

SURVEY REQUIREMENTS

The Surveys of the real property shall consist of plats and field notes, prepared by a Registered Public Surveyor or Professional Engineer. The Surveys shall be dated after the Effective Date, and shall (i) contain a north arrow and reflect the actual dimensions of the entirety of the property (reflecting the length and direction of the perimeter boundaries), the number of square feet contained in the property, the location and dimensions of any highways, streets, roads, easements, right-of-way, setback lines, encroachments, or overlaps located on or adjacent to the property (and indicating the names of any such highways, streets, roads, etc.), and the outside boundary lines and dimensions of any improvements located thereon, (ii) identify any easements, setback lines or other matters located thereon by recording reference, (iii) include the surveyor's registered number and seal, the date of the survey and a certificate satisfactory to BexarMet, (iv) reflect that the property has access to and from a publicly dedicated street, road, or highway, (v) reflect that the property is not located within any flood plain except as shown thereon, and (vi) be sufficient to cause the Title Company to delete, except for "shortages in area," the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements" in the Title Policy to be delivered pursuant to the Agreement. The certificate on the Surveys shall be specifically addressed to both BexarMet and the Title Company verifying the above information. The surveyor shall comply with all applicable survey laws in the preparation and completion of the survey documents employed in closing this transaction.

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EXHIBITS:

EXHIBIT 'A' - Form Escrow Agreement

EXHIBIT 'B' - Opinion letter

EXHIBIT 'A' - Form Escrow Agreement

**ESCROW AGREEMENT
AND FIRST AMENDMENT TO PURCHASE AGREEMENT**

This Escrow Agreement dated _____, 2003 (herein, together with any amendments or supplements hereto, called the "Escrow Agreement") is entered into by and among **BEXAR METROPOLITAN WATER DISTRICT**, a conservation and reclamation district and political subdivision of the State of Texas, (herein called "Bexar Met"), **DIAMOND WATER COMPANY**, (herein called "DIAMOND") and **STEWART TITLE COMPANY**, as escrow agent (herein, together with any successor in such capacity, called "Escrow Agent").

WITNESSETH:

WHEREAS, BexarMet and DIAMOND have entered into an Agreement of Purchase and Sale (the "Purchase Agreement") effective _____, 2003, wherein and herein capitalized terms, to the extent not in conflict therewith, have the same meaning or definition, for the sale by DIAMOND to BexarMet of virtually all of the assets that DIAMOND owns with regard to the Water Systems enumerated in the Purchase Agreement.

WHEREAS, in connection with the sale under the Purchase Agreement, BexarMet is to acquire that certain Texas Commission on Environmental Quality ("TCEQ") Certificate of Convenience and Necessity numbered 12865, or the part thereof applicable to the Water Systems (the "CCN"); and

WHEREAS, the TCEQ has approved the sale and transfer of the Water Systems, but has not completed the administrative act of issuing its Order (herein so called), transferring the CCN from DIAMOND to BexarMet; and

WHEREAS, BexarMet and DIAMOND are herewith closing the transaction contemplated by the Purchase Agreement, including the delivery and recordation of the Closing Documents (herein so called) while holding DIAMOND's cash proceeds portion of the Purchase Price and BexarMet's Note to DIAMOND in escrow;

WHEREAS, BexarMet and DIAMOND desire DIAMOND's cash proceeds as set out on line 509 of the Settlement Statement and designated as "Sellers Proceeds Escrowed", BexarMet's note (the "Note"), and the Third Party Creditor's Release Documents be deposited in escrow with Escrow Agent, to be later disbursed, delivered and/or recorded as provided in Section 3.02 hereof, pending the issuance of the Order and satisfaction of the Opinion Letter requirement set forth hereinafter in this Escrow Agreement; and

WHEREAS, the Escrow Agent is willing to accept its responsibilities hereunder upon the terms and conditions herein expressed;

NOW, THEREFORE, in consideration of the mutual undertakings, promises and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, BexarMet, DIAMOND and the Escrow Agent mutually undertake, promise and agree for themselves and their respective representatives and successors, as follows:

I. ARTICLE

DEFINITIONS AND INTERPRETATIONS

Section 1.01. Definitions. Unless the context clearly indicates otherwise, the following

terms shall have the meanings assigned to them below and above when they are used in this Escrow Agreement:

"BexarMet Representative" means either Thomas C. Moreno in his capacity as General Manager/CEO, or Sylvia Gamez in her capacity as Deputy General Manager, of BexarMet or any other officer of BexarMet designated by a BexarMet Representative in writing to the Escrow Agent.

"Closing Documents" shall mean bills of sale, water rights transfers, assignments, general warranty deeds, certificate verifying accuracy of DIAMOND's representations and warranties contained in the Agreement, a title insurance policy, evidence that Assets are free and clear of any security interests, the Release Documents, and such other instruments satisfactory in form and substance to Purchaser and title company pursuant to which DIAMOND shall convey the Assets to Purchaser free and clear of all liens, claims, charges or encumbrances whatsoever and any right of any party and BexarMet's Note;

"Escrow Agreement" means this Agreement.

"Escrow Closing" means the closing of the transaction and the deposit of funds and documents called for in Sections 2.01 and 2.02 below.

"Escrow Fund" means the Escrow Fund created by this Escrow Agreement to be administered by the Escrow Agent pursuant to the provisions of this Escrow Agreement.

"DIAMOND Representative" means THOMAS BAUDAT in his capacity as President of DIAMOND, or any other person designated in writing by Thomas Baudat.

"Mandatory Transfer Date" means 365 days from the Effective Date of the Purchase Agreement, or such other later date expressly agreed to in writing by BexarMet for purposes of this Escrow Agreement.

"Order" means originals or certified copies of a signed Order issued by the TCEQ transferring the CCN from DIAMOND to BexarMet.

"Permitted Investments" means direct obligations of (including obligations issued or held in book entry form on the books of) the Department of Treasury of the United States of America or any money market fund, which invests solely in obligations of the Department of Treasury of the United States of America.

"Settlement Statement" means the closing statement approved by the parties hereto at Closing, closing the sale evidenced by the Purchase Agreement and any amendments thereto, which Settlement Statement may be appropriately adjusted upon disbursement of the escrow funds, if necessary ("Adjusted Settlement Statement").

The terms "Escrow Agreement", "BexarMet", "DIAMOND" and "Escrow Agent", when they are used in this Escrow Agreement, shall have the meanings assigned to them in the preamble to this Escrow Agreement. All other defined terms shall have the meanings assigned to them herein or in the Purchase Agreement.

Section 1.02 Interpretations. The titles and headings of the articles and sections of this Escrow agreement have been inserted for convenience and reference only, and are not to be considered a part hereof and shall not in any way modify or restrict the terms hereof.

II. ARTICLE

DEPOSIT OF FUNDS AND DOCUMENTS

Section 2.01 Deposit of Funds. At Closing, BexarMet shall deposit, or cause to be deposited, with Escrow Agent, good funds in the amount shown on line 303 of the Settlement Statement.

Section 2.02 Deposit of Closing Documents. At Closing, BexarMet and DIAMOND will deliver the fully executed Closing Documents to Escrow Agent.

III. ARTICLE

CREATION AND OPERATION OF ESCROW

Section 3.01 Escrow Fund. The Escrow Agent has created or will immediately create on its books a special trust fund and irrevocable escrow for the funds to be deposited into the Escrow Fund, which Escrow Fund shall be known and carried on the Escrow Agent's books as the "BexarMet/DIAMOND Acquisition Fund". The Escrow Agent hereby agrees that upon directions of BexarMet and DIAMOND and upon deposit of the executed Closing Documents and receipt of the good funds from BexarMet mentioned in Section 2.01 above, Escrow Agent (a) will close the transaction contemplated in the Purchase Agreement, including recording and delivering the Closing Documents, except for the Note and the Release Documents; (b) will collect from, and utilize sufficient funds to pay, each parties costs of closing assigned in the Purchase Agreement, including payment of taxes owing at time of closing, and (c) will deposit DIAMOND's cash proceeds (Settlement Statement line 509 amount) in the Escrow Fund, and will hold the Note and the Release Documents (the "Escrowed Documents"). Such deposit to the Escrow Fund, all investment proceeds therefrom, and all cash balances from time to time on deposit therein shall remain in the Escrow Fund, shall become a part thereof, and shall be applied only in strict conformity with the terms and conditions of this Escrow Agreement. The Escrow Fund shall be held in escrow by Escrow Agent in an interest-bearing investment account with said interest to accrue on the Escrow Fund one-half (½) to the benefit of BexarMet and one-half (½) to the benefit of DIAMOND. The Escrow Fund shall be held by the Escrow Agent in escrow in accordance with the terms hereof.

Section 3.02 Escrow Fund Disbursement. DIAMOND shall, upon DIAMOND's receipt of same, promptly deliver to the Escrow Agent and BexarMet, the Orders, together with, at DIAMOND's expense, the written opinion ("Opinion Letter") of Mark H. Zeppa, Attorney at Law, 4833 Spicewood Springs Road, Suite 202, Austin, TX 78759-8436, stating that all regulatory, administrative and statutory time periods for a request for a rehearing of the Order by TCEQ and for an appeal of the Order to the District Court have passed and no such request or appeal has been filed or notice thereof given. An opinion letter in the form of Exhibit "A" attached hereto will satisfy this requirement. Upon and only upon the Escrow Agent's receipt of the Order and Opinion Letter prior to 5:00 p.m. on the Mandatory Transfer Date, the Escrow Agent is hereby instructed to deliver the Note to DIAMOND, deliver to the Third Party Creditor the funds required by the Third Party Creditor to release and record the Release Documents, and distribute DIAMOND's remaining cash proceeds shown on line 509 of the Settlement Statement to DIAMOND out of the Escrow Fund, subject to any adjustments, if any, including compensation to Escrow Agent as set out in paragraph 5.03 herebelow, in order to complete the funding of DIAMOND's closing proceeds and immediately refund to BexarMet, after the distribution of the interest as provided in Section 3.01 above, any of the Escrow Fund then remaining, less any adjustments, if any, including compensation to Escrow Agent as set out in paragraph 5.03 herebelow, whereupon the Escrow Agent shall be discharged from any further duties regarding the Escrow Fund. Notwithstanding the preceding sentence, in the event the Orders are not received by the Escrow Agent prior to 5:00 p.m. on the Mandatory Transfer Date, the Escrow Agent shall only release the Escrowed Documents and pay any sums in the Escrow Fund pursuant to instructions given to the Escrow Agent agreed to in writing by both DIAMOND and BexarMet. The Escrow Agent shall deliver any original Orders received by the Escrow Agent to BexarMet.

bmwd\diamond
October 23, 2003
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Section 3.03 Trust Funds. The Escrow Agent shall hold and dispose of the Escrowed Documents and the assets of the Escrow Fund only as set forth herein or as subsequently instructed by instructions given to the Escrow Agent agreed to in writing by both BexarMet and DIAMOND. The Escrow Fund amounts received and held by the Escrow Agent under this Escrow Agreement shall not be considered as general funds of the Escrow Agent, nor as a banking deposit by BexarMet or DIAMOND, and the Escrow Agent shall have no right to title with respect thereto except as a constructive trustee and as an escrow agent under the terms of this Escrow Agreement. The amounts received by the Escrow Agent under this Escrow Agreement shall not be subject to warrants, drafts or checks drawn by BexarMet or DIAMOND.

IV.

ARTICLE

INVESTMENTS

Section 4.01 (a) Investments. The Escrow Fund may only be invested in Permitted Investments designated in writing by a BexarMet Representative, and the Escrow Agent shall not have any right, power or duty to invest or reinvest any money held hereunder, or to make substitutions of the Permitted Investments, or to sell, transfer or otherwise dispose of the Permitted Investments.

(b) Substitutions. At the written direction of a BexarMet Representative, the Escrow Agent shall redeem all or any part of the Permitted Investments and reinvest the proceeds thereof, together with all or any part of any cash held in the Escrow Fund, in other Permitted Investments.

(c) Separate Investment Authorization. Except that notwithstanding anything to the contrary herein contained, this Section 4.01 may be modified in whole or in part by a separate agreement between BexarMet, DIAMOND and Escrow Agent styled "Investment Authorization".

Section 4.02 Investment Results. Interest and other earnings on the Permitted Investments shall be added to the Escrow Fund. Any loss incurred from an investment, including, without limitation, market loss resulting from early liquidation of assets, and all costs of investment or liquidation, and withholding and other taxes, will be borne by the Escrow Fund. BexarMet and DIAMOND agree to furnish to the Escrow Agent as required, all appropriate tax forms and information in order for the Escrow Agent to comply with tax laws. To the extent BexarMet and/or DIAMOND does not provide information and tax forms, the party failing to provide such requested information assumes all liability for failure to report or withhold income under the tax laws.

ARTICLE V.

RECORDS AND REPORTS

Section 4.01 Records. The Escrow Agent will keep books of records and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection at reasonable hours and under reasonable conditions by BexarMet and DIAMOND.

Section 4.02 Reports. While this Escrow Agreement remains in effect, the Escrow Agent monthly shall prepare and send to DIAMOND and BexarMet, a written statement of all Permitted Investments and the cash balance on deposit in the Escrow Fund as of the end of such period.

ARTICLE V.

CONCERNING THE ESCROW AGENT

Section 5.01 Representation. The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Escrow Agreement and undertake the obligations and responsibilities imposed upon Escrow Agent herein, and to act as an Escrow Agent for a conservation and reclamation district and political subdivision of the State of Texas, and that it will carry out all of its obligations hereunder.

Section 5.02 Limitation on Liability. Notwithstanding any provision contained herein to the contrary, the Escrow Agent shall not have any liability whatsoever for the insufficiency of funds from time to time in the Escrow Fund or any failure of the obligors of the Permitted Investments to make timely payment thereon. The recitals herein shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent. In its capacity as Escrow Agent, it is agreed that the Escrow Agent need look only to the terms and provisions of this Escrow Agreement. The Escrow Agent makes no representations as to the value, condition or sufficiency of the Escrow Fund, or any part thereof, or as to the title thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters. The Escrow Agent shall not be responsible or liable to any person in any manner whatever for the genuineness, effectiveness or validity of the Opinion Letters or the Orders, or for the identity or authority of any persons executing the Opinion Letter or the Orders. The Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder. Unless it is specifically otherwise provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund and to dispose of and deliver the same in accordance with this Escrow Agreement. If, however, the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination, the Escrow Agent shall be liable only for its own willful misconduct or its gross negligence. In determining the occurrence of any such event or contingency, the Escrow Agent may request from DIAMOND or BexarMet or any other person such reasonable additional evidence as the Escrow Agent, in its discretion, may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, DIAMOND or BexarMet at any time. In the event any dispute between any of the parties shall occur concerning any of the subject matters of this Escrow Agreement or concerning any claim or any party to any sums in the Escrow Fund, the Escrow Agent is hereby authorized to interplead all sums in the Escrow Fund into a court of competent jurisdiction in Bexar County, Texas.

5.03 Compensation. BexarMet and DIAMOND hereby jointly agree to equally pay reasonable, necessary and customary fees to the Escrow Agent for the normal administration of the Escrow Agreement and to reimburse the Escrow Agent for expenses actually incurred by the Escrow Agent in performing such services, and the Escrow Agent hereby agrees to look to BexarMet and DIAMOND jointly and equally for the payment of such fees and reimbursement of such expenses. BexarMet and DIAMOND further hereby agree to pay reasonable, necessary and customary fees to the Escrow Agent for the extraordinary administration of the Escrow Agreement in the event of a dispute or litigation regarding the Escrow Fund, and to reimburse the Escrow Agent for all such expenses incurred by the Escrow Agent and its counsel in performing such extraordinary services, and in which event the Escrow Agent hereby agrees to look jointly and severally to BexarMet and DIAMOND for the payment of such fees and reimbursement of such expenses. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses or for any other liability or claim it may have against DIAMOND or BexarMet.

5.04 Successor Escrow Agents. If at any time the Escrow Agent or its legal successor or successors should become unable, through operation or law or otherwise, to act as Escrow Agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event DIAMOND and BexarMet, by joint appropriate action, promptly shall appoint an Escrow Agent to fill such vacancy. If no successor Escrow Agent shall have been appointed by DIAMOND and BexarMet within 60 days, DIAMOND or BexarMet may apply to any court of competent jurisdiction in the State of Texas to appoint a successor Escrow Agent; such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Any successor Escrow Agent shall be a corporation organized and doing business under the laws of the United States or the State of Texas, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000.00 and subject to the supervision or examination by federal or state authority and able to hold funds of political subdivisions of the State of Texas.

Any successor Escrow Agent shall execute, acknowledge and deliver to DIAMOND and BexarMet and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Escrow Agreement, all the rights, powers and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, BexarMet and DIAMOND shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties. The Escrow Agent shall pay over to its successor Escrow Agent, a proportional part of the Escrow Agent's fee hereunder.

Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell, lease or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which is a party, *ipso facto*, shall be and become successor Escrow Agent hereunder and vested with all of the title to the Escrow Fund and all the trusts, powers, rights, obligations, duties, remedies, discretions, immunities, privileges and all other matters as was its predecessor, all without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 5.05 Indemnification of the Escrow Agent. BexarMet and DIAMOND agree to indemnify, defend and hold the Escrow Agent harmless against all losses, claims, damages, demands, liabilities and expenses (including attorney's fees and expenses), arising out of or in connection with this Escrow Agreement or any transaction related hereto, except to the extent that any such loss, liability or expense results from the gross negligence or willful misconduct of the Escrow Agent. The foregoing indemnities shall survive the resignation of the Escrow Agent and the termination of this Escrow Agreement.

ARTICLE VI.

TERMINATION OF ESCROW AGREEMENT

Section 6.01 Termination of Escrow Agreement. Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to BexarMet, DIAMOND or to any other person or persons in connection with this Escrow Agreement. This Escrow Agreement may be terminated at any time by joint written instructions to the Escrow Agent executed by both BexarMet and DIAMOND, in which event the Escrow

Agent shall deliver and/or dispose of the Closing Documents and the Escrow Funds as specified in such termination notice.

ARTICLE VII.

MISCELLANEOUS

Section 7.01 Notice: Any notice, authorization, request or demand required or permitted to be given hereunder shall be given pursuant to the provisions of Section 11.7 of the Purchase Agreement. The address for notice to the Escrow Agent shall be 2961 Mossrock, San Antonio, Texas 78230.

Section 7.03 Binding Escrow Agreement. This Escrow Agreement shall be binding upon BexarMet, DIAMOND and the Escrow Agent and their respective successors and legal representatives, and shall inure solely to the benefit of BexarMet, DIAMOND and the Escrow Agent, and their respective successors and legal representatives.

Section 7.04 Severability. In case any one or more of the provisions contained in this Escrow Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of the Escrow Agreement, but this Escrow Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 7.05 Texas Law Governs. This Escrow Agreement shall be governed by the provisions hereof and by the applicable laws of the State of Texas.

Section 7.06 Time of the Essence. Time shall be of the essence in the performance of obligations from time to time upon the Escrow Agent by this Escrow Agreement.

Section 7.07 Changes in Escrow Agreement Generally Prohibited. This Escrow Agreement shall not be repealed, revoked, altered or amended except by the written agreement of BexarMet, DIAMOND, and Escrow Agent.

Section 7.08 Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all counterparts shall together constitute one and the same instrument.

EXECUTED as of the date first written above.

DIAMOND WATER COMPANY

By: 

THOMAS BAUDAT, President

BEXAR METROPOLITAN WATER DISTRICT

By: 

THOMAS C. MORENO, General Manager/CEO

STEWART TITLE COMPANY
2961 Mossrock
San Antonio, Texas 78230

By: _____
Date

EXHIBIT 'B' - Opinion letter

LAW OFFICES OF MARK H. ZEPPA, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436
(512) 452-1642
Fax (512) 346-6847
mhzeppa@attglobal.net

_____, 20__

Mr. North O. West, Esq.
West and West, P.C.
2929 Mossrock, Suite 204
San Antonio, Texas 78230

Re: Counsel's Opinion on Finality of Administrative Review and Approval of the Sale
of Water Utility Assets from Diamond Water Company to Bexar Metropolitan
Water District

Dear Mr. West:

Pursuant to Section 3.02 of the "Escrow Agreement and First Amendment to Purchase Agreement" between Diamond Water Company ("DIAMOND") and Bexar Metropolitan Water District ("BexarMet"), I render to you my counsel's opinion that the administrative review and approval process on this public water utility asset sale and certificate of convenience and necessity ("CCN") transfer has been satisfactorily completed, that all appeal periods thereon have tolled and that no timely appeals have been filed. This opinion is based upon the following actions that, as special counsel to DIAMOND by agreement between the parties, I have researched files on this matter and the public records, of the Texas Commission on Environmental Quality ("TCEQ"):

1. A joint application for approval of this sale and CCN transfer was filed with the TCEQ by DIAMOND and BexarMet on _____, 20__ pursuant to Texas Water Code ("Code") 13.301 which was accepted by the agency and designated as Application No. _____.
2. By letter dated _____, Mr. Doug Holcomb, P. E., Manager of the Utility Certification Team, TCEQ Water Permitting Division, on behalf of the TCEQ Executive Director, notified BexarMet and DIAMOND that the parties were authorized to close this sale without hearing, pursuant to Code 13.301 (d).

EXHIBIT "A".

DRAFT

Section 3.02 Opinion Letter

3. On _____, 20____, the sale was closed in the offices of West & West, P. C. Evidence of the closing and transfer of control over the water system, in the form of a sworn affidavit of _____ and a signed HUD closing statement was filed with the TCEQ on _____, 20____.

4. On _____, 20____, the TCEQ Executive Director entered his order canceling DIAMOND's CCN No. 12865 and amending BexarMet's CCN No. 10675 to include the former DIAMOND service area in Comal County, Texas. This order was entered pursuant to 30 T.A.C. 31, 33 and 35.

5. Notice of the Executive Director's order was mailed to the parties on or about _____, 20____. Pursuant to 30 T.A.C. 50.39, DIAMOND, BexarMet, the TCEQ's Public Interest Counsel or other person had twenty (20) days, plus three (3) days mail time, from this date to file a motion for reconsideration of the Executive Director's order with the TCEQ's Chief Clerk as a prerequisite to an appeal of this order.

6. No motion for reconsideration was filed by 5:00 P.M., _____, 20____ thus, the Executive Director's order amending BexarMet's CCN to include DIAMOND's service area is final and non-appealable.

[OR]

6. A Motion for reconsideration was filed by _____ on _____, 20____, more than 20 days from _____. No agreement to extend the filing deadline was entered into by all parties; therefore, the motion was untimely and void. Thus, the Executive Director's order amending BexarMet's CCN to, include DIAMOND's service area is final and nonappealable.

[OR]

6. A motion for reconsideration was filed by _____ on _____, 20____, less than 20 days from _____. The motion was denied by the TCEQ commissioners by order dated _____.

_____, 20____. Under 30 T.A.C. 50.39(f), no motion for rehearing is necessary as a prerequisite for appeal to the Travis County District Courts. Pursuant to Code 5.351, such an appeal must be filed within thirty(30) days of the denial of the motion for reconsideration.

Respectfully submitted,

Mark H. Zeppa

DRAFT

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**FIRST ADDENDUM TO
AGREEMENT OF PURCHASE AND SALE**

THIS FIRST ADDENDUM TO THE AGREEMENT OF PURCHASE AND SALE dated as of the 17th 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").

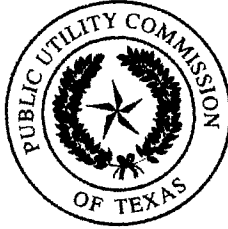
WHEREAS, concurrent with the execution of this Addendum, BexarMet and Diamond have entered into a contract for BexarMet to purchase Diamond's retail public water utility public drinking water systems in the Rim Rock, Wind Mill Estates and Kestrel Air Park Subdivisions in Comal County, Texas ("Agreement");

WHEREAS, at the time of execution of said Agreement, Diamond is engaged in a dispute with Developer Nick McFadden over clearing the title to real property in the Wind Mill Estate Subdivision, which property being an integral part of the water supply for that subdivision and the adjacent Kestrel Air Park Subdivision;

WHEREAS, Diamond has initiated legal actions to resolved this cloud on its title with Developer McFadden and intends to have this matter resolved before Closing;

WHEREFORE, IN RECOGNITION OF THIS CURRENT STATE OF AFFAIRS AND IN ORDER TO ALLOW THE PARTIES TO PROCEED WITH THEIR PURCHASE - SALE AGREEMENT IN THE MANNER MOST EQUITABLE TO ALL PARTIES, BEXARMET AND DIAMOND AGREE TO THE FOLLOWING:

1. The parties shall proceed under the terms of their Agreement. If there still remains any cloud or problem with Diamond's title at the time Diamond tenders its required title insurance commitment to BexarMet, BexarMet shall exercise its rights under the Agreement and may object to the defect in title. Diamond shall then have a right to cure under the Agreement.
2. If Diamond has not been able to cure all title defects properly identified under the Agreement before the eleventh day before the scheduled Closing Date, BexarMet shall be given the following options:
 - a. Waive objections to the title(s) and close on the property "as is" in its then current title state.



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

Central Records Personally Identifiable Information Audit

NOTICE OF REDACTION

Documents containing Personally Identifiable Information* have been redacted from electronic posting, in accordance with Texas privacy statutes.

*"Personally Identifiable Information" (PII) is defined to include information that alone or in conjunction with other information identifies an individual, including an individual's: Social security or employer taxpayer identification number, driver's license number, government-issued identification card number, or passport numbers, checking and savings account numbers, credit card numbers, debit card numbers, unique electronic identification number, address, or routing code, electronic mail names or addresses, internet account numbers, or internet identification numbers, unique biometric data, and mother's maiden name, marriage and any other numbers or information used to access



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 WSI, and WSI 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 WSI for the payment or discharge of the respective systems' Assumed Liabilities; and (c) BexarMet will pay to WSI the Purchase Price, partly in cash and partly by Promissory Note installments, as herein provided. Also as herein provided, WSI shall retain the Excluded Assets and be directly and solely responsible for the payment or discharge of the Excluded Liabilities and BexarMet shall have no obligation or liability with respect thereto. BexarMet and WSI agree to completely close the transaction, including delivery and recording of the Closing Documents as provided for herein, except that WSI's cash proceeds and Note will be escrowed pending the successful obtaining of an uncontestable and non-appealable Order from TCEQ transferring the CCN's 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 Bavarian Hills, Coolcrest, Oaks North, Stagecoach Hills, Country Bend and Oak Village North Water Systems which are owned by WSI 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 WSI 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 WSI 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, 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, in accordance with the detail required in that schedule, on Schedule 3.2(f), 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 WSI and/or the Water System.

(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 therefore, 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 WSI 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 of 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 WSI that are specifically identified and described on Schedule 2.4, but only to the extent such liabilities and obligations are due and payable after a 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) One certain Promissory Note having a principal balance as of June 30, 2003 of \$780,719.00, executed by WSI, payable to the order of National Bank of Cooperatives (CoBank) of Denver, Colorado, (the

"Third Party Creditor"), and being secured by a Deed of Trust, Assignment, Security Agreement and Financing Statement on the Real Property described on Schedule 3.2(f) hereof and other assets of WSI which will be paid off and fully released at the time of the Escrow Disbursal.

- (b) Notwithstanding anything to the contrary contained herein, this Third Party Encumbrance shall be kept current by WSI and WSI 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 Encumbrance as of and from the Effective Date hereof through the date the cash portion of the Purchase Price is disbursed to WSI as provided in Section 2.1 above, at which time the Third Party Encumbrance will be paid off, discharged and released by the Escrow Agent from the escrowed cash portion of WSI's funds.
- (c) Notwithstanding anything to the contrary contained herein, this Third Party Encumbrance shall not be an Assumed Liability, and shall be an Excluded Liability.
- (d) Within five (5) business days from the Effective Date, WSI 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 WSI 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 Encumbrance has been paid off and discharged.

2.6 Excluded Liabilities. For the purposes of this Agreement, the term "Excluded Liabilities" shall mean the Third Party Encumbrance and any and all liabilities, debts and obligations of WSI 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 six Water Systems as follows:

Coolcrest	\$2,000 per active connection at time of Closing.
Oaks North	\$2,000 per active connection at time of Closing.
Bavarian Hills	\$2,000 per active connection at time of Closing.
Country Bend	\$2,000 per active connection at the time of Closing
Stagecoach Hills	\$2,000 per active connection at the time of Closing
Oak Village North	\$2,000 per active connection at the time of Closing.

"Active connection" as defined herein shall mean a water utility service connection active for at least ½ 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 WSI a check in the amount of \$100.00 as Independent Contract Consideration, which amount WSI and Purchaser hereby acknowledge and agree has been bargained for and agreed to as consideration for WSI'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 SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00);.

(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 SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00). 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 \$5,000.00 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 WSI 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 WSI 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 WSI fails to comply with this Agreement for any other reason, WSI 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 WSI, 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 WSI and WSI 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 WSI, regardless of whether or not such assignee has notice of this right of offset. This right of offset from the earnest money shall be BexarMet's sole remedy for Breach other than to void the Agreement and to release WSI from all further obligations to BexarMet arising thereunder.

ARTICLE 3.

REPRESENTATIONS AND WARRANTIES

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

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

(b) Power and Authority. WSI 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. WSI 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 WSI has been duly authorized by all requisite corporate action.

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

(f) No Default. Neither the execution and delivery of this Agreement nor WSI'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 WSI is a party.

(g) No Knowledge of BexarMet Default. WSI 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 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 WSI to consummate the transactions contemplated by this Agreement, except those which have been or will be obtained prior to Closing.

(j) Representations and Warranties True and Complete. All representations and warranties of WSI 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 Closing, and such representations and warranties shall be deemed remade at and as of 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. WSI has fairly and accurately disclosed to BexarMet all material facts respecting the purchase by BexarMet of the Acquired Assets. 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 WSI's Other Representations and Warranties. WSI 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) and (c) have been deleted by design

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

(e) Personal Property. WSI 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 WSI free and clear of any claim whatsoever. WSI has delivered or will deliver at Closing all support, maintenance, warranty and similar agreements related to such personal property. To the best of WSI'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". To the best of WSI's knowledge, all water pipes and lines owned by WSI or used by the Business are on property or easements owned by WSI that are to be conveyed to BexarMet or in public rights of way.

(f) Real Property. WSI 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 WSI free and clear of any claim whatsoever, except the Permitted Encumbrances. To the best of WSI'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 WSI 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 of which BexarMet does not have full knowledge. WSI has no knowledge of any facts or circumstances that would indicate that any claim not heretofore disclosed to BexarMet that might give rise to litigation exists. WSI 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 WSI 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 WSI and the party or parties thereto. All of the contracts and agreements described or referred to in said 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 WSI nor, to WSI's knowledge, is any other party in Default thereunder.

(i) Intellectual Property. WSI has (and after Closing BexarMet will have) exclusive Ownership of the intellectual Property listed as "owned" on Schedule 3.2(i). WSI has (and after 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 WSI 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 WSI relating to, or applicable to the Business or its employees. WSI has no employment contract with any person, other than as listed in Schedule 3.2(j). Neither WSI nor any member of the group of businesses under common control of which WSI 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 WSI and all members of the group of businesses under common control of which WSI 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 Closing, WSI has not made or been required to make any contributions to any "multi-employer plan" (as defined in Section 3(37) of ERISA). WSI 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, Texas Commission on Environmental Quality (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. WSI 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. WSI 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 Closing, the conduct of WSI 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). Notwithstanding WSI's belief in its good standing with regards to state and federal environmental, health and safety regulations, BexarMet shall be given an unrestricted and unimpeded opportunity to make all inspections and tests of WSI water systems and facilities BexarMet desires (BexarMet's expense and assumed risk) prior to Closing. After Closing, BexarMet buys WSI's water systems and all components thereof "AS IS, WHERE IS" without warranty (express or implied) without any future obligation or responsibility of any kind for any reason by WSI or its owners. BexarMet

shall assume any future responsibilities for the properties.

(m) Payment of Taxes; Tax Liens. All tax returns, declarations of estimated tax and tax reports required to be filed by WSI 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 WSI 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 WSI 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 WSI 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 Closing. All ad valorem or other personal property taxes shall be prorated through the date of 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 WSI prior to Closing (so-called "rollback taxes"), then WSI 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 WSI and hold WSI 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 WSI free and clear of any and all liens and encumbrances whatsoever, and any right of any party other than WSI. WSI 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). WSI 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 WSI nor, to the knowledge of WSI, 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), WSI 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 WSI, any adjacent premises, has ever been affected by any Hazardous Materials Contamination, as herein defined. WSI has not received any notice from any governmental authority or other person advising WSI 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 WSI, 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 WSI, has the premises ever been on, federal or state "Superfund" or "Superlien" list. WSI 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 WSI or the Water Systems, in the past ten years. WSI 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 WSI 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 WSI up to the time of Closing with a maximum total expenditure not to exceed the \$5000 earnest money. Prior to Closing, BexarMet shall be given an unrestricted and unimpeded opportunity to make all inspections and tests of WSI water systems and facilities BexarMet desires (BexarMet's expense and assumed risk). After Closing, BexarMet buys WSI's water systems and all components thereof "AS IS, WHERE IS" without warranty (express or implied) without any future obligation or responsibility of any kind for any reason by WSI or its owners. BexarMet shall assume any and all future responsibilities for the properties. BexarMet shall assume all obligations of WSI arising under CERCLA and other federal environmental law as a former landowner.

(q) Labor Relations: Collective Bargaining Agreements. There are no controversies pending or, to the knowledge of WSI, threatened between WSI and its employees. WSI is not a party to any collective bargaining or union contract and, to the

knowledge of WSI, there exists no current union organizational effort with respect to employees of WSI.

(r) True and Complete Copies. Within ten (10) days from the Effective Date, WSI 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 make available 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 WSI with respect to the Business. As to financial books, records and journals, BexarMet shall be provided with copies since WSI shall be continuing as a going business concern. As to operating and engineering records of water systems being transferred, BexarMet shall be given original documents where available.

(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 co-payments, annual premiums and expiration date) for fire, casualty, liability and other forms of insurance maintained by, or for the benefit of, WSI. All such policies are in full force and effect and are adequate for the business. WSI 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. WSI 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. WSI 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 WSI aware of any fact or circumstance which would give rise to any such claim

(u) Customer Deposits. WSI 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 WSI Default. BexarMet has no knowledge that any of WSI's representations and warranties are untrue, incorrect or incomplete, or that WSI 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 WSI 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, WSI covenants to BexarMet that WSI will afford duly authorized representatives of BexarMet, at no cost to BexarMet, free and full access to, and the right to copy, during normal business hours, 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. WSI specifically covenants that WSI 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 WSI harmless from any personal injury or death that is not the result of WSI's negligence or willful misconduct. In addition, WSI 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 WSI 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. WSI hereby covenants to BexarMet that,

from the date hereof to the Closing, WSI 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, WSI hereby covenants to BexarMet that, insofar as the business of the Water Systems is concerned, WSI 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 therefore;
- (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 WSI'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. WSI 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, WSI 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. WSI hereby covenants to BexarMet that, at least ten business days prior to the Closing, WSI 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 WSI's rights as contemplated by this Agreement, and WSI 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). WSI further covenants to BexarMet that, between the date hereof and the Closing, WSI 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 WSI'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 WSI 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 WSI, but shall entitle BexarMet to terminate this Agreement without any liability whatsoever to WSI.

4.5 Title Commitment. Within thirty (30) days of the date of this Agreement, BexarMet shall obtain, at WSI'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: WSI agrees to bear one-third (1/3) of any survey costs, which one-third (1/3) shall be deducted from WSI's

Closing settlement proceeds for surveys for water well sites and fee simple property owned by WSI to be conveyed in this sale. BexarMet agrees to bear two-thirds (2/3) of any survey costs, which shall be paid at time of Closing for surveys for water well sites and fee simple property owned by WSI to be conveyed in this sale. WSI shall not be billed and shall not pay the surveying cost for any easements that BexarMet desires to have surveyed prior to Closing. Parties to this transaction shall ensure that survey costs for water well sites and transferred fee simple properties 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 WSI 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 WSI and Escrow Agent, and WSI 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, WSI and Escrow Agent shall thereupon be released from all further obligations under this Contract. If BexarMet does not send such written notice to WSI 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 WSI set forth in this paragraph shall survive the termination of this Contract.

4.7 Schedule Updates. WSI shall update by amendment or supplement each of the Schedules referred to herein and any other disclosure in writing from WSI required by this Agreement to be disclosed in writing by WSI to BexarMet promptly upon any change in the information set forth in such Schedules or other disclosures; provided that, unless otherwise required by BexarMet, WSI shall only be required to update Schedules 3.2(a), (c), (e) and (f) at Closing. WSI 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 or prior to the date of this Agreement, shall not limit or impair the right that BexarMet might otherwise have respecting the representations and warranties of WSI contained in this Agreement. WSI further covenants that any update in the Schedules shall not show a material adverse change in the value of the inventory or personal property reflected therein.

4.8 Physical Inventory. No physical inventory of the Inventory is necessary, since Inventory is an Excluded Asset.

4.9 Easements. If any unrecorded easements are on real property owned by WSI, or any Affiliate of WSI, WSI shall cause such entity to record such easement in the real property records of the appropriate county. If such unrecorded easements are not on real property owned by WSI, or any Affiliate of WSI, either (a) WSI shall cause the owners of such real property to record such easements in the real property records of such county, or (b) if WSI is unsuccessful in having all such easements recorded, the component of the Purchase Price specified in Section 2.6(a) shall be reduced by an amount to be negotiated in good faith by the parties equal to the estimated costs and expenses of BexarMet in condemning easements to such real property, including,

without limitation, attorney's fees. For purposes of this Section 4.9, unrecorded easements shall mean all water pipes and lines located on property for which WSI does not have an easement.

4.10 Updated Financial Statements. Within ten (10) days of Closing, WSI shall provide BexarMet with updated unaudited financial statements current within sixty (60) days, and such financial statements shall be reflected on Schedule 3.2(a). WSI shall provide BexarMet with a copy of WSI's monthly and annual unaudited financial statements when such financial statement becomes available.

4.11 Transfer of CCN. BexarMet and WSI will, immediately after execution hereof, jointly commence the necessary and proper processing of the necessary information and TCEQ forms so as to timely receive consent to the sale and transfer contemplated herein and the transfer that part of the CCN presently held by WSI relating to the Coolcrest, Bavarian Hills, Oaks North, Country Bend, Stagecoach Hills, and Oak Village North Water Systems to BexarMet (the "Transfer Proceedings"). All costs of consultants and professionals retained by BexarMet (engineers, attorneys, etc.) with regard to Transfer Proceedings shall be borne by BexarMet. Publication costs, filing fees and the cost of professionals retained by WSI (engineers, attorneys, etc.) and costs that might be involved in the development of necessary historical or operating data specifically within the knowledge and records of WSI which shall be borne by WSI.

ARTICLE 5.

CONDITIONS

5.1 Conditions to BexarMet's Obligations. The obligation of BexarMet to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions at or before the Closing:

(a) The representations and warranties of WSI contained in this Agreement shall be true, accurate and complete in all material respects regarding each system as of the date hereof and as of its Closing (and such representations and warranties shall be deemed remade at and as of 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);

(b) WSI shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or satisfied by WSI, and WSI shall have delivered to BexarMet all documents,

certificates and instruments required to be delivered by WSI under the terms of this Agreement, including, without limitation, the documents described or referred to in Section 6.4;

(c) All corporate and other proceedings or actions to be taken by WSI in connection with the transaction contemplated by this Agreement, and all documents incidental thereto, shall be satisfactory in form and substance to BexarMet;

(d) WSI shall have obtained all of the consents, approvals, and novations or effective waivers thereof, which WSI is required to obtain under the terms of this Agreement, at no cost or expense to BexarMet;

(e) There shall not have been issued and in effect any injunction or similar legal order prohibiting or restraining consummation of any of the transactions herein contemplated and no legal action or governmental investigation which might reasonably be expected to result in any such injunction or order shall be pending or threatened;

(f) At BexarMet's discretion, BexarMet may arrange for one or more independent contractors to conduct tests of any real property used in connection with the Water Systems, to identify any present or past release or threatened release of any waste materials or any chemical substances, including, without limitation, any Hazardous Materials. Any such test may be done at any time, or from time to time, upon reasonable notice and under reasonable conditions, which do not impede the performance of the tests. Such tests may include both above and below ground testing for environmental damages or the presence of Hazardous Materials or Hazardous Material Contamination or such other tests as BexarMet may deem reasonably necessary. WSI will supply to BexarMet such historically and operational information as may reasonably be requested by BexarMet to facilitate any such site review and testing and will make available personnel having knowledge of such matters. Any and all costs associated with supplying such historical and operational information, or making such personnel available, shall be borne by WSI up to the time of Closing with a maximum total expenditure not to exceed the \$5000 earnest money. . In the event the results of the test indicate the presence of Hazardous Materials Contamination, BexarMet shall have the option of the reducing the sales price by \$20,000 closing the sale and accepting the WSI water systems and all transferred properties in their then 'AS IS, WHERE IS" condition. In the alternative, BexarMet may retain the \$5000 earnest money and cancel this Agreement.

(g) The successful obtaining of written notification from the TCEQ that the

parties are authorized to close the respective sales without a hearing or further hearing pursuant to Water Code §13.301(a).

(h) Cure of any timely-made title or survey objections, as described in Section 4.6;

(i) The Acquired Assets shall not have suffered any destruction or damage or otherwise, by fire, explosion or other casualty or any taking by eminent domain, or if such destruction or damage or taking by eminent domain shall have occurred, WSI shall have failed to deliver all of the insurance or condemnation proceeds received in connection with such destruction or damage or taking by eminent domain to BexarMet and, if such proceeds are insufficient to place any damaged asset back to its condition prior to such damage or to replace any destroyed asset, WSI shall have failed to deliver an amount equal to such insufficiency to BexarMet; and

(j) The updates in the financial statements of WSI pursuant to Section 4.10 shall not show a material adverse change in the financial condition of the Water Systems.

(k) Final approval and ratification hereof by BexarMet's Board of Directors and of BexarMet's Manager's execution hereof, which shall occur within thirty (30) days of the Effective Date.

5.2 Conditions to WSI's Obligation. The obligation of WSI to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions at or before the Closing:

(a) The representations and warranties of BexarMet contained in this Agreement shall be true, accurate, and complete in all material respects as of the date hereof and as of the Closing (as if such representations and warranties have been made anew as of the Closing, except with respect to the effect of transactions contemplated or permitted by this Agreement); provided, however, in the event the rights of BexarMet hereunder have been assigned pursuant to Section 11.7 hereof, the representations of BexarMet hereunder shall be true, accurate and complete with respect to such assignee only from and after the date of such assignment;

(b) BexarMet shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or satisfied by BexarMet, and BexarMet shall have delivered all documents, certificates and instruments required to be delivered by BexarMet under the

terms of this Agreement, including, without limitation, the documents referred to in Section 6.3;

(c) BexarMet shall have taken all corporate and other actions to be taken by BexarMet in connection with the transactions contemplated by this Agreement;

(d) BexarMet shall have obtained all of the consents, approvals, and novations, or effective waivers thereof, which BexarMet is required to obtain under the terms of this Agreement; and

(e) There shall not have been issued and in effect any injunction or similar legal order prohibiting or restraining consummation of any of the transactions herein contemplated and no legal action or governmental investigation which might reasonably be expected to result in any such injunction or order shall be pending.

ARTICLE 6.

CLOSING

6.1 The Closing. For purposes of this Agreement, the term "Closing" means the time at which the transactions contemplated hereby will be consummated under 6.2 below after satisfaction or waiver of the conditions set forth in Article 5 of this Agreement.

6.2 Time, Date and Place of Closing. Unless extended by BexarMet as permitted by this Section 6.2, the Closing shall occur at 10:00 a.m. Central Time on the later of the 90th day after the Effective Date or the 7th business day after the receipt by the parties of the Manager of the Utility Certification Team, TCEQ Water Utilities Division's letter on behalf of the TCEQ Executive Director, notifying BexarMet that the parties are authorized to complete the Closing without hearing pursuant to Code 13.301(d), unless a Saturday, Sunday or legal holiday, in which event such Escrow Closing shall occur on the following Monday (the "Closing Date"). The Closing shall take place at the offices of West & West, Attorneys, 2929 Mossrock #204, San Antonio, Texas 78230, or at such other place as the parties may agree in writing. This Agreement may be terminated by either party in the event the Closing shall not have occurred one hundred fifty (150) days from the Effective Date hereof, unless otherwise extended by the parties in writing.

Notwithstanding the traditional BexarMet closing date for water systems acquisition set forth in the preceding paragraph, the parties acknowledge that they will endeavor to

close this sale at the end of a WSI billing cycle to facilitate the transition of service with the least inconvenience to customers and possibilities of billing errors. This goal will be followed in setting the actual Closing Date within the flexibility permitted in the Closing structure above.

6.3 BexarMet's Obligations. At the Closing, BexarMet shall deliver to WSI the following in accordance with the terms of the separate Escrow Agreement executed by and between the parties hereto and Escrow Agent:

- a. the respective amount specified in Section 2.7(a) hereof as provided and/or modified by the Escrow Agreement;
- b. the executed Note;
- c. the executed Escrow Agreement;
- d.. resolutions evidencing the authorization of the execution, delivery and performance of this Agreement by BexarMet and the consummation of the transactions contemplated hereby, certified by the Secretary or an Assistant Secretary of BexarMet;
- e. a certificate dated as of the Closing Date as to the incumbency and signatures of officers of BexarMet;
- f. a certificate dated as of the Closing Date and signed by the President of the Board of Directors of BexarMet that i) evidences the authorization, execution and delivery of this Agreement by BexarMet; and ii) verifies the continuing accuracy of representations and warranties of BexarMet contained in this Agreement both as of the date of this Agreement and as of the Closing (as if such representations and warranties had been made anew as of the Closing, except with respect to the effect of transactions contemplated or permitted by this Agreement);
- g. an executed assumption agreement pursuant to which BexarMet assumes WSI's obligations under the Assumed Liabilities; and
- h. such additional legal opinions, certificates, proceedings, instruments and other documents as WSI may reasonably request to evidence compliance by BexarMet with this Agreement and applicable legal requirements and the performance or satisfaction by BexarMet at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by BexarMet.

6.4 WSI's Obligations. At the Closing, WSI, at its expense (except as specified below) shall deliver to BexarMet the following:

- (a) ownership and possession of and to the Acquired Assets as herein contemplated;
- (b) executed Escrow Agreement;
- (c) executed bills of sale, assignments, general warranty deeds, transfers of water rights, certificates of title for motor vehicles (if any), and such other instruments satisfactory in form and substance to BexarMet pursuant to which WSI shall convey the Acquired Assets to BexarMet;
- (d) certificate as to the existence of WSI (as of the date not earlier than ten days prior to the Closing) in the State of Texas;
- (e) evidence satisfactory to BexarMet that the Assets are free and clear of any security interests, recorded liens of encumbrances, other than those to be paid at Closing (including, without limitation, UCC searches dated not more than 10 days prior to the date of Closing);
- (f) resolutions of the Board of WSI evidencing the authorization of the execution, delivery and performance of this Agreement by WSI and the consummation of the transactions contemplated hereby, certified by the secretary or assistant secretary of the Board of WSI;
- (g) a certificate dated as of the Closing Date as to the incumbency and signatures of officers of the Board of WSI;
- (h) a certificate dated as of the Closing Date and signed by the President or a Vice President and a Secretary or Assistant Secretary of WSI that (i) evidences the execution and delivery of this Agreement by WSI; and (ii) verifies the continuing accuracy of WSI's representations and warranties contained in this Agreement, both as of the date of this Agreement and as of the Closing (as if such representations and warranties had been made anew 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 passage of time upon dated material) as provided in this Agreement;
- (i) title policy in the amount of \$280,860.00, insuring title to all real property and easements showing no liens and no other exceptions other than

those approved by BexarMet (other than easements created by recorded plat) included in the Acquired Assets;

(j) Evidence satisfactory to BexarMet that the Acquired Assets are free and clear of any security interests, recorded liens or encumbrances, other than those to be paid at Closings; and

(k) a certificate from WSI, executed not more than ten (10) days prior to Closing, certifying the number of active connections;

(l) the executed Release Documents;

(l) such additional certificates, proceedings, instruments and other documents as BexarMet may reasonably request to evidence compliance by WSI with this Agreement and applicable legal requirements and the performance or satisfaction by WSI at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by WSI.

ARTICLE 7.

ACTIONS AFTER CLOSING

7.1 Further Conveyances. After Closing, WSI will, without further cost or expense to BexarMet, execute and deliver to BexarMet (or cause to be executed and delivered to BexarMet) such additional instruments of conveyance, and take such other and further actions and as BexarMet may reasonably request and which are ordinarily provided by a seller, more completely to sell, transfer and assign BexarMet and vest in BexarMet Ownership to the Acquired Assets.

7.2 Further Consents to Assignment. And to the extent WSI shall have failed to obtain prior to Closing the consent or approval (or an acceptable effective waiver thereof) of any person or persons in respect of any item described in Section 4.4, and if BexarMet shall nonetheless have elected to proceed to purchase the Acquired Assets:

(a) WSI shall continue to use its best efforts to obtain from such person or persons the consents, approvals or novations (or effective waivers thereof); and

(b) if after diligent efforts WSI is unable to obtain any such consent, approval, novation or waiver, then (i) this Agreement shall not constitute or be deemed to be a contract to assign the same if an attempted assignment without such consent, approval, novation or waiver would constitute a breach of such items or create in any other party to and contract the right or power to cancel or terminate such contract, and (ii) WSI will cooperate with BexarMet in any

reasonable arrangement designed to provide BexarMet with the benefit of WSI's rights under such contract, including enforcement or any and all rights of WSI against such person as BexarMet may reasonably request.

In performance of its best efforts under subsection (b) above, WSI will not be obligated to pay any additional consideration in order to obtain any consent, approval, novation or waiver, except for reasonable expenses incurred by WSI with respect thereto.

ARTICLE 8.

EMPLOYEES AND EMPLOYEE BENEFITS

8.1 Employment. BexarMet assumes no obligation to hire any of WSI's employees.

8.2 Employee Benefit Plans. BexarMet shall not assume or become liable for any and all liabilities which arise out of or relate to employee benefit plans (as defined in Section 3(3) of ERISA) maintained by or contributed to by WSI.

8.3 Accrued Vacation. WSI hereby acknowledges that all obligations of WSI to employees of the Water Systems for accrued vacation is and will remain the obligation of WSI, and BexarMet will not have any obligation to make any payment to employees even if hired by BexarMet after the Closing Date with respect to any vacation pay entitlement. WSI hereby covenants and agrees to indemnify, defend and hold harmless BexarMet from and against any liability, loss, cost or expense with respect to any failure to pay any vacation pay entitlement to employees of the Water Systems who become employees of BexarMet at the Closing Date.

8.4 Worker's Compensation. WSI will bear the entire cost and expense of all workers' compensation claims arising out of injuries identifiably sustained by employees of the Water Systems on or before the Closing date. BexarMet will bear the entire cost and expense of all workers' compensation claims arising out of injuries identifiably sustained by employees of the Water Systems actually employed by BexarMet after the Closing Date.

8.5 Other Employee Benefits. WSI will bear the entire cost and expense of providing continuation coverage under group health plans under Section 601 through 608 of ERISA and Section 4980B of the Code for any former employees of WSI and for those employees who cease to be employees of WSI effective on or prior to Closing. WSI hereby covenants and agrees to indemnify, defend and hold harmless BexarMet

from and against any liability, loss, cost or expense with respect to any failure to provide continuation coverage under group health plans to employees of the Water Systems who cease to be employees of WSI effective on or prior to Closing.

ARTICLE 9.

INDEMNIFICATION

9.1 Indemnification of WSI. To the extent it legally may, after Closing, BexarMet will indemnify, defend and hold WSI harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including reasonable attorneys' fees) arising out of or resulting from (a) any misrepresentation or breach of warranty by BexarMet; BexarMet's failure to pay or satisfy or cause to be paid or satisfied any of the Assumed Liabilities when due and payable which constitute legal obligations; provided, however, BexarMet shall be entitled to contest in good faith any such liability; (c) nonperformance after the Closing Date of any other material obligations or covenants on the part of BexarMet under this Agreement; and (d) without limiting the foregoing, any of the following:

- (i) Liabilities or obligations incurred by BexarMet in its conduct of the business of the Water Systems which are assumed by BexarMet pursuant to Article 2.4 hereof;
- (ii) Liabilities or obligations arising out of, resulting from or relating to claims, whether funded upon negligence, breach of warranty, strict liability in tort or other similar legal theory, seeking compensation or recovery for or relating to injury or death to person or damage to property occurring after Closing and arising in whole or part out of a defect or alleged defect of any Water supplied by BexarMet through the Water Systems more than 24 hours after Closing;
- (iii) Liabilities or obligations arising out of, resulting from or relating to claims, whether founded upon negligence, breach of contract, intentional or willful misconduct or other similar legal theory, seeking compensation or recovery for or relating to injury or death to person or property which arise in whole or part out of conduct of the business or ownership of the Acquired Assets of the Water System after Closing; and
- (iv) Liabilities or obligations in whole or part arising out of, resulting from or relating to any tort, breach of contract or warranty, violation of any statute, ordinance, regulation or other governmental requirement in connection with the use and ownership of the Acquired Assets of the Water System after Closing or

in connection with conduct of the Water Systems after Closing.

9.2 Indemnification of BexarMet. In addition to, and without limiting the other indemnification obligations of WSI set forth in this Agreement, WSI will indemnify, defend and hold BexarMet harmless from and against any and all liabilities, damages, losses, claims, costs and expenses (including reasonable attorneys' fees and expenses for the defense of any claim which, if proved, would give rise to an obligation of indemnity hereunder, whether or not such claim may be ultimately proved) arising out of or resulting directly or indirectly from (a) any misrepresentation or breach of warranty or covenant by WSI; (b) failure of WSI to fully pay or satisfy or cause to be paid or satisfied any liabilities relating to the Excluded Assets and any of the Excluded Liabilities when due and payable; (c) nonperformance of any other material obligations or covenants on the part of WSI under this Agreement; and (d) without limiting the foregoing, any of the following:

(i) Liabilities or obligations incurred by WSI in its conduct of the business of the Water Systems which are not assumed by BexarMet pursuant to the terms hereof, and any liabilities which are not accrued on the books of WSI as of Closing;

(ii) Liabilities or obligations of WSI under orders, contracts and other commitments not included in the Acquired Assets, including, without limitation, rights and duties arising as a direct consequence of the assignment of such orders, contracts and commitments by WSI to BexarMet hereunder;

(iii) Liabilities or obligations arising out of, resulting from or relating to claims, whether founded upon negligence, breach of warranty, strict liability in tort, or other similar legal theory, seeking compensation or recovery for or relating to injury or death to person or damage to property occurring after Closing and arising in whole or part out of a defect or alleged defect of any Water supplied by WSI or supplied by BexarMet through a closed Water System within 24 hours after Closing of the Water Systems, and regardless of whether any such liability or obligation arises in part as a result of the negligence or other legal fault of BexarMet.

(iv) Liabilities or obligations arising out of, resulting from or relating to claims, whether founded upon negligence, breach of contract, intentional or willful misconduct, or other similar legal theory, seeking compensation or recovery for or relating to injury or death to person or property which arise in whole or part out of conduct of the business of a Water Systems or ownership of the Acquired Assets of the Water Systems prior to Closing.

(v) Liabilities or obligations in whole or part arising out of, resulting from, or relating to any tort, breach of contract or warranty, violation of any statute, ordinance, regulation or other governmental requirement in connection with the use and ownership of the Acquired Assets of the Water Systems, prior to Closing or in connection with conduct of the business of the Water Systems prior to Closing.

(vi) Liabilities and obligations arising out of, resulting from or relating to claims of infringement or other misappropriation of the intellectual property rights of other persons with respect to any Intellectual Property rights purported to be conveyed to BexarMet under the terms hereof;

(vii) Liabilities and obligations arising out of, resulting from or relating to, employment and/or claims by employees of WSI, whether or not they become employees of BexarMet, including any claim by employees terminated by WSI with respect to whom termination of their employment was undertaken in violation of Worker Adjustment and Retraining Notification Act (WARN) or any regulations issued or promulgated thereunder, including claims that such violation occurred as a result of the cumulative effect of a series of employment actions taken by WSI and BexarMet; and

(viii) Liabilities and obligations arising out of, resulting from, or relating to the operation of a System prior to the Closing Date of the Water Systems or the condition on the Closing Date of any premises upon which the System is presently located or any premises on which the Water Systems were previously located, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from any such premises prior to the Closing Date of any Hazardous Materials or any Hazardous Materials Contamination or which arise out of or result from the environmental condition of the premises on the Closing Date or the applicability or violation of any governmental law, order, rule or regulation relating to Hazardous Materials (including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended or federal, state or local so-called "Superfund" or "Superlien" laws, statutes, ordinances codes, rules, regulations, orders or decrees) in connection with the system prior to the system Closing Date or the condition on its Closing Date of any premises upon which the Water System is presently or was formerly located, regardless of whether or not any site review is conducted by BexarMet before or after Closing.

This indemnification shall expressly survive Closing.

9.4 Current Payment of Fees and Expenses. Any party entitled under this Article 9 to indemnification for fees and expenses shall be entitled to current reimbursement thereof by the indemnifying party upon the submission (not more often than once during any six-month period) to the indemnifying party of a request for reimbursement setting forth in reasonable detail such costs and expenses to be reimbursed.

ARTICLE 10.

AMENDMENT, WAIVER, BREACH AND TERMINATION

10.1 Amendment. This Agreement may be amended at any time prior to the Closing only by written instrument executed by all of the parties hereto.

10.2 Waiver. Either party may, at any time, waive compliance by the other of any covenants or conditions contained in this Agreement but only by written instrument executed by the party waiving such compliance. No such waiver, however, shall be deemed to constitute the waiver of any such covenant or condition in any other circumstance or the waiver of any other covenant or condition.

10.3 Breach. WSI agrees that in the event of a breach of this Agreement by WSI, BexarMet would be irreparably injured and be without adequate remedy at law. Therefore, in the event of such a breach, BexarMet shall be entitled to enforce the provisions of this Agreement and shall be entitled to recover its damages not to exceed the \$5000 Earnest Money and, in addition, to any other remedies that are made available to it at law or in equity, to a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security. In the event of a breach of this Agreement by BexarMet, WSI's exclusive remedy shall be the recovery of WSI's reasonable damages and out-of-pocket expenses incurred in connection with this Agreement solely from and not to exceed the amount of the Earnest Money, and the recovery of any damages under Section 4.1.

10.4 Termination. In addition to any right of termination herein provided, this Agreement may be terminated at any time prior to the Closing, but only by written instrument signed by both parties.

ARTICLE 11.

MISCELLANEOUS

11.1 Cooperation. BexarMet and WSI will each cooperate with the other party; at the other party's request and expense, in furnishing information, testimony and other assistance in connection with any actions, proceedings, arrangements and disputes with other persons or governmental inquiries or investigations involving WSI or BexarMet's conduct of the Water Systems or the transactions contemplated hereby.

11.2 Approval. This Agreement of Purchase and Sale is subject to the approval of (a) National Bank of Cooperatives (CoBank) of Denver, Colorado; (b) the Board of Directors of the Bexar Metropolitan Water District; and (c) the TCEQ.

11.3 Method of Payment. Unless otherwise provided herein, all payments hereunder shall be made by certified funds to the trust account of the Escrow Agent.

11.4 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the extent permitted by law.

11.5 Expenses. Except as otherwise provided in this Section 11.4 and Section 11.5, each party will bear its own expense incurred in connection with this Agreement and the transactions contemplated hereby, whether or not such transactions shall be consummated.

11.6 Transfer Taxes. WSI will bear any state, federal or foreign transfer, sales or use taxes, if any, which may result from the transfer of the Acquired Assets from WSI to BexarMet.

11.7 Notices. All notices, offers, approvals and other communications hereunder shall be in writing and, except when receipts required to start the running of a period of time, shall be deemed given the second day after its mailing by one party by registered United States mail, postage prepaid and return receipt requested, to the other party addressed as follows: