly benefit from the Pension plan are eligible to receive a medical insurance premium reimbursement of the lesser to \$100 per month or the amount of the Participant's medical insurance premium.

Post-Retirement Cost-of-Living Adjustment

Effective March 1, 1996, retirement benefits distributed after the adoption date (January 6, 1997) shall be automatically adjusted each anniversary date with a three percent (3%) increase of the original benefit for the first ten years.

Termination Benefit

A terminating participant who has completed five years of service is entitled to receive a vested benefit starting on his normal retirement date. The amount of the benefit is equal to the retirement income earned on the basis of service to

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 15-Defined Benefit Pension Plan (Continued)

date and provided by employer contributions multiplied by the appropriate vested percentage from the table below, plus the benefit, if any, provided by the employee after tax contributions.

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 5	0%
5 or more	100%

A year of service for vesting is credited for each year the participant worked at least 1,000 hours. Notwithstanding the above schedule, the accrued benefits are 100% vested when a participant attains retirement age, death while an active employee, or total and disability. Any benefits derived from employee contributions are always 100% vested.

Conditional Benefits

If the plan is or becomes top heavy, the following additions or modifications to the above provisions become effective:

Vesting - The vesting table changes to 100% after three years of vesting service

Benefits - The accrued benefit must not be less than a single life annuity of 2% of the highest five consecutive year average compensation times years of benefit service while the plan is top heavy up to a maximum of ten years.

Compensation - The compensation used to calculate benefits cannot exceed \$200,000 per year or such greater amount as may result from cost-of-living increases.

Funding Status - The amount shown below as the "pension benefit obligation" is a standardized disclosure measure of the present value of pension benefits, adjusted for the effects of salary increases and step-rate benefits, estimated to be payable in the future status of the plan on a going-concern basis, assess progress made in accumulating sufficient assets to pay benefits when due, and make comparisons among employers. The measure is the actuarial present value of credited projected benefits and is independent of the funding method used to determine contributions to the plan.

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 15-Defined Benefit Pension Plan (Continued)

The pension benefit obligation was computed as part of an actuarial valuation performed as of March 1, 2002. Significant actuarial assumptions used in the valuation include (a) a rate of return on the investment of present and future assets ranging from 6% a year compounded annually as an intermediate rate to 7.5% a year compounded annually as a long term rate, and (b) a 3.5% per year projected salary increase with no distinction between inflation, merit, and seniority.

The excess of plan assets over projected benefit obligations totaled \$635,416 at March 1, 2002 as follow:

	<u>March 1, 2002</u>
Pension Benefit Obligation:	
Present Value of Vested Benefits	\$ 7,828,626
Present Value of Non-vested Benefits	<u>316,287</u>
Present Value of Accrued Benefits	8,144,913
Net Assets Available for Benefits, at Market Value	<u>8,780,329</u>
Excess Assets Over Pension Benefit Obligation	<u>\$ 635,416</u>

Trend Information

Five-year historical trend information presenting the District's progress in accumulating sufficient assets to pay benefits when due is as follows:

<u>Fiscal Year</u>	<u>Net Assets Available For Benefits</u>	<u>Projected Benefit Obligation</u>	<u>Percentage Funded</u>	<u>Excess Assets Over Benefit Obligation</u>	<u>Annual Covered Payroll</u>	<u>Excess Assets as a % of Covered Payroll</u>
1998	\$7,767,439	\$5,638,915	138%	\$2,128,523	\$4,061,584	52.41%
1999	\$7,745,099	\$5,262,090	148%	\$2,483,009	\$4,408,893	56.32%
2000	\$8,267,335	\$5,505,470	151%	\$2,761,865	\$5,057,718	54.61%
2001	\$8,639,177	\$7,180,100	121%	\$1,459,077	\$5,784,600	25.22%
2002	\$8,793,036	\$7,529,414	117%	\$1,263,622	\$6,504,383	36.95%

Bexar Metropolitan Water District
Notes to Financial Statements (Continued)
April 30, 2003

Note 16-Bond Refunding

During the fiscal year, the District refunded the Series 1992 bond issue and \$50,000,000 of Commercial Paper. These issues were refunded with proceeds of the Revenue Refunding Bonds Series 2002.

Note 17-Prior Period Adjustments

Because of the amounts involved, a prior period adjustment for \$1,315,179. was made to recognize the unbilled water revenues at the beginning of the period.

Supplementary Information

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**Independent Auditors' Report
on Supplementary Information**

Board of Directors
Bexar Metropolitan Water District
San Antonio, Texas

Our report on our audit of the basic financial statements of Bexar Metropolitan Water District for April 30, 2003, appears on pages 7 and 8. That audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The Schedules of Production Expenses, Administrative and General Expenses, and Depreciation Expenses are presented for purposes of supplementary analysis and are not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Crawford, Iverson & Co., P.C.

Crawford, Iverson & Co., P.C.

June 30, 2003

**Bexar Metropolitan Water District
Schedule of Production Expenses
For the Year Ended April 30, 2003**

	Bexar Metropolitan Water District	Bexar Metropolitan Development Corporation	Total
Salaries	\$ 4,476.195	\$ -	\$ 4,476.195
Power Used	2,159.791	-	2,159.791
Maintenance	1,663.158	-	1,663.158
Production Expenses	-	1,018.410	1,018.410
Lease Payments to Development Corporation	3,716.052	-	3,716.052
Supplies	520.647	-	520.647
Water Purchases and Treatment	3,802.752	-	3,802.752
Contracts and Rentals	265.880	-	265.880
Total Production Expenses	\$ 16,604.475	\$ 1,018.410	\$ 17,622.885

See Independent Auditors' Report on Supplementary Information.

Bexar Metropolitan Water District
Schedule of Administrative and General Expenses
For the Year Ended April 30, 2003

	Bexar Metropolitan Water District	Bexar Metropolitan Development Corporation	Total
Salaries	\$ 2,446,032	\$ -	\$ 2,446,032
Directors Fees	15,255	-	15,255
Agency Fees	985,389	15,811	1,001,200
Insurance Expense	2,802,970	-	2,802,970
Professional Services	2,001,696	-	2,001,696
Office Supplies and Expense	652,302	-	652,302
Communication Expenses	350,477	-	350,477
Retirement Plan Expenses	892,642	-	892,642
Payroll Taxes	686,959	-	686,959
Property Taxes	2,635	-	2,635
Training	83,173	-	83,173
Travel and Entertainment	76,929	-	76,929
Security	291,476	-	291,476
Data Processing Services	177,870	-	177,870
Credit Losses	948,018	-	948,018
Benefits and Hiring Expense	66,085	-	66,085
Election Expenses	-	-	-
Maintenance Contracts	147,062	-	147,062
Miscellaneous Expenses	276,527	-	276,527
Total Administrative and General Expenses	12,903,497	15,811	12,919,308
Overhead Allocated to Capital Projects	(1,285,041)	-	(1,285,041)
Equipment Expense Allocated to Capital Projects	(101,593)	-	(101,593)
Net Administrative and General Expenses	\$ 11,516,863	\$ 15,811	\$11,532,674

See Independent Auditors' Report on Supplementary Information.

**Bexar Metropolitan Water District
Schedule of Depreciation Expense
For the Year Ended April 30, 2003**

	Bexar Metropolitan Water District	Bexar Metropolitan Development Corporation	Total
Depreciation Expense for the Year	\$ 7,322,272	\$ 758,335	\$ 8,080,607
Depreciation Expense Allocated to Capital Projects	(403,104)	-	(403,104)
Net Depreciation Expense	\$ 6,919,168	\$ 758,335	\$ 7,677,503

See Independent Auditors' Report on Supplementary Information.

Overall Compliance and Internal Control

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**Report on Compliance and on Internal Control Over Financial
Reporting Based on an Audit of Financial Statements Performed
In Accordance with *Government Auditing Standards***

To The Board of Directors
Bexar Metropolitan Water District
San Antonio, Texas

We have audited the basic financial statements of the Bexar Metropolitan Water District as of and for the year ended April 30, 2003, and have issued our report thereon dated June 30, 2003. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether the Bexar Metropolitan Water District's basic financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance that are required to be reported under *Government Auditing Standards* which are described in the accompanying schedule of findings and questioned costs as items 2 and 3. We also noted certain immaterial instances of noncompliance that we have reported to management of the Bexar Metropolitan Water District in a separate letter dated June 30, 2003.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Bexar Metropolitan Water District's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the basic financial statements and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our

judgment, could adversely affect Bexar Metropolitan Water District's ability to record, process, summarize and report financial data consistent with the assertions of management in the basic financial statements. Reportable conditions are described in the accompanying schedule of findings and questioned costs as item 1.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the general purpose financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe none of the reportable conditions described above is a material weakness. We also noted other matters involving the internal control over financial reporting that we have reported to management of the Bexar Metropolitan Water District, in a separate letter dated June 30, 2003.

This report is intended solely for the information and use of management, others within the organization, the Board of Directors, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Crawford, Iverson & Co., P.C.

Crawford, Iverson & Co., P.C.

June 30, 2003

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**Report on Compliance with Requirements Applicable to Each
Major Program and Internal Control Over Compliance in
Accordance with OMB Circular A-133**

To The Board of Directors
Bexar Metropolitan Water District
San Antonio, Texas

Compliance

We have audited the compliance of the Bexar Metropolitan Water District with the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement* that are applicable to each of its major federal programs for the year ended April 30, 2003. The Bexar Metropolitan Water District's major federal programs are identified in the Summary of Auditor's Results section of the accompanying Schedule of Findings and Questioned Costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of the Bexar Metropolitan Water District's management. Our responsibility is to express an opinion on the Bexar Metropolitan Water District's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Bexar Metropolitan Water District's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on the Bexar Metropolitan Water District's compliance with those requirements.

As described in items 2 and 3 in the accompanying schedule of findings and questioned costs, Bexar Metropolitan Water District did not comply with requirements regarding reporting and use of funds that are applicable to its Summary of Auditor's Results section of the accompanying Schedule of Findings and Questioned Costs. Compliance with such requirements is necessary, in our

opinion, for the Bexar Metropolitan Water District to comply with requirements applicable to that program.

In our opinion, except for the noncompliance described in the preceding paragraph, Bexar Metropolitan Water District complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended April 30, 2003.

Internal Control Over Compliance

The management of the Bexar Metropolitan Water District is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered the Bexar Metropolitan Water District's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on the internal control over compliance in accordance with OMB Circular A-133.

Our consideration of the internal control over compliance would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with applicable requirements of laws, regulations, contracts and grants that would be material in relation to a major federal program being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over compliance and its operations that we consider to be material weaknesses.

This report is intended solely for the information and use of the management, others within the organization, the Board of Directors, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Crawford, Iverson & Co. P.C.

Crawford, Iverson & Co., P.C.

June 30, 2003

**Bexar Metropolitan Water District
Schedule of Expenditures of Federal Awards
For the Year Ended April 30, 2003**

	<u>Federal CFDA Number</u>	<u>Pass- Through Grantor's Number</u>	<u>Receipts or Revenue Recognized</u>	<u>Disbursements Expenditures</u>
Department of Housing and Urban Development (HUD)				
Community Development Block Grants (1)	14.228	B-01-UC- 48-0500	\$ 218,332	\$ 218,332
Total Department of Housing and Urban Development (HUD)			<u>218,332</u>	<u>218,332</u>
Environmental Protection Agency (EPA)				
Security Planning Grants for Large Drinking Utilities	66.476	HS82983501	<u>115,000</u>	<u>115,000</u>
Total Environmental Protection Agency (EPA)			<u>115,000</u>	<u>115,000</u>
Federal Emergency Management Agency (FEMA)				
Public Assistance Grants (2)	83.544		<u>8,230</u>	<u>8,230</u>
Total Federal Emergency Management Agency (FEMA)			<u>8,230</u>	<u>8,230</u>
Total Federal Awards			\$ <u>341,562</u>	\$ <u>341,562</u>

Total Federal Awards

- (1) Pass-through from Bexar County, TX
(2) Pass-through Texas Department of Public Safety's Division of Emergency Management

**Bexar Metropolitan Water District
Notes to Schedule of Expenditures of Federal Awards
Year Ended April 30, 2003**

Note A – Basis of Presentation

The accompanying schedule of federal awards includes the federal grant activity of the Bexar Metropolitan Water District and is presented on the accrual basis of accounting. The information in this schedule is presented in accordance with the requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Amounts presented on this schedule agree with amounts presented in the basic financial statements.

**Bexar Metropolitan Water District
Prior Year Audit Findings
Year Ended April 30, 2003**

Prior Year Findings

The District did not have any findings in the prior audit.

**Bexar Metropolitan Water District
Schedule of Findings and Questioned Costs
Year Ended April 30, 2003**

Finding 1 - Water Utility Billing System and Procedures

Comment - The District implemented a new water utility billing system in November of 2001. Eighteen months later substantial problems are still being encountered. The system cannot provide accurate summary information needed to prepare the District's monthly financial statements and summary aging reports do not agree with the control totals printed at the end of the month. The month-end activity reconciliation by bill item has a credit balance of \$164,966 and there is apparently no explanation of what these amounts are or why items are posting to this classification. There is \$150,815 in identified credit balances that are presented in the financial statements as a current liability. Policies and procedures are either non-existent or not being followed.

Environmental Protection Agency (EPA)

Security Planning Grants for Large Drinking Utilities, CFDA #66.476, Grant #HS82983501

Finding 2 - Financial Reporting

Criteria - The grant document requires the Bexar Metropolitan Water District to submit all financial, performance, and other reports within 90 days upon completion of the activities contemplated by the EPA grant.

Condition - Our audit showed that required reports have not been filed by the district.

Questioned Costs - None

Additional Information - The individual responsible for preparing the financial reports left the employment of the District April 30, 2003. We consider this finding to represent an isolated instance.

Corrective Action - The District must prepare and file the required financial, performance and other reports immediately to resolve this finding.

Finding 3 - Specific Expenditures for Grant May not be Allowable

Criteria - Approved budgets with the EPA established specific expenditures by line item.

Condition - Actual expenditures do not comply with approved budget for this project.

Questioned Costs - Not determined at this point.

**Bexar Metropolitan Water District
Schedule of Findings and Questioned Costs (Continued)
Year Ended April 30, 2003**

Additional Information - Since the final report has not been prepared, a determination of questioned costs cannot be made.

Corrective Action - Justify all costs associated with the Grant.

Summary of Auditors' Results

1. The auditors' report on the District's financial statement was unqualified.

2. Internal control over financial reporting

Material weakness identified

Yes ☐ No ☒

Reportable conditions identified

Yes ☒ No ☐

3. Noncompliance material to financial statements noted

Yes ☐ No ☒

4. Internal controls over major programs

Material weakness identified

Yes ☐ No ☒

Reportable conditions identified that are not considered to be material weaknesses

Yes ☐ No ☒

5. The auditors' report issued on compliance with major programs was modified.

6. There were three audit findings.

7. The major program was CFDA # 14.228 Department of Housing and Urban Development (HUD) Community Development Block Grant and CFDA # 66.476 Environmental Protection Agency (EPA) Security Planning Grants for Large Drinking Utilities.

8. The dollar threshold used to distinguish between Type A and Type B programs was \$300,000.

9. The District did not qualify as a low-risk auditee.

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER

LAW OFFICES OF MARK H. ZEPPA, P.C.

TAX ID. 74-2302716
PHONE (512) 346-4011
4833 SPICEWOOD SPRINGS ROAD, STE. 202
AUSTIN, TX 78759-8436

BANK ONE, TEXAS, N.A.
AUSTIN, TX 78757
32-81/1110 22536

8788

Dec 8, 2003

PAY
TO THE
ORDER OF

Infas Commission on Environmental Quality
Seven Hundred and no/100

\$ 700.00

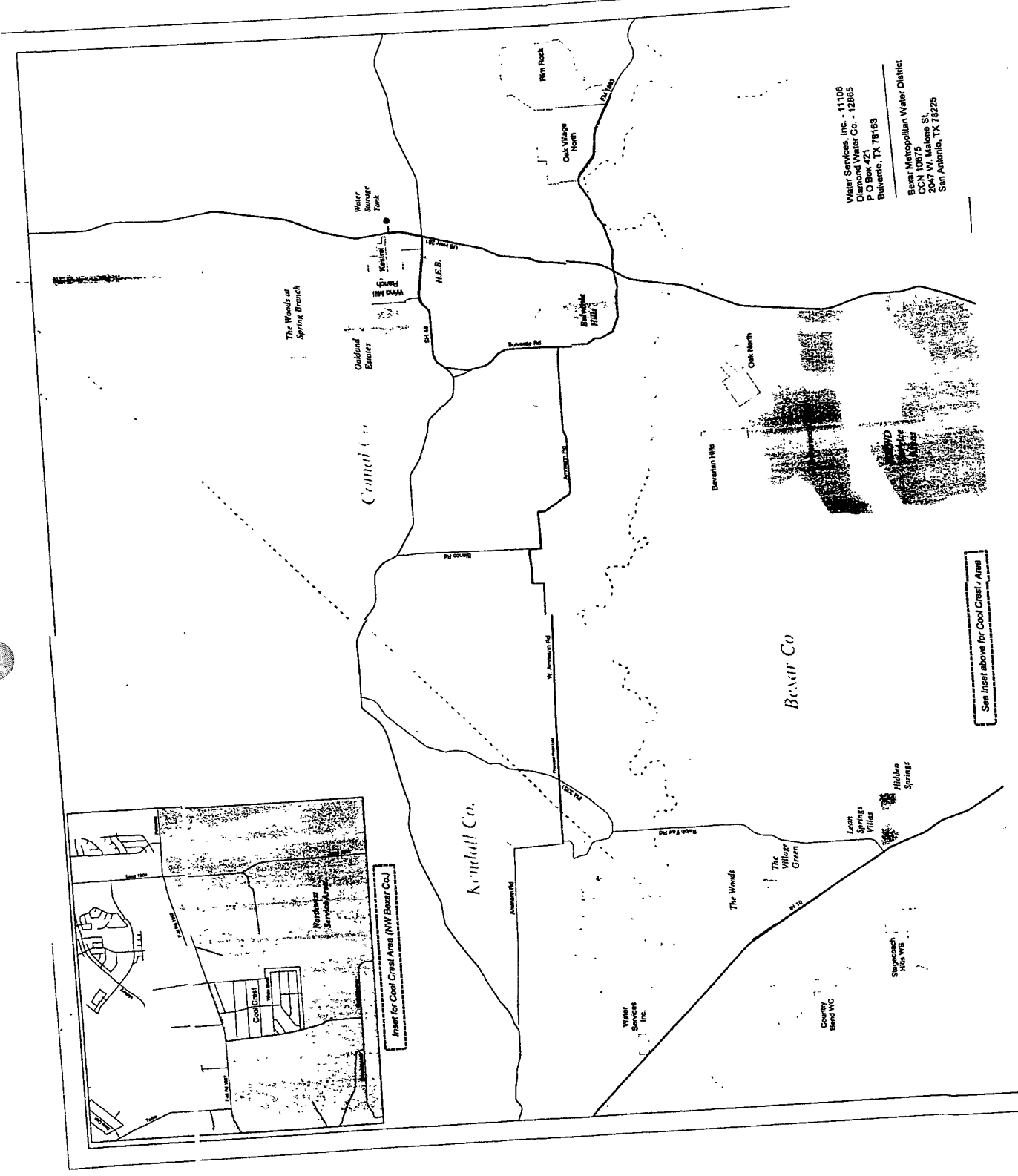
DOLLARS

MEMO *Before met STM of a portion of WSE + diamond*

Arlene Stanford
AUTHORIZED SIGNATURE

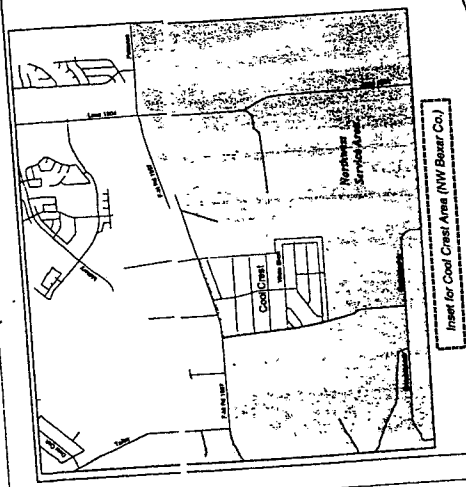
⑈008788⑈ ⑆111000614⑆ ⑈7881194380⑈

FOR SECURITY PURPOSES, THE REVERSE OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT ANGLE TO VIEW



Water Services, Inc. - 11108
Diamond Water Co. - 12085
P.O. Box 421
Bulverde, TX 78163

Bear Metropolitan Water District
CCN 10675
2947 W. Malone St.
San Antonio, TX 78225



Inset for Cool Crest Area (NW Bear Co.)

See Insert above for Cool Crest Area

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") dated as of the 1st day of OCTOBER, 2003, is made by and between **BEXAR METROPOLITAN WATER DISTRICT**, a political subdivision of the state of Texas, and a conservation and reclamation district organized and existing under Article XVI, Section 59, of the Texas Constitution, ("BexarMet"), and **DIAMOND WATER COMPANY**, a Texas corporation ("Diamond").

RECITALS

WHEREAS, Diamond is a water supply corporation serving, among other areas, the Rimrock Ranch, Windmill Ranch and Kestrel Airpark subdivisions consisting of approximately 310 customers with potable water which subdivisions are, among other subdivisions, located within the areas described in Certificate of Convenience and Necessity Numbered 12865 issued by the Texas Natural Resource Conservation Commission, now known as the Texas Commission on Environmental Quality (the "TCEQ"); and

WHEREAS, BexarMet, as purchaser, in lieu of its powers of condemnation, desires to purchase from Diamond, and Diamond desires to sell to BexarMet, all of its right, title and interest in and to, and only in and to, the Rimrock Ranch, Windmill Ranch and Kestrel Airpark water systems in Comal County (the "Water Systems"), together with Diamond's respective assets and rights owned or used and related thereto, on and subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises contained herein and of other good and valuable consideration, and intending to be legally bound hereby, BexarMet and Diamond hereby agree as follows:

ARTICLE 1.

GENERAL PROVISIONS

1.1 Definitions. In addition to definitions contained in this Agreement, Appendix 1.1 of this Agreement sets forth the definitions of certain additional terms used in this Agreement. Each defined term identified with initial capital letter shall have the meaning assigned to it as herein provided, or as set forth in Appendix 1.1.

1.2 "Water System" or "Water Systems". For purposes of this Agreement, the term "Water System" or "Water Systems", as used herein, shall refer only to the Rimrock Ranch, Windmill Ranch and Kestrel Airpark Water Systems (one or all, respectively) owned by Diamond, notwithstanding that Diamond is the owner of

additional Water Systems.

1.3 Other Definitions and Meanings; Interpretation. For purposes of this Agreement, the term "Person" includes any natural person, firm, association, partnership, corporation or other entity; and the words "hereof", "herein", "hereby" and other words of similar import refer to this Agreement as a whole. The table of contents and the headings of the Articles, Sections and other subdivisions of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. All dollar amounts referred to herein are in United States dollars. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identify of the person or persons referred to may require.

ARTICLE 2.

PURCHASE AND SALE

2.1 Transaction. At the Closing (the "Closing"), (a) BexarMet will purchase from Diamond, and Diamond will sell, transfer and assign to BexarMet, all right, title and interest in and to the respective systems' Acquired Assets, free and clear of all liens; (b) BexarMet will assume and become directly and responsible solely to Diamond for the payment or discharge of the respective systems' Assumed Liabilities; and (c) BexarMet will pay to Diamond the Purchase Price, partly in cash and partly by Promissory Note installments, as herein provided. Also as herein provided, Diamond shall retain the Excluded Assets and be directly and solely responsibility for the payment or discharge of the Excluded Liabilities and BexarMet shall have no obligation or liability with respect thereto. BexarMet and Diamond agree to completely close the transaction, including delivery and recording of the Closing Documents as provided for herein, except that Diamond's cash proceeds and Note will be escrowed pending the successful obtaining of an uncontestable and nonappealable Order from TCEQ transferring the CCN for the respective areas being served by the respective Water Systems to BexarMet, and the parties agree to enter into a separate Escrow Agreement with Escrow Agent relative thereto (the "Escrow Agreement"). It is agreed that the Escrow Agreement will contain the substance and will be in the form of Exhibit 'A' attached hereto.

2.2 Acquired Assets. For purposes of this Agreement, the term "Acquired Assets" means all respective assets, properties and rights associated with the Rimrock Ranch, Windmill Ranch and Kestrel Airpark Water Systems which are owned by Diamond or used in connection with the conduct of the business purposes (the "Business") of such Water Systems, including without limitation all assets of the Water Systems reflected on the Financial Statements of Diamond as of the Closing, but excluding the Excluded Assets. Without limiting the generality of the foregoing, the Acquired Assets include all of the right, title and interest in and to the following assets owned by Diamond or used in connection with the Water Systems:

(a) All personal property (whether as owner, lessor, lessee or otherwise) including, without limitation, all designs, plans, specifications, surveys, drawings, maintenance records, leak and breakage records, books, technical specifications, as built construction drawings and utility plans, laboratory equipment, chlorination equipment, water pumps, pipes, manuals, and related personal property associated with or related to the conduct of the Water Systems, and all support, maintenance, warranty and similar agreements related to such personal property, and including specifically and without limitation the personal property described or referred to on Schedule 3.2(e).

(b) All real property described on Schedule 3.2(f), in accordance with the detail required in that Schedule, together with the improvements thereon and fixtures related thereto, including without limitation, pumps, mains, lines, meters, water wells and storage tanks, and all easements related to Diamond and/or the Water Systems.

(c) All orders, contracts and commitments for the sale of Water or otherwise related to the Water Systems, including, without limitation all such items relating to distribution and similar arrangements and including specifically and without limitation those orders, contracts and commitments described or referred to on Schedule 3.2(h).

(d) All permits, approvals, authorizations, licenses, qualifications and the like issued by any governmental unit, agency, board, body or instrumentality, whether federal, state or local, and all applications therefor, including specifically and without limitation the CCN, and the permits, approvals and qualifications described or referred to on Schedule 3.2(k).

(e) All operating books and records, including without limitation all records, customer lists, supplier lists and records, well and system water pumpage histories and all sales and promotional literature, correspondence and files, and including specifically and without limitation the books and records described or referred to on Schedule 3.2(r).

(f) All utility account numbers used or useful in connection with the Business;

(g) All water rights owned, possessed, held, acquired or claimed and any such water rights that could or may in the future be owned, possessed, held, acquired or claimed based on the pumpage history and other history of Diamond or otherwise.

2.3 Excluded Assets. For purposes of this Agreement, the term "Excluded Assets" means the following rights, properties and assets of the Business as the same exist as of the Closing.

(a) All cash, certificates of deposit, bank deposits, time deposits, securities all notes, billed accounts receivable and unbilled accounts receivable, including specifically and without limitation those notes, accounts receivable and unbilled accounts receivable listed on Schedule 2.3(a).

(b) The real property described on Schedule 2.3(b), together with the improvements thereon and fixtures related thereto.

(c) The billing and collection office leases listed on Schedule 2.3(c).

(d) The billing system and computers listed on Schedule 2.3(d).

(e) The personal property listed on Schedule 2.3(e), including, without limitation, all inventories, of whatever nature and wherever located, including, without limitation, inventories of raw materials, work-in-process, finished goods, replacement parts, spare parts, operating supplies, packaging, scientific instruments of all kinds, test kits, test units, test procedures, machinery, equipment, tooling, masks, molds, jigs, patterns, gauges, materials handling equipment, furniture, office equipment, calculators, and computers;

(f) All post office boxes and telephone numbers used in connection with the Business;

(g) All prepaid insurance and all prepaid and similar items (other than insurance), including, without limitation, all prepaid expenses, deferred charges, advance payments, and other prepaid items.

2.4 Assumed Liabilities. For purposes of this Agreement, the term "Assumed Liabilities" shall mean only the liabilities and obligations of Diamond that are specifically identified and described on Schedule 2.4, but only to the extent such liabilities and obligations are due and payable after the Closing. The Assumed Liabilities expressly exclude any of the Excluded Liabilities.

2.5 Third Party Encumbrance. There exists and there shall continue to exist after the Closing, the following specific third party debt and encumbrance ("Third Party Encumbrance"):

(a)		Current	Long Term	Total
System	Description	Portion	Portion	Note
Name				
Kestrel Air Park	N/P - Kestrel		350,003.00	350,003.00
Windmill Estates	Construction Agreement- McFadden		331,000.00	331,000.00
Rimrock	N/P - Robert Payne	18,299.48	29,251.79	47,551.27
Working Capital	N/P - Ronald Payne	17,755.22	-	17,755.22





- (b) Notwithstanding anything to the contrary contained herein, these Third Party Encumbrances shall be kept current by Diamond, and Diamond shall not allow any event or non-event to exist or occur that could be construed to be a default of any of the terms, stipulations or conditions of said Third Party Encumbrances as of and from the Effective Date hereof through the date the cash portion of the Purchase Price is disbursed to Diamond as provided in Section 2.1 above, at which time the Third Party Encumbrances will be paid off, discharged and released by the Escrow Agent from the escrowed cash portion of Diamond's funds.
- (c) Notwithstanding anything to the contrary contained herein, these Third Party Encumbrances shall not be an Assumed Liability, and shall be an Excluded Liability.
- (d) Within five (5) business days from the Effective Date, Diamond will commence and diligently pursue efforts to obtain the agreement and consent of the Third Party Creditor to the Third Party Creditor's execution and delivery into Escrow, with the Escrow Agent under the Escrow Agreement, of documents acceptable to Diamond and BexarMet which fully, absolutely, and completely discharge and release (the "Release Documents") any liens, encumbrances and/or security interests that the Third Party Creditor may hold or have in the Acquired Assets with instructions to the Escrow Agent that will permit the Escrow Agent to deliver the Release Documents to BexarMet for use and recording whenever the Third Party Encumbrances have been paid off and discharged.

2.6 Excluded Liabilities. For the purposes of this Agreement, the term "Excluded Liabilities" shall mean any and all liabilities, debts and obligations of Diamond not expressly assumed by BexarMet pursuant to section 2.4 hereof and listed as Assumed Liabilities on Schedule 2.4.

2.7 Purchase Price. For purposes hereof, the term "Purchase Price" means the following:

Subject to the terms and conditions of this Agreement, the purchase price (the "Purchase Price") to be paid by BexarMet to Seller for the Assets is allocated among the three Water Systems as follows:

Rimrock Ranch	\$2,000 per active connection at time Closing.
Windmill Ranch	\$2,000 per active connection at time Closing.
Kestrel Airpari	\$2,000 per active connection at time Closing.

"Active connection" as defined herein shall mean a water utility service connection active for at least 1/2 month to which water is actually being provided for consumption upon demand and which is being billed in the normal course of business.

2.8 Payment of Purchase Price. BexarMet will pay the Purchase Price as follows:

(a) Within five (5) business days after the Effective Date, BexarMet shall deliver to Diamond a check in the amount of \$100.00 as Independent Contract Consideration, which amount Diamond and Purchaser hereby acknowledge and agree has been bargained for and agreed to as consideration for Diamond's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for herein, and is nonrefundable in all events.

(b) At the Closing, BexarMet will deposit into escrow, the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00);

(c) At Closing, BexarMet will extend and deposit into escrow, BexarMet's Promissory Note (the "Note") in a sum equal to the number of active connections at the time of Closing, calculated as provided in paragraph 2.6 hereof, LESS the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00). The Note will be unsecured and will be at the rate of 5% per annum payable in annual installments of principal and interest that will pay off the Note in not more than five (5) years, SAVE AND EXCEPT, however, in the event BexarMet should, during the five (5) year term of the Note, issue "new money revenue bonds", then BexarMet will be obligated to, within 30 days from funding, pay off and discharge all amounts of principal and interest owing on the Note. "New Money Revenue Bonds", which would ordinarily be styled "Bexar Metropolitan Water District Waterworks System Revenue Bonds" or "Bexar Metropolitan Water District Waterworks System Refunding and New Money Bonds" does not include purely refunding bonds, which would ordinarily be styled "Bexar Metropolitan Water District Waterworks System Refunding Bonds."

2.9 Earnest Money - Default. Upon execution of this Agreement, BexarMet shall issue its check in the sum of \$3,000.00 payable to Stewart Title Company ("Escrow Agent") to bind this sale, to be held by Escrow Agent in escrow and to be delivered by

Escrow Agent in accordance with the provisions hereof. The Earnest Money is to be held in an interest bearing account and all interest earned for the benefit of BexarMet. At Closing, the Earnest Money (including any interest accrued thereon) shall be applied to the Purchase Price. If BexarMet fails to comply with this Agreement, BexarMet shall be in default, and Diamond may either (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this Agreement and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Agreement. If Diamond is unable without fault to make any non-casualty repairs or deliver the Commitment within the time allowed, BexarMet may either terminate this Agreement and receive the Earnest Money as the sole remedy or extend the time for performance up to 15 days and the Closing Date shall be extended, if necessary. If Diamond fails to comply with this Agreement for any other reason, Diamond shall be in default and BexarMet may either (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this Agreement and receive the Earnest Money, thereby releasing both parties from this Agreement.

2.10 Offset for Breach. In the event of a breach of this Agreement by Diamond, BexarMet may, at its option, offset from the component of the Purchase price specified in Section 2.6(c), any liability, damage, claim, cost or expense (including reasonable attorney's fees) arising out of or resulting from such breach; provided that BexarMet shall have given written notice of such breach to Diamond and Diamond shall have failed to cure such breach to the satisfaction of BexarMet within thirty days after receipt of such notice. This right of offset shall be binding upon any assignee of Diamond, regardless of whether or not such assignee has notice of this right of offset.

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES

3.1 Diamond's General Representations and Warranties. Diamond hereby represents and warrants to BexarMet the following:

(a) Organization and Existence; Business. Diamond is a Texas Business Corporation, duly organized and validly existing under the laws of the State of Texas. Diamond extracts, treats and distributes potable water ("Water").

(b) Power and Authority. Diamond has full power and authority under its corporate charter and by-laws and the laws of the State of Texas to execute, deliver and perform this Agreement.

(c) Finders. Diamond has not engaged, nor is directly or indirectly obligated to anyone acting as a broker, finder, or in any other similar capacity in connection with the sale of the Assets or any other transaction contemplated by this Agreement.

(d) Authorization. The execution, delivery and performance of this Agreement by Diamond has been duly authorized by all requisite corporate action.

(e) Binding Effect. This Agreement is a valid, binding and legal obligation of Diamond, enforceable against Diamond in accordance with the terms hereof.

(f) No Default. Neither the execution and delivery of this Agreement nor Diamond's full performance of its obligations hereunder will violate or breach, or otherwise constitute or give rise to a default under, the terms or provisions of its organizational and governance documents or any material contract, commitment, instrument, notice, writ, injunction, order or decree of any court, agency or other governmental authority or other obligation to which Diamond is a party.

(g) No Knowledge of BexarMet Default. Diamond has no knowledge that any of BexarMet's representations and warranties are untrue, incorrect or incomplete, or that BexarMet is in Default under any term or provision of this Agreement.

(h) Liens and Encumbrances. Except for the Third Party Encumbrance, the Permitted Encumbrances disclosed on Schedule 3.1(h) and the liens and encumbrances that will be released at or prior to the Closing, the Acquired Assets are free and clear of any and all liens and encumbrances or any other rights or claims of any person.

(i) Consents. Except for the consent of the Third Party Creditor and the consents and approvals listed on Schedule 3.1(i), no consent, approval, authorization or order of any court, agency or any other person is required in order to permit Diamond to consummate the transactions contemplated by this Agreement, except those which have been or will be obtained prior to the Closing.

(j) Representations and Warranties True and Complete. All representations and warranties of Diamond in this Agreement including all representations in this Section 3.1 and in Section 3.2 hereof are true, accurate and complete in all material respects as of the date hereof, will be true, accurate and complete in all material respects as of the Closing, and such representations and warranties shall be deemed remade at and as of the Closing, except with

respect to the effect of transactions contemplated or permitted by this Agreement and with respect to the effect of the passage of time upon material expressly indicated in the Schedules as being as of a particular date. Diamond has fairly and accurately disclosed to BexarMet all material facts respecting the purchase by BexarMet of the Acquired Assets and the acquisition of the Business. The representations and warranties herein provided, and all information disclosed to BexarMet, and all information provided in the Schedules to this Agreement are true, correct and complete with respect to the information therein presented, and do not omit to state any material fact necessary to make any fact, representation, statement or information therein not misleading.

3.2 Diamond's Other Representations and Warranties. Diamond hereby represents and warrants to BexarMet the following:

(a) Financial Statements. Schedule 3.2(a) is a listing of financial statements, information and schedules covering six Business (including, without limitation, financial statements for the last three years, true, correct and complete copies of which have been previously delivered to BexarMet (collectively, the "Financial Statements"). Each of the Financial Statements is true, correct and complete in all material respects and fairly presents the financial condition of the Business, in accordance with generally accepted accounting principles, consistently applied, except as disclosed in the footnotes to the financial statements.

(b) Investments. Diamond does not own or hold any equity interest, directly or indirectly, in any corporation, partnership, joint venture, business, firm or other entity which engages in any business in direct competition with the Business and Diamond is not a party to a commitment or agreement to acquire any such interest.

(c) Receivables. Diamond has Ownership of all accounts receivable being transferred to BexarMet, and none of such receivables are owing to the Business by any Affiliate of Diamond other than in the ordinary course of business in the supplying of Water. The list of accounts receivable to be delivered at the Closing and to be attached hereto as Schedule 3.2(c) constitutes a full and complete list of all accounts receivable owing to the Water Systems at Closing other than the accounts receivable identified on Schedule 2.3(a). All accounts receivable listed on Schedule 3.2(c) are valid, represent obligations to pay for products sold or services rendered in the ordinary course of business, and are not subject to any right of offset.

(d) Inventories. While Diamond has Ownership of a variety of inventories, inventory is an Excluded Asset.

(e) Personal Property. Diamond has Ownership of all tangible personal property listed on Schedule 3.2(e). The list of personal property attached hereto as Schedule 3.2(e) is a full and complete list of all of the tangible personal property, exclusive of Inventory, used in connection with the Business, and such property constitutes all of the assets necessary for the operation of the Business. All personal property listed on Schedule 3.2(e) is owned by Diamond free and clear of any claim whatsoever. Diamond has delivered or will deliver at the Closing all support, maintenance, warranty and similar agreements related to such personal property. To the best of Diamond's knowledge, there are no latent defects in the personal property listed on Schedule 3.2(e). With respect to the physical condition, except as herein expressly provided and except for warranty of title, the personal property listed on Schedule 3.2(e) shall be transferred to BexarMet "AS-IS - WHERE IS". All water pipes and lines owned by Diamond or used by the Business are on property or easements owned by Diamond that are to be conveyed to BexarMet or in public rights of way.

(f) Real Property. Diamond has Ownership of all real property listed on Schedule 3.2(f). The lists of real property attached hereto as Schedule 3.2(f) is a full and complete list of all of the real property, including easements, exclusive of Excluded Assets, used in connection with the Business, and such real property constitutes all of the real property necessary for the conduct of the Business. All real property listed on Schedule 3.2(f) is owned by Diamond free and clear of any claim whatsoever, except the Permitted Encumbrances. To the best of Diamond's knowledge, there are no latent defects in the improvements on and water pipes and lines in the real property listed on Schedule 3.2(f). With respect to the physical condition, except as herein expressly provided and except for warranty of title, any improvements on and water pipes and lines in the real property listed on Schedule 3.2(f) shall be transferred to BexarMet "AS-IS - WHERE IS". All easements owned by Diamond or used by the Business that are not recorded or created by recorded plats are listed on Schedule 3.2(f). There is a legal right of ingress and egress to all real property listed on Schedule 3.2(f).

(g) Litigation. There presently exists no litigation, proceeding, action, claim or investigation at law or in equity pending or threatened which would, individually or in the aggregate, have a material or adverse effect on the Water Systems, and Diamond has no knowledge of any facts or circumstances that would indicate that any such claim exists. Diamond is not subject to any notice, writ, injunction, order or decree of any court, agency or other governmental authority which would materially or adversely affect the Water Systems or Business.

(h) Contracts. The list of contracts and agreements identified on

Schedule 3.2(h) is a complete and accurate list of all contracts and agreements between Diamond and any other person, or related to the Water Systems, which have associated with them any continuing obligation of performance or liability by BexarMet. Each of the contracts or agreements described or referred to in Schedule 3.2(h) is a valid and binding obligation of Diamond and the party or parties thereto. All of the contracts and agreements described or referred to in Schedule 3.2(h) are included in the Acquired Assets, unless specifically noted in said Schedule as not being an Acquired Asset, and constitute all of the contracts and agreements included in the Acquired Assets. None of the parties to any of such contracts or agreements has terminated, canceled or substantially modified any of such contracts or agreements and neither Diamond nor, to Diamond's knowledge, is any other party in Default thereunder.

(i) Intellectual Property. Diamond has (and after the Closing BexarMet will have) exclusive Ownership of the intellectual Property listed as "owned" on Schedule 3.2(i). Diamond has (and after the Closing BexarMet will have) the exclusive right under valid and subsisting license, technology or similar agreements referred to on Schedule 3.2(i) to employ the intellectual Property listed as "licensed" on Schedule 3.2(i) in its conduct of the Business subject only to the terms of any such agreements referred to in Schedule 3.2(i).

(j) Employee Benefits. Schedule 3.2(j) is a full and complete listing of all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") which are maintained by or contributed to by Diamond in connection with the Business (all such plans are herein referred to as "Plans"), and all employee stock option or stock purchase, bonus, incentive compensation, severance pay and fringe benefit arrangements of Diamond relating to, or applicable to the Business or its employees. Diamond has no employment contract with any person, other than as listed in Schedule 3.2(j). Neither Diamond nor any member of the group of businesses under common control of which Diamond is a part has incurred any liability under Title IV of ERISA arising in connection with the termination of, or complete or partial withdrawal from, any plan covered or previously covered by Title IV of ERISA, and Diamond and all members of the group of businesses under common control of which Diamond is a part have paid and discharged when due all obligations and liabilities arising under ERISA and the Internal Revenue Code of 1986, as amended (the "Code") with respect to all Plans which, if unpaid might in the imposition of a lien against any of the Acquired Assets. During the five-year period ending on the Closing, Diamond has not made or been required to make any contributions to any "multi-employer plan" (as defined in Section 3(37) of ERISA). Diamond has complied in all material respects with the continuation coverage requirements of Section 601 through 608 of ERISA and Section 4980B of the Code.

(k) Permits. Schedule 3.2(k) is a full and complete list of the following:

A. All United States, non-federal permits, approvals, authorizations, licenses, consents, certifications or clearances held, used or required in the conduct of the Business, identified by holder, including those required by Environmental Requirements.

B. All United States federal permits, approvals, authorizations, licenses, consents, certifications or clearances held, used or required in the conduct of the Business, identified by holder, including those required by Environmental Requirements, TCEQ, and the Edwards Aquifer Authority.

C. All other permits, approvals, authorizations, licenses, consents, certifications, or clearances held, used or required in the conduct of the Business, identified by holder, including those required by Environmental Requirements.

D. Diamond is not in Default under any permit, approval or qualification listed on Schedule 3.2(k); and no permit, approval or qualification other than those listed on Schedule 3.2(k) of any government or governmental unit, agency, board, body or instrumentality, whether federal, state or local, including those required by Environmental Requirements, is necessary for the conduct of the Business as the same has been and is being conducted.

(l) Compliance with Laws. Diamond is in all material respects in full compliance with all statutes, ordinances, codes, restrictions, regulations and other governmental requirements, including Environmental Requirements. At all times prior to the Closing, the conduct of Diamond and the Business has been in all material respects in full compliance with all statutes, ordinances, codes, restrictions, regulations and other governmental requirements, including, without limitation, except as expressly set forth on Schedule 3.2(l).

(m) Payment of Taxes; Tax Liens. All tax returns, declarations of estimated tax and tax reports required to be filed by Diamond have been filed in timely fashion with the appropriate government agency, and all federal, state and local income, profits, employment, franchise, sales, use, occupation, property, excise or other taxes or charges, and all required estimated payments in respect thereof, applicable to the Business have been paid when due and Diamond has withheld and paid to the appropriate taxing authority or jurisdiction any and all amounts required by law or

agreement to be withheld from the wages or salaries of its employees. There are no agreements by Diamond for the extension of the time for the assessment of any tax, and all Federal, foreign, state, county and local taxes due and payable by Diamond have been paid. The Assets are not in any manner encumbered by any or vulnerable to liens arising out of unpaid taxes which are due and payable nor shall any such lien arise on account of any taxes due for any period prior to the Closing. All ad valorem or other personal property taxes shall be prorated through the date of the Closing on the Assets conveyed. In the event any additional ad valorem taxes are imposed on the Property as a result of a change in use by Diamonds prior to a Closing (so-called "rollback taxes"), then Diamonds shall be responsible for the payment thereof. In the event there is any change in use on or after the Closing Date, then BexarMet agrees to indemnify Diamonds and hold Diamonds harmless from any lawful obligation or responsibility for payment of any such tax. The parties further agree to proration of taxes and following the procedures as set out in Section 26 of the Texas Property Tax Code.

(n) No Material Events. The Business has been conducted only in the ordinary and usual course since January 1, 2003, and no Material Events have occurred since January 1, 2003.

(o) Ownership: Liens and Encumbrances. Except for the Permitted Encumbrances set forth on Schedule 3.1(h), the Acquired Assets, at the Closing, will be owned by Diamond free and clear of any and all liens and encumbrances whatsoever, and any right of any party other than Diamond. Diamond has full right to use (and, after Closing, BexarMet will have full right to use) the account numbers referred to in Schedule 3.2(o). Diamond has, and after the Closing BexarMet will have, good and marketable title to all of the Acquired Assets free and clear of any liens, claims or encumbrances.

(p) Environmental Matters. Except as set forth on Schedule 3.2(p), neither Diamond nor, to the knowledge of Diamond, any other person, has generated, processed, stored, transported, recycled, disposed of or otherwise handled any Hazardous materials, as herein defined, in any manner that has resulted, or that could result, in a violation of Environmental Requirements or in a Hazardous Materials Contamination, as herein defined on, beneath or about any of the premises used in the conduct of the Water Systems, or previously used in the conduct of the Water Systems, or in any manner otherwise related to the operation of the Water Systems. In addition, except as set forth on Schedule 3.2(p), Diamond has no knowledge that any property adjoining the premises used in the conduct of the Water Systems, or previously used in the conduct of the Water Systems, is being used, or has ever previously been used, for the generation, processing, storage, transport, recycling, disposal or other handling of any Hazardous Materials. In addition, neither the premises presently used, nor any premises previously used in the conduct of the Water Systems, nor, to the knowledge of Diamond, any adjacent premises, has ever been affected by any Hazardous Materials

Contamination, as herein defined. Diamond has not received any notice from any governmental authority or other person advising Diamond that it is potentially responsible for response costs with respect to a release or threatened release of any Hazardous Materials, and no investigation, administrative proceeding, consent order or agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is anticipated or in existence, or to the knowledge of Diamond, proposed or threatened with respect to the premises used in the conduct of the Water Systems, or in any other manner otherwise related to the operation of the Water Systems, nor is such property currently owned, nor to the knowledge of Diamond, has the premises ever been on, federal or state "Superfund" or "Superlien" list. Diamond has provided BexarMet with a copy of any report resulting from any audits, studies or reviews performed with respect to any environmental matter related to Diamond or the Water Systems, in the past ten years. Diamond expressly agrees to supply BexarMet with historical and operational information regarding the Water Systems, and any premises now or heretofore used in connection with the Water Systems, as may be reasonably requested by BexarMet to facilitate any site assessment or site review with respect to any environmental matter, and will make available such personnel of Diamond as BexarMet may reasonably request with respect to any review of environmental matters in connection with the Water Systems or any premises now or heretofore used in the conduct of the Water Systems. Any cost or expenses associated with providing such assistance and personnel shall be borne by Diamond. Without limiting the foregoing, BexarMet shall be entitled to, at any time after Closing, without in any manner limiting BexarMet's remedies as a result of the breach of the representations and warranties herein contained, to take such actions as it may deem necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with any Hazardous Materials or Hazardous Materials Contamination on the premises on the Closing Date or related to operation of the Water Systems prior to the Closing Date, and Diamond shall reimburse BexarMet for any cost and expense related thereto upon demand.

(q) Labor Relations; Collective Bargaining Agreements. There are no controversies pending or, to the knowledge of Diamond, threatened between Diamond and its employees. Diamond is not a party to any collective bargaining or union contract and, to the knowledge of Diamond, there exists no current union organizational effort with respect to employees of Diamond.

(r) True and Complete Copies. Within ten (10) days from the Effective Date, Diamond will make available and deliver to BexarMet, true and correct copies of all Section 2.2(f) and (g) items, all Section 2.4 and 2.5 contracts, obligations and agreements, and has delivered or made available to BexarMet true, correct and complete copies of all other contracts, agreements and documents referred to in this Agreement or related to the Water Systems, together with all modification thereof and amendments thereto, and all business books and records, including without limitation all

financial, operating, inventory, legal, personnel, payroll, customer lists, accounts and records, supplier lists and records, and all sales and promotional literature, correspondence and files of Diamond with respect to the Business.

(s) Insurance. Schedule 3.2(s) contains a list of the policies and contracts (including insurer, named insured, type of coverage, limits of insurance, required deductibles or copayments, annual premiums and expiration date) for fire, casualty, liability and other forms of insurance maintained by, or for the benefit of, Diamond. All such policies are in full force and effect and are adequate for the business. Diamond has not received any notice of cancellation or nonrenewal or of significant premium increases with respect to any policy. All premiums due prior to the date hereof for the period prior to the date hereof with respect to such policies have been timely paid, and all premiums due before the Closing Date for periods between the date hereof and the Closing Date will be timely paid.

(t) Safety Requirements. The operation of the Water Systems is presently in all material respects in full compliance with, and has at all times prior to the date hereof been in all material respects, in full compliance with, all job safety requirements applicable thereto, including, without limitation, any and all requirements of the Occupational Safety and Health Act of 1970, as amended, and any other requirements of any governmental authority with respect to the health or safety of workers. Diamond has not received any notice of any failure to comply with any such law, order, rule, or regulation, nor is any such complaint pending or threatened from any other party. Diamond has provided BexarMet with a copy of any report resulting from any audit, study or review performed with respect to health or safety or health, nor is Diamond aware of any fact or circumstance which would give rise to any such claim

(u) Customer Deposits. Diamond shall refund all customer deposits with accrued statutory interest on or before the Closing Date. No customer deposit obligations shall pass to BexarMet.

3.3 BexarMet's Representations and Warranties. BexarMet hereby represents and warrants to the following:

(a) Organization and Existence. BexarMet is a political subdivision of the State of Texas duly organized, validly existing and in good standing under the laws of the State of Texas.

(b) Power and Authority. BexarMet has full corporate power and authority under its enabling act and the general laws of the State of Texas to execute, deliver and perform this Agreement.

(c) Authorization. The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate actions on the part of

BexarMet.

(d) Binding Effect. This Agreement is a valid, binding and legal obligation of BexarMet, enforceable against BexarMet in accordance with the terms hereof.

(e) No Default. Neither the execution and delivery of this Agreement nor BexarMet's full performance of its obligations hereunder will violate or breach, or otherwise constitute or give rise to a Default under, the terms or provisions of the Texas laws to which BexarMet is subject or any material contract, commitment, instrument, notice, writ, injunction, order or decree of any court, agency or other governmental authority or other obligation to which BexarMet is a party.

(f) Finders. BexarMet has not engaged and is not directly or indirectly obligated to any one acting as a broker, as a finder or in any other similar capacity in connection with BexarMet's purchase of the Acquired Assets, or any other transaction contemplated by this Agreement.

(g) No Knowledge of Diamond Default. BexarMet has no knowledge that any of Diamond's representations and warranties are untrue, incorrect or incomplete, or that Diamond is in Default under any term or provision of this Agreement.

(h) Consents. No consent, approval, authorization or order of any court, agency or any other person is required in order to permit BexarMet to consummate the transactions contemplated by this Agreement, except those which have been or will be obtained prior to Closing.

(i) Representations and Warranties True and Complete. All representations and warranties of BexarMet in this Agreement are true, accurate and complete in all material respects as of the date hereof and will be true, accurate and complete in all material respects as of the Closing (as if such representations and warranties were made anew as of the Closing, except with respect to the effect of the transactions contemplated or permitted by this Agreement).

3.4 Disclaimer. Except as set forth in this Article 3, no party has made any further representation or warranty, either express or implied, concerning the subject matter of this Agreement and no party has relied on any such further representation or warranty.

3.5 Survival. The respective covenants, representations and warranties of Diamond and BexarMet contained in this Agreement will survive the execution and delivery of this Agreement and the Closing.

ARTICLE 4.

ACTIONS BEFORE CLOSING

4.1 Access. During the Section 4.6 Review Period and thereafter through the Closing, Diamond covenants to BexarMet that Diamond will afford duly authorized representatives of BexarMet, at no cost to BexarMet, free and full access, and the right to copy, during normal business hours to all of the assets, properties, maps, plats, surveys, as-built surveys, drawings, maintenance records, leaks and breakage records, studies, analysis, projections, other books, records, water pumping/production history, well data and to the personnel, accountants, attorneys, customers, clients, contractors, and suppliers of the Water Systems. Diamond specifically covenants that Diamond will permit, at BexarMet's cost, duly authorized representatives of BexarMet to conduct such tests of the assets, including evaluation of compliance with environmental laws, as BexarMet may request, provided that any such tests are performed in such a manner as will not disrupt the operation of the Water Systems and, in the event of damage or injury resulting from any such tests, BexarMet will place any damaged property in substantially the same condition as it was in prior to the conduct of such tests and, to the extent it legally may, indemnify and hold Diamond harmless from any personal injury or death that is not the result of Diamond's negligence or willful misconduct. In addition, Diamond will permit such representatives to make abstracts from, or take copies of, such books, records or other documentations, or to obtain temporary possession of, any thereof as may be reasonably required by BexarMet, and Diamond will furnish to BexarMet such information concerning the Business and its assets, liabilities or condition as BexarMet may reasonably request.

4.2 Interim Conduct of the Business. Diamond hereby covenants to BexarMet that, from the date hereof to the Closing, Diamond will conduct the business and operation of the Water Systems only in the ordinary and usual course, consistent with past practices, subject to BexarMet's approval of certain transactions pursuant to Section 4.3 hereof. Without limiting the generality of the foregoing, Diamond hereby covenants to BexarMet that, insofar as the business of the Water Systems is concerned, Diamond will use its best efforts to:

- (a) preserve substantially intact the Water Systems' relationships with suppliers, customers, employees, creditors and others having business dealings with the Business;
- (b) maintain in full force and effect, its existing policies of insurance listed on Schedule 3.2(s);
- (c) maintain its properties, machinery and equipment in good operating condition and repair;
- (d) maintain all Intellectual Property to be included as part of the Acquired

Assets in substantially the same standing as exists on the date hereof and continue the prosecution of all applications therefor;

(e) continue performance in the ordinary course of its obligations under contracts, commitments or other obligations to be included as part of the Acquired Assets; and

(f) permit employees or other representative is of BexarMet to participate and consult with Diamond's employees in the performance of their jobs for a period or not less than two weeks prior to the Closing Date, provided that any such participation will be performed in such a manner as will not disrupt the operation of the Business, and BexarMet will be responsible for the wages of BexarMet's employees and representatives.

4.3 BexarMet's Approval of Certain Transactions. Diamond hereby covenants to BexarMet that, except as may otherwise be required under this Agreement, from date hereof to the Closing, insofar as the Business is concerned, Diamond will not do any of the following without the prior written consent of BexarMet:

(a) permit any Encumbrances against any of the Acquired Assets;

(b) accelerate or delay the sale of Water except as may be necessary in the ordinary course of business;

(c) enter into any transaction, contract or commitment outside of the ordinary course of business, waive any right, cancel any debt or claim or voluntarily suffer any extraordinary loss; or

(d) sell, assign, transfer, license or convey any of the intellectual Property to be included as part of the Acquired Assets.

4.4 Consent to Assignment. Diamond hereby covenants to BexarMet that, at least ten business days prior to the Closing, Diamond will obtain the consents, approvals or novations (or acceptable effective waivers thereof) of assignment from those persons whose consents or approvals are required for the assignment of Diamond's rights as contemplated by this Agreement, and Diamond represents that the only consents, approvals or novations required are those required under those contracts, leases, licenses, permits, approvals and other items identified with a triple asterisk (***) in Schedule 3.2(h) and those consents listed on Schedule 3.1(i). Diamond further covenants to BexarMet that, between the date hereof and the Closing, Diamond will obtain the consents, approvals or novations (or acceptable effective waivers thereof) of all persons who are required to consent to or approve the assignment of Diamond's

rights under contracts, leases, licenses, permits, approvals and the similar items constituting part of the Acquired Assets, including without limitation, the CCN. Any and all consents, approvals, novations or waivers shall be in writing, signed by the person entitled to consent or approval, and shall be delivered to BexarMet at least ten business days prior to the Closing. Failure of Diamond to obtain, after good faith attempts, all consents, approvals and novations described or referred in this Section 4.4 shall not give rise to monetary damages against Diamond, but shall entitle BexarMet to terminate this Agreement without any liability whatsoever to Diamond.

4.5 Title Commitment. Within thirty (30) days of the date of this Agreement, BexarMet shall obtain, at Diamond's cost, (a) a title commitment issued by Stewart Title Company, 2961 Mossrock, San Antonio, Bexar County, Texas (the "Title Company") through West & West, Attorneys, covering all real property and easements (other than easements created by recorded plats) included in the Acquired Assets and all other property covered by and included in the as built drawings of the Water Systems and legible copies of all documents forming the basis for any exceptions noted therein (including, but not limited to, copies of all recorded plats affecting any of such real property) (the "Title Commitment") and (b) surveys (the "Survey") of all real property and easements (other than easements created by recorded plats) included in the Acquired Assets, which surveys shall meet the requirements described in Schedule 4.5(b). It is further provided, and agreed by the parties, that any surveys deemed required by the Engineer for BexarMet shall be paid for on the following formula: Diamond agrees to bear one-third (1/3) of any survey costs, which one-third (1/3) shall be deducted from Diamond's Closing settlement proceeds. BexarMet agrees to bear two-thirds (2/3) of any survey costs, which shall be paid at time of Closing. Parties to this transaction shall ensure that survey costs are invoiced prior to time of Closing and said invoices are furnished to the Title Company for payment in connection with Closing this transaction.

4.6 Review Period. BexarMet shall have until eleven (11) days before closing (the "Review Period") from receipt of the last of the Survey and Title Commitment for BexarMet and BexarMet's Agents, consultants and representatives of BexarMet's financing sources to have access to the Acquired Assets, to inspect any available plans, surveys, permits, environmental studies, financial statements, operating statements, books, records, leases, contracts and other documents and information pertaining to the Acquired Assets, together with copies of the instruments referred to therein, and survey described above, including the things mentioned in Section 4.1 to review those documents and information and the Title Commitment, Survey and instruments, to object to any matter therein, to study the Acquired Assets, review BexarMet's utilization plan, to determine in BexarMet's sole discretion, whether the Acquired Assets are suitable for BexarMet's intended use and other purposes. BexarMet shall have the right of investigation and inspection of the Acquired Assets to determine, in BexarMet's sole opinion, whether or not the Acquired Assets and every aspect thereof are suitable for BexarMet's intended use and otherwise acceptable to BexarMet. By way of example,

such Review Period shall allow BexarMet to determine the availability of utilities, capacity of wells, working order of machinery and equipment, condition of mains, access to and from the Real Property a part of the Acquired Assets, soil and subsoil conditions, drainage, any environmental condition or hazards on or about the Real Property a part of the Acquired Assets, and such other matters as BexarMet, in BexarMet's sole discretion, may desire to investigate. BexarMet and BexarMet's agent shall have the right of access to the Acquired Assets for the purpose of conducting such investigations and inspections during the Review Period. BexarMet shall not cause or permit damage or injury to be done to the Acquired Assets and BexarMet shall repair any damage or injury to the Acquired Assets resulting from BexarMet's investigation and inspection of the Acquired Assets. BexarMet shall indemnify and hold harmless Diamond on account of any claims, causes of action, damages and expenses (including attorney's fees) arising out of or relating to the acts of BexarMet, BexarMet's agents and employees under the provisions of this paragraph. BexarMet may, but shall not be required to, deliver objections, and request to cure, matters discovered during the Review Period that are unacceptable to BexarMet. If BexarMet determines in BexarMet's sole judgment and discretion, that the Acquired Assets are not suitable for BexarMet's intended use, or the Acquired Assets are otherwise not acceptable to BexarMet for any reason whatsoever, BexarMet shall give Diamond and Escrow Agent, and Diamond and Escrow Agent shall have actually received, written notice of such non_suitability on or before the end of the Review Period which will cause an automatic termination of this Contract. Upon receipt of such written notice, Escrow Agent shall immediately refund the Earnest Money to BexarMet, and BexarMet, Diamond and Escrow Agent shall thereupon be released from all further obligations under this Contract. If BexarMet does not send such written notice to Diamond and Escrow Agent, then it shall be conclusively deemed that the condition of the Acquired Assets are acceptable to BexarMet, that the exceptions to title as disclosed in the Title Commitment and the Survey are acceptable to BexarMet (such exceptions being herein referred to as "Permitted Encumbrances") and that BexarMet has waived its right to terminate the Contract under this paragraph. BexarMet's indemnity of Diamond set forth in this paragraph shall survive the termination of this Contract.

4.7 Schedule Updates. Diamond shall update by amendment or supplement each of the Schedules referred to herein and any other disclosure in writing from Diamond required by this Agreement to be disclosed in writing by Diamond to BexarMet promptly upon any change in the information set forth in such Schedules or other disclosures; provided that, unless otherwise requested by BexarMet, Diamond shall only be required to update Schedules 3.2(a), (c), (e), and (f) at the Closing. Diamond hereby represents and warrants that such Schedules and such written disclosures, as so amended or supplemented, shall be true, correct and complete as of the date or dates thereof and at the date of the closing involving the subject matter of said Schedules; provided, however, that the inclusion of any information in any such amendment or supplement, not included in the original Schedule or other disclosure at