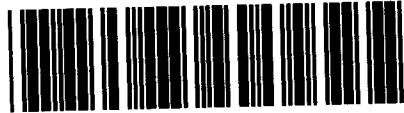


Control Number: 43990



Item Number: 27

Addendum StartPage: 0

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

43990

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2014 DEC 19 AM 8:17

PUBLIC UTILITY COMMISSION
FILING CLERK

Water Supply Analysis for Tapatio Springs Service Company

CCN Nos. 12122 and 20698

August 2005

EXHIBIT 1

Executive Summary

This report has been prepared in conjunction with the CCN Application of Tapatio Springs Service Company for the expansion into the 5000 acres that is bordered by Ranger Creek Road to the North. This property is known as The Broken "O" and is currently being platted through Kendall County as "Cielo Grande". A preliminary plat has been filed for the westernmost 2000 acres and a Master Development Plan has been filed for the entire 5000 acres.

Through the acquisition of GBRA water, Tapatio Springs Service Company has sufficient capacity by state regulations to serve this Property.

Existing Water Production

The existing water production is based upon wells that have been produced in Kendall County by Kendall County Utility Company and Tapatio Springs Service Company. A summary of these wells is provided in the attachments. The current pumping rates of these wells are a combined 1360 Ac-ft/ Year. We have accounted for a 75% reduction in maximum pumping capability, which will allow 1020 Ac-ft/ Year for water service by existing well Production.

GBRA Water

There is a current contract for the GBRA water signed July 14, 2005. This contract is for 750 AC-FT/ Year. This water will be available with the Western Canyon Regional Project. Matkin-Hoover Engineering, Inc. is currently designing the facilities and off-site infrastructure for this water to be delivered to the Tapatio Springs Service Company.

Storage

Currently, Tapatio Springs Service Company has storage facilities in excess of 1.65 Million Gallons.

Existing Water Demand and Future Demand

There is an existing customer base of 843 connections on Tapatio Springs Service Company. The 5000 acres that is currently being added to the CCN will result in additional 1700 connections to the system and future lots in Tapatio will yield 850 lots. The total ultimate connections for Tapatio Springs Service Company at this time are 3393. A total of 1697 Ac-ft/ Year will be required. Including the GBRA supply of water, the total production at this time will be 1770 Ac-ft/Year. This build out and ultimate demand will be phased in over the next ten years.

Peak Demand

TCEQ requires .6 GPM/ Connection for Peak Demand. The total connections of 3393 is equivalent to 2036 GPM. Our existing Peak Production is currently 2110 AC-FT/ Year with a maximum of 1308 GPM by a combination of existing well production and GBRA supply. To accommodate for future demand and peaking, we are accounting for the drilling of 10 additional commercial wells with an estimated pumping capacity of 75 GPM/ Well. These wells will be phase in over the next ten years. The well production that is required for the peak demand is offset by the enormous amount of storage capacity and the constant flow of GBRA Water. We anticipate that the wells will not be utilited.

Conclusion

Tapatio Springs Service Company has sufficient water to meet the demands of the additional requirements of the expansion of the CCN. The yearly requirement of production for water is met by the addition of the GBRA water and no new wells will have to be drilled to accommodate for this.

To meet Peaking demands, Tapatio Springs Service Company has allowed for the drilling of 10 additional commercial wells that will be drilled and phased in over the next 10 years. Tapatio Springs Service Company is also investigating the feasibility of creating surface water to mitigate the Peak Demands. It is by resolution of Tapatio Springs service company to use GBRA water to its maximum ability to service the needs of their customers.

The incorporation of the 5000 acres into the CCN of Tapatio Springs Service Company allows for the control of and monitoring of water usage in the county. The commercial wells that will be required for peaking will be much less damaging to the county than the allowed 850 individual domestic wells that would be required for a residential development without a central water system.

Existing Storage facilities meet all future demand at this time and mitigate the impact of peaking within the water system.

Kendall County Utility Company / Tapatio Springs Utility Company

2005 Water Production and Usage

	AC-FT/ YR	EDU
Maximum Well Production	1360	
Exisitng Well Production 75% Reduction	1020	2040
Additional GBRA	750	1500
Total Production	1770	3540
Existing Customer Base		843
5000 acres		1700
Additional Tapatio		850
Net Customer Base		147

Notes :

- 1) 1700 homes committed to the 5000 acres for CDS
- 2) 850 Homes for future development of Tapatio

Prepared By:
Matkin-Hoover Engineering, Inc.

John-Mark Matkin
President, CEO

mk

SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO
SPRINGS SERVICE COMPANY,
INC., TO AMEND CERTIFICATES
OF CONVENIENCE AND
NECESSITY NOS. 12122 AND 20698
IN KENDALL COUNTY, TEXAS

§
§
§
§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

Pre-Filed Testimony of

John J. Parker, Jr.

April 27, 2006

APR 28 2006
STATE OFFICE
OF ADMINISTRATIVE HEARINGS
DALLAS, TEXAS

SOAH
Ex. #A-3

1 Q. Please state your name and address.

2
3 A. John J. Parker, Jr., my business address is P.O. Box 550, Boerne, Texas 78006.
4
5

6 Q. Do you understand that the purpose of this proceeding is to determine
7 whether or not the Texas Commission on Environmental Quality should
8 approve the application by Tapatio Springs Service Company to amend its
9 water and wastewater CCNs in Kendall County?
10

11 A. Yes.
12
13

14 Q. What is the purpose of your testimony today?
15

16 A. I will describe my responsibilities relating to Tapatio Springs Service Company,
17 the applicant, and describe the financial, technical, and managerial ability of
18 Tapatio Springs Service Company to provide retail water and wastewater service
19 to the territory that will be added to the CCNs if the application is approved.
20
21

22 Q. Could you summarize the nature of your business?
23

24 A. I invest in and develop real estate for residential and commercial purposes and
25 have been doing so for about twenty-five years.
26
27

28 Q. Could you describe your affiliation with Tapatio Springs Service Company,
29 the applicant?
30

31 A. I serve as ^{vice-}president ^{sec'y - treasurer} for Tapatio Springs Service Company, Inc. I purchased
32 shares of stock of Tapatio Springs Service Company on February 26, 1993, as
33 part of my acquisition of the real estate and other assets making up the Tapatio
34 Springs Resort. I have been personally involved and responsible for the daily
35 operation of the Tapatio Springs Service Company since February 26, 1993.
36
37

38 Q. What type of business or benefit does Tapatio Springs Service Company
39 provide?
40

41 A. Currently, Tapatio Springs Service Company owns the water production and
42 distribution system and the wastewater collection and treatment system serving
43 the Tapatio Springs Resort and the surrounding residential areas.
44
45

1 **Q. Could you briefly describe the Tapatio Springs Resort community?**

2
3 A. Tapatio Springs is the name of a residential subdivision centered around a resort
4 created in 1981. The subdivision provides single-family homes, town homes, and
5 condominiums. The resort provides a country club, hotel, and 27 holes of golf.
6

7
8 **Q. Is it located in or near a city?**

9
10 A. It is located about five miles west of Boerne, in Kendall County, but is not located
11 within the corporate limits or extraterritorial jurisdiction of any city.
12

13
14 **Q. Does Tapatio Springs Service Company hold certificates of convenience
15 and necessity, sometimes referred to as CCNs?**

16
17 A. Yes, Tapatio Springs Service Company holds a CCN to provide retail water
18 service, and a CCN to provide retail wastewater service.
19

20
21 **Q. Do the existing water and wastewater CCNs cover the resort?**

22
23 A. Yes, the existing CCN covers the currently developed portions of the property
24 and areas reserved for future development.
25

26
27 **Q. Are you responsible for any other water utility company?**

28
29 A. Yes, I serve as ^{vice-} ~~president~~ ^{secy-treasurer} for Kendall County Utility Company.
30

31
32 **Q. Do you own shares of stock in any other water utility company and if so,
33 when did you purchase those shares?**

34
35 A. Yes, I own shares of stock in Kendall County Utility Company and I purchased
36 those shares in 1996.
37

38
39 **Q. Why did you cause Tapatio Springs Service Company to file the pending
40 application?**

41
42 A. Tapatio Springs Service Company agreed to do so as part of the agreement with
43 CDS, the owner of the land to be added to the CCN.
44

45
46 **Q. Why did you make such an agreement?**

1
2 A. I considered the agreement with CDS to be very favorable to the shareholders
3 and to the existing and future customers of Tapatio Springs Service Company.
4
5

6 **Q. Could you identify the document attached to your testimony as Exhibit 1?**
7

8 A. Exhibit 1 is a true and correct copy of the contract between Tapatio Springs
9 Service Company and CDS.
10
11

12 **Q. Has the contract been amended?**
13

14 A. No.
15
16

17 **Q. Why do you consider the contract, Exhibit 1, favorable to Tapatio Springs**
18 **Service Company?**
19

20 A. Under the agreement, Tapatio Springs Service Company will receive a minimum
21 of \$1.5 million towards the cost of constructing an off-site water main that Tapatio
22 Springs Service Company needs, plus additional surface water rights from
23 GBRA, plus on-site water and wastewater systems at little or no cost, and
24 additional customers to help pay the cost of operating and maintaining the
25 system.
26

27
28 **Q. Could you elaborate on your answer regarding the off-site water main**
29 **extension?**
30

31 A. Tapatio Springs Service Company must construct a water line to deliver the
32 water purchased from GBRA to supplement the supply of water produced from
33 the existing wells. This surface water supply is necessary to provide an alternate
34 source for the groundwater supply currently relied upon to serve the existing
35 customers and satisfy the projected demand for the build-out of the remaining
36 portion of the Tapatio Springs Service Company's service area under its existing
37 CCN. Tapatio Springs Service Company did not have the cash funds to finance
38 the construction on its own, so I was either going to have to infuse equity into the
39 utility company, loan the money to the utility company, or guarantee a loan by the
40 utility company to a third party and probably make the debt service payments on
41 the loan until the company could make the payments, or a combination of all
42 three. I was ready to proceed with the financing for the line construction costs
43 when CDS approached me. We made an arrangement by which they would
44 participate financially in the line that could benefit all of the ultimate purchasers of
45 the CDS property, as well as Tapatio Springs. If we participated jointly in the

1 line, the ultimate consumers will save money because the costs of two separate
2 lines would not be necessary.
3
4

5 **Q. Does the contract protect the existing customers of Tapatio Springs**
6 **Service Company?**
7

8 A. It does. For example, CDS had to get a contract amendment for 250 acre-feet of
9 water from GBRA to provide a water supply for its project. The contract plainly
10 states that Tapatio Springs Service Company has no obligation to use its existing
11 wells to supply water to the CDS property.
12
13

14 **Q. How does this protect the existing customers?**
15

16 A. Mr. Calvert and Mr. Haas raise concerns about the ability to get permits for
17 additional wells. I disagree with their opinions, but if the worst-case scenario
18 occurs, and no permits for additional wells can be obtained, then the 250 A.F.
19 supply from GBRA would need to be used for both base supply and peaking
20 purposes. CDS may be able to acquire a commitment from GBRA for additional
21 water supply, and if the additional water supply could not be obtained from GBRA
22 or other sources, the density of the CDS property may need to be reduced.
23
24

25 **Q. Are there other benefits?**
26

27 A. Yes, CDS must finance and build the infrastructure and donate it to Tapatio
28 Springs Service Company.
29
30

31 **Q. What are the other benefits to the contract?**
32

33 A. Tapatio will have an opportunity to significantly increase the number of
34 customers, which will help stabilize rates.
35
36

37 **Q. Does the contract with CDS obligate Tapatio Springs Service Company to**
38 **amend the contract with GBRA to increase the supply of water from**
39 **GBRA?**
40

41 A. Yes.
42
43

44 **Q. Has that amendment to the GBRA contract been obtained?**
45

1 A. Yes. Exhibit 2, attached to my testimony is a true and correct copy of the GBRA
2 contract and Exhibit 3 is a true and correct copy of the first amendment to the
3 GBRA contract.
4

5
6 **Q. Do you have any experience that suggests that Tapatio Springs Service**
7 **Company has the managerial experience to provide retail water and**
8 **wastewater service within the CDS property?**
9

10 A. Yes. As previously stated, I have been responsible for Tapatio Springs Service
11 Company since 1991.
12

13
14 **Q. Could you describe that experience?**
15

16 A. Sure. During the past 16 years, I have been directly involved in Tapatio Springs
17 Service Company extending water and wastewater service to several projects
18 within its existing service area. These projects include the Ridge at Tapatio
19 Springs consisting of approximately 100 lots, the Gardens at Tapatio, which has
20 175 lots in the first two phases, and a 70,000 square foot condominium complex.
21 Tapatio Springs Service Company is currently working on extending service to a
22 new area with 135 lots.
23

24
25 **Q. How does that experience relate to your ability to provide the managerial**
26 **skills needed to make sure that CDS installs the necessary facilities in**
27 **order to provide retail water and wastewater service?**
28

29 A. All of these projects that I described were multi-million dollar projects that are
30 comparable in cost and complexity to installing the water and wastewater
31 systems in the requested service area. As part of these projects, I arranged for
32 the necessary financing, hired the technical experts needed for assistance,
33 obtained federal, state, and local permits and approvals, paid the bills, and
34 responded to the day-to-day construction-related matters.
35

36
37 **Q. Could you describe some of the improvements to the Tapatio Springs**
38 **Service Company System that have been accomplished since you became**
39 **responsible for operating the company?**
40

41 A. I am quite proud of the significant improvements to the system that have been
42 finished. These improvements enhanced the reliability of the service provided by
43 the utility. These improvements include:
44

- 45 1. Construction of additional storage facilities to provide 1,065,000 gallons of
46 storage. This storage allows us to continue to provide service, and provide

1 pressure for fire fighting services, during a power outage of up to three
2 days.

- 3
- 4 2. Installation of elevated storage so that no hydro pneumatic pressure tanks
5 are used in the system.
- 6
- 7 3. Installation of a 12-inch main connection the ground storage tank at Johns
8 Road to the water system at Tapatio so that the water system in the
9 Ranger Creek subdivision is pressurized by gravity and does not have to
10 rely upon hydro pneumatic pressure tanks.
- 11
- 12 4. Installed a SCADA system that allows our operator to continuously
13 monitor the level of water in the wells above the well pumps, the amount
14 of water in each storage tank, and the flow rates at the several pumps.
15 This system keeps a record of this data and alerts the operator when any
16 facility experiences an unusual event.
- 17
- 18 5. Interconnected the wells at Hwy 87 to increase the amount of groundwater
19 available for use to serve the existing customers.
- 20
- 21 6. Sized the lines, pumps, and storage tanks so that capacity can be
22 increased without building redundant lines or other facilities.
- 23
- 24 7. Replaced water lines that experienced repeated failures.
- 25

26
27 **Q. Are you familiar with the financial capability of the Applicant?**

28
29 **A.** Yes.

30
31
32 **Q. Where does Tapatio Springs Service Company plan to obtain the funds
33 necessary to construct and operate the retail system within the requested
34 service area?**

35
36 **A.** As described in the contract, CDS will construct the required utility systems and
37 donate those systems to Tapatio Springs Service Company.

38
39
40 **Q. Will Tapatio Springs Service Company be responsible for contributing
41 money towards the construction of the required water line?**

42
43 **A.** Yes, Tapatio Springs Service Company will need to pay the incremental costs of
44 the larger diameter pipe needed to meet the demands of the system in excess of
45 the CDS property, which is expected to be a relatively small proportionate share
46 of the total cost.

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28

Q. Does Tapatio Springs Service Company have access to the funds that it needs to contribute towards the cost of constructing the off-site water main?

A. Yes.

Q. Did CDS request Tapatio Springs Service Company to serve CDS' property?

A. Yes.

Q. Is CDS responsible for the infrastructure to serve its property?

A. Yes.

Q. Is Tapatio Springs Service Company an experienced utility?

A. Yes.

Q. Does this conclude your testimony?

A. Yes.

EXHIBITS

- Exhibit 1: True and correct copy of the contract between Tapatio Springs Service Company and CDS International
- Exhibit 2: True and correct copy of the Agreement Between Kendall County Utility Company and Tapatio Springs Service Company and Guadalupe-Blanco River Authority
- Exhibit 3: True and correct copy of the First Amendment to Agreement Between Kendall County Utility Company and Tapatio Springs Service Company and Guadalupe-Blanco River Authority

AFFIDAVIT OF JOHN J. PARKER, JR.

STATE OF TEXAS §

COUNTY OF KENDALL §

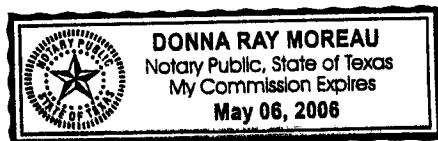
BEFORE ME, the undersigned authority, JOHN J. PARKER, JR. being first duly sworn, deposes and states:

"My name is John J. Parker, Jr. I am over the age of twenty-one and am competent to make the following affidavit:

The foregoing testimony offered by me is true and correct."


JOHN J. PARKER, JR.

SUBSCRIBED AND SWORN TO BEFORE ME this 26th day of April, 2006.




NOTARY PUBLIC,
STATE OF TEXAS

NON-STANDARD SERVICE AGREEMENT

THE STATE OF TEXAS

COUNTY OF KENDALL

THIS AGREEMENT is made and entered into by and between CDS International Holdings, Inc., hereinafter referred to as the "Developer" and Tapatio Springs Service Company, Inc., hereinafter referred to as the "Utility Company".

WHEREAS, the Developer is engaged in developing that certain 5,000 acres of land (more or less) in Kendall County, Texas, a legal description of the land being attached as Exhibit 1 and a location map being attached as Exhibit 2, said land being hereinafter referred to as "Property"; and

WHEREAS, the Utility Company owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area and owns and operates a wastewater collection and treatment system that serves customers located within its service area; and,

WHEREAS, the Developer has requested the Utility Company to provide water and wastewater service to no more than 1,700 future customers within the Property through an extension of the Utility Company's water system and wastewater system, such extension hereinafter referred to as "the Extension."

NOW THEREFORE KNOW ALL MEN BY THESE PRESENT:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the Developer and the Utility Company agree as follows:

1. Engineering and Design of the Extension.
 - a. Prior to preparing any detail design of any portion of the Extension, Developer shall cause a Texas Registered Professional Engineer to prepare an engineering report showing the proposed Extensions, considering both the cost of construction and operation of the various components, and such report shall be submitted to Utility Company for approval. Within thirty days after receipt of the report Utility Company shall either approve the report or describe in detail the changes that must be made to obtain the approval by the Utility Company. Absent objections, within the time allowed, the report will be deemed approved by the Utility Company.
 - b. The Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the

Utility Company and all governmental agencies having jurisdiction. Developer will retain the Utility Company's Consulting Engineer to perform all required work on the Extension. After completion of the plans and specifications by the Consulting Engineer, the plans, and specifications shall become part of this Agreement by reference and shall more particularly define the "Extension". Developer and Utility Company each consent to the employment of the Consulting Engineer and waive any conflict of interest inherent to the relationship.

- c. The Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the Property provided to the Utility Company by the Developer. The Utility Company may require the Extension to be oversized in anticipation of the needs of other customers of the Utility Company, subject to the obligation to reimburse the Developer for any such over sizing as provided below.
- d. For a period of sixty (60) days following the date of completion of the plans and specifications of the Extension, the Developer may give notice of termination of this Agreement to the Utility Company. All costs of the preparation of those plans and specifications are to be borne by the Developer.

2. Required Sites, Easements or Right-of-Ways.

- a. Developer shall be responsible for dedicating or acquiring any sites on and easements across the Property, which are necessary for the construction of the Extension. Utility Company will be responsible for acquiring any easements or rights of way necessary for the Extension outside the Property and for obtaining any governmental approvals necessary to construct the Extension in public right-of-ways. Since acquisition of right-of-way, easements, and crossing permits is not subject to control by the Utility Company, the Utility Company's obligation to serve the Property, or any portion of the Property, is subject to Utility Company acquiring the right-of-way, easements, and permits required for the Extension.
- b. Any sites, easements, and rights of way acquired by the Developer shall be assigned to the Utility Company upon proper completion of the construction of the Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to the Utility Company must be approved by the Utility Company's attorney.

3. Construction of the Extension.

- a. The Developer shall cause the Extension to be constructed by a contractor acceptable to the Utility Company in accordance with the approved plans and specifications. The Consulting Engineer shall also be responsible for

the inspection of all phases of the construction of the Extension. The Developer will be responsible for the payment of all costs related to the inspections. The Contractor shall warranty the work and material for a term of twelve months after substantial completion of the Extension.

- b. The contractor(s) constructing or installing the Extension shall execute performance and payment bonds for the total projected cost of the contractor(s)' portion of the work and the performance bond shall include the twelve month warranty on the work and material, and shall provide insurance for the typical coverage for the work being performed, such insurance naming the Developer and Utility Company as additional insured for the work performed by the contractor on the Extension.

4. Dedication of Extension to the Utility Company.

Upon proper completion of construction of the Extension and final inspection and testing thereof by the Utility Company, the Extension shall be dedicated to the Utility Company by an appropriate legal instrument approved by the Utility Company's attorney. The Extension shall thereafter be owned and maintained by the Utility Company, subject to the Contractor's warranty obligations.

5. Cost of the Extension.

- a. Developer shall pay all costs associated with the Extension as a contribution in aid of construction, including without limitation the cost of the following:
 - 1. engineering and design;
 - 2. easements or right-of-ways acquisition;
 - 3. construction;
 - 4. inspection;
 - 5. engineering and attorney's fees and expenses;
 - 6. governmental or regulatory approvals required to lawfully provide service;
 - 7. procurement of water allotments(increased reservation of GBRA water).
- b. Developer shall indemnify the Utility Company and hold the Utility Company harmless from all of the foregoing costs.

- c. Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Extension subsequent to its dedication and acceptance for maintenance by the Utility Company.
- d. If the Utility Company has required the Extension to be oversized in anticipation of the needs of the other customers of the Utility Company, the Utility Company shall reimburse Developer for the additional costs of construction attributable to the over sizing, as determined by the Utility Company's Consulting Engineer.
- e. The Developer's cost including the total of its contributions in aid of construction and its direct expenditures for the portion of the Extension which is not located on the Developer's Property shall not exceed a total of \$1,500,000.00. All other costs of the Extension as approved by the Utility Company shall be borne by the Utility Company. The Consulting Engineer shall divide the estimated cost of the Extension between the portion on the Property and off the Property in all proposals, plans and specifications prepared for the Extension. If the costs of the Extension not located on Developer's Property exceed \$1,500,000 and Developer chooses not to fund the excess, the Utility Company is under no obligation to fund any portion of the Developer's share of the costs of the Extension and Utility Company is under no obligation to furnish water service to the Property or any portion of the Property.

6. Service From the Extension

- a. After proper completion and dedication of the Extension to the Utility Company and payment by the Developer of all costs in accordance with this Agreement, the Utility Company shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of the Utility Company and the payment of all standard rates, fees, and charges as reflected in the Utility Company's approved tariff
- a. It is understood and agreed by the parties that the obligation of the Utility Company to provide water service in the manner contemplated by this Agreement is subject to:
 - 1. The issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates, or approvals required to lawfully provide such service.
 - 2. The approval by the GBRA of a contract to supply an additional 250 acre-feet of water per year to the Utility Company and approval by GBRA to Utility Company supplying water to the Property.

c. Unless the prior approval of the Utility Company is obtained, the Developer shall not:

1. Construct or install additional water lines or facilities to service areas outside the Property;
2. Add any additional water lines or facilities to service areas outside the Property.
3. Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

d. Nothing in this Agreement is intended to grant, nor shall any provision be interpreted to grant, Developer or any Utility Company customer located within the Property any preferential right to service or preferential fees in relation to other similarly situated customers of the Utility Company. The Utility Company's tariff and policies for service shall apply to all service offered or provided by Utility Company within the Property.

7. Service Area Issues.

Developer and Utility Company acknowledge and agree that the Property is not located within Utility Company's service area under the certificates of convenience and necessity issued to the Utility Company. Developer shall pay all costs associated with Utility Company obtaining regulatory authority to provide service to all or any part of the Property if Utility Company is required by law or the rules of the applicable regulatory authorities to obtain such approval prior to providing retail service within the Property.

8. GBRA issues:

- a. Developer and Utility Company acknowledge and agree that Utility Company may not supply water under its contract with the Guadalupe Blanco River Authority ("GBRA") to the Property without the prior consent of the GBRA. Developer shall pay all costs associated with Utility Company obtaining GBRA consent to supply water to all or any part of the Property.
- b. Section 5.4 of the contract between Utility Company and GBRA states as follows:

Customer agrees that the supply of water to Customer under this Agreement for use on any lands within a CCN in Kendall County shall be conditioned, to the extent allowed by law, on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with all federal, state and local

laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Customer further agrees that, to the extent allowed by law, it will not supply any water supplied to Customer under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Customer shall demonstrate to GBRA its compliance with the requirements of this Section 5.4. If Customer fails to comply with the requirements of this Section 5.4 with respect to Customer's supply of water for use on any lands, GBRA shall have available all remedies allowed by law including, without limitation, termination of this Agreement, or suspension or reduction of the supply of treated water under this Agreement until Customer demonstrates that compliance has been achieved; provided, however, GBRA will notify Customer of the violation and provide Customer a reasonable time to cure the violation. Customer will not be obligated to implement any requirement that GBRA does not require all other Project customers or participants to implement.

Developer will not take any action that will cause Utility Company to violate this provision and will fully cooperate with Utility Company in performing its obligations under this section.

- c. Developer and Utility Company will fully cooperate with each other in the efforts by Utility Company to amend the GBRA contract to increase the amount of the raw water reservation by an additional 250 acre-feet of water and to relocate the point of delivery. If GBRA refuses to increase the amount of the raw water reservation by 250 acre-feet or lesser amount acceptable to Utility Company, Utility Company may cancel this Agreement upon thirty days notice to Developer. Based upon the information currently known to Utility Company, GBRA is willing to increase the amount of the reservation by 250 acre-feet and has submitted a contract to that effect to Utility Company.

9. Special Conditions.

Utility Company and Developer agree that the following special conditions shall apply and in the event of any inconsistency between these special conditions and the other parts of this Agreement, these special conditions shall apply:

- a. The Extension must include a means to receive water delivered by GBRA to Utility Company under the contract with GBRA, such delivery point being at

the City of Boerne's facilities on Cascade Caverns Road, and the means of storing and pumping the water from such point of delivery to existing Utility Company facilities, such as the ground storage tank on Johns Road, and/or new facilities constructed as part of the Extension. Developer and Utility Customer will cooperate with each other and GBRA to change the point of delivery and to install the necessary facilities at the point of delivery to receive and pump the water. Developer will pay all costs of connecting the Utility Company system to the GBRA system in accordance with section 3.2 of the GBRA contract, provided, however, if the facilities are oversized to allow Utility Company to serve territory located outside of the Property, Developer and Utility Company will pay the GBRA connection costs proportionately based upon the capacity of such connection facilities.

- b. The Extension will include all facilities and improvements required to serve customers within the Property.
- c. The Extension must be sized to accommodate Developer's projected maximum demand equivalent to 1700 residential connections within the Property, but the actual demand will be determined later.
- d. The Extension will include two water wells and related facilities (including storage tank(s), pressure tank(s), and disinfection equipment on two different tracts of land located within the Property, together with the drilling, production, and sanitary control easements required by state and local regulatory authorities, and all easements and utilities to drill and operate the wells and unrestricted access easements. In the event that additional easements or rights of way are required outside of property, Utility Company agrees to cooperate in the acquisition of such rights, including facilitating the use of public rights of way outside the Property.
- e. Upon acknowledgment by GBRA of the reservation of the additional 250 acre feet of water, Developer will pay Utility Company on a monthly basis the raw water component of the monthly charges paid by Utility Company to GBRA for the 250 acre-feet of water, such monthly charge being determined in accordance with section 6.5 of the GBRA contract (such amount being estimated at approximately \$1,800 per month) (the "Reservation Payment") for so long as the Developer's planned project requires the acquisition of this additional water capacity. If Developer's planned project requires less than 250 acre-feet of water, then Utility Company may ask GBRA to amend the contract to reduce the reservation, but absent agreement by GBRA, Developer shall continue to pay such charge until Utility Company obtains GBRA's consent, or another person needs the water and is willing to take over Developer's obligation under this section of the agreement. Payment by Developer of the Reservation Payment will continue until there are at least 500 active connections (homes occupied by the end-user) within the

Property.

- f. In the event Developers plans are revised to decrease the required number of connections all contributions in aid of construction which are variable or no longer required will be proportionately reduced or terminated if such costs are not required to serve the Developer's property.
- g. In order for Utility Company to have required access to and for facilities, Developer will grant a right of way for a service road within the Property for Utility Company's use to all its service facilities and as an easement for installation of water and wastewater facilities, such service road right of way being at the general location shown on the map attached as Exhibit 3 and being at least 30 feet with a temporary easement during the original construction of an additional 30 feet in width. Developer and Utility Company will determine who will pay the cost of constructing the roadway.
- h. Developer desires to install a wastewater collection and treatment system, Utility Company will apply for the necessary permits and Developer will pay the costs of obtaining such permits. The treatment plant will be owned and operated by Utility Company once construction of the treatment plant is completed. The Extensions may include a lift station and force main to the Utility Company's existing plant if necessary to provide limited, temporary service while such permit is being obtained and the treatment plant is being constructed. Nothing in this Agreement prevents Developer, or the ultimate customer, from installing a septic tank on certain lots within the Property, subject to local laws that may require abandonment of septic tanks if a wastewater collection system is within a certain distance. Developer will be responsible for obtaining permits for the wastewater treatment facility and paying the costs of obtaining the permits. Once the permits are final and non-appealable, Developer will assign, transfer, or amend the permits so that Utility Company will be the permittee.
- i. No funds paid by the Developer to the Utility Company will be used to defray any costs other than those directly related to providing services to the Property or the acquisition of water necessary to provide service to the Property or obtaining the consents and approvals required to serve the area. Any funds paid to the Utility Company in anticipation of service to a greater number or capacity of connections than finally constructed will be reimbursed to the Developer; provided, however, if Utility Company does not have a means to recover the costs of such excess capacity from other users (not including its retail customers) Developer will continue to pay the costs until another such user agrees to assume the costs.
- j. If a portion of the Extension is oversized, Utility Company and Developer will cooperate with each other regarding the time of construction and funding of same, but if either needs the portion of the Extension before the other party

desires to fund same, the oversized portion of the Extension will be funded within sixty days after either party gives written notice to the other stating that the party desires to proceed with the construction of the oversized portion of the Extension.

- k. Beginning the first month following GBRA approval of the reservation of 250 acre-feet of water, or a lesser or greater amount acceptable to Utility Company, Developer will pay Utility Company on a monthly basis an amount equal to the Utility Company's monthly payment to GBRA, less the customer's raw water component, such payment being calculated in accordance with article VI of the GBRA contract. The amount of the monthly payment paid by Developer will be calculated as follows:

Monthly GBRA charge (minus Raw water component for 250 acre-feet) multiplied by a factor equal to 0.333 (250/750), unless GBRA contract is amended to reserve more or less than the 250 acre-feet currently anticipated to be reserved).

The payment by Developer will continue until there are at least 500 active connections within the Property (an active connection meaning a home occupied by the end-user.)

- l. Under no circumstances is Utility Company obligated to use any portion of the 500 acre-feet currently reserved under the GBRA contract to provide water service to the Property or any portion of the Property. Under no circumstances is Utility Company obligated to use the groundwater supply facilities that it owns and operates on the effective date of this Agreement to supply water to the Property or any portion of the Property, or to use capacity in its wastewater treatment facilities that it owns on the effective date of this Agreement to supply the Property or any portion of the Property. If Utility Company determines that it may have capacity in either its groundwater supply facilities or wastewater treatment facilities in excess of the requirements for Utility Company's then-existing actual and projected demand within its service area as of the date of this Agreement and Utility Company chooses to use such excess capacity to provide service within the Property for the temporary period of time required to construct the Extension described in this Agreement, then Utility Company will notify Developer of that determination and the two parties will cooperate on developing a plan for the temporary use of such capacity.

However, to the extent of any conflict between the terms of this Agreement (including the special conditions) and the Utility Company's tariff in effect on the date this agreement is approved by the Utility Company, the Utility Company's tariff shall apply, but Utility Company will grant exceptions or variances to the tariff, to conform to this agreement and, if necessary, obtain regulatory

approval or any required changes to the tariff.

10. General Provisions.

- i. Effect of Force Majeure. In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement (other than Developer's obligations to pay costs as described in this Agreement), in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbance, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority. Insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbance, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failures of water supply, and any other incapacities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.
- ii. Notices. Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the Utility Company shall be addressed:

Any notice mailed to the Utility Company shall be addressed:

Tapatio Springs Service Company, Inc.
P.O. Box 550
Boerne, Texas 78006

Any notice mailed to the Developer shall be addressed:

CDS International Holdings, Inc.
95 Northeast 4th Ave.
Delray Beach, Florida 33483

with copy to:

Grady B. Jolley
Nunley, Davis, Jolley & Hill, L.L.P.
1580 S. Main Street, Suite 200
Boerne, Texas 78006

- Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.
- iii. Severability. The provisions of this agreement are severable, and if any work, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstance shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.
 - iv. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein; provided, however, Developer's request for service and the Utility Company's tariff in effect on the date this Agreement is approved are incorporated by reference into this agreement for all intents and purposes.
 - v. Amendments. No amendments of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the Utility Company and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.
 - vi. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Kendall County, Texas.


- vii. Venue. Venue for any suit arising hereunder shall be in Kendall County, Texas.
- viii. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.
- ix. Assignability. The rights and obligations of the Developer hereunder may be assigned without the prior written consent of the Utility Company, however, no such assignment shall relieve the Developer, its successors or assigns of any obligation under this Agreement.

11. Effective Date and term.

This Agreement shall be effective from and after the date of the execution by all parties. This agreement shall expire and be null and void if work on the Extension does not begin within twenty-four months after approval of this Agreement and shall be in effect for a term ending four years and one day after Developer fully performs the obligations under this Agreement; provided, however, if any claim or suit is filed relating to this Agreement or the Extension prior to the termination of this Agreement, this Agreement shall continue in effect until such claim or suit is finally resolved.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

UTILITY COMPANY

By: 

Title: Vice President

Date: 8-31-04

DEVELOPER

BY:

W. H. Milne

Name:

W. H. Milne

Title:

Treasurer

Date:

9/9/01

**REGIONAL WATER SUPPLY PROJECT
FOR PORTIONS OF
COMAL, KENDALL AND BEXAR COUNTIES.**

**AGREEMENT BETWEEN
KENDALL COUNTY UTILITY COMPANY AND TAPATIO SPRINGS SERVICE
COMPANY, INC.
AND
GUADALUPE-BLANCO RIVER AUTHORITY**

EXHIBIT 2

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**AGREEMENT BETWEEN
KENDALL COUNTY UTILITY COMPANY
AND TAPATIO SPRINGS SERVICE COMPANY, INC.
AND
GUADALUPE-BLANCO RIVER AUTHORITY**

This Agreement Between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and Guadalupe-Blanco River Authority (this "Agreement") is made and entered into as of the 18 day of March, 2002, by and between Kendall County Utility Company and Tapatio Springs Service Company, Inc. (jointly referred to as "Customer"), and the Guadalupe-Blanco River Authority ("GBRA"), a conservation and reclamation district and political subdivision of the State of Texas created pursuant to Article XVI, Section 59 of the Texas Constitution by special act of the Legislature, formerly compiled at Article 8280-106, Vernon's Annotated Civil Statutes.

RECITALS

This Agreement provides for the development, permitting, design, financing, construction and operation of a treated water supply project to serve portions of Comal, Kendall and Bexar Counties.

The development of a treated surface water supply is important to meet the current and future water needs of residents within GBRA's ten-county statutory service area, which includes Comal and Kendall Counties. The development of a surface water supply project to serve portions of Comal and Kendall Counties can also serve as part of a larger regional system which provides water supplies to meet future demands in a portion of Bexar County.

Customer holds certificate of convenience and necessity nos. 11904 (Kendall) and 12122 (Tapatio) which authorize Customer to provide retail water service within the territory shown by the map attached as Exhibit 2.

GBRA holds the right to store water in and use water from Canyon Reservoir under Certificate of Adjudication No. 18-2074C. This Agreement sets forth terms and conditions agreed upon by Customer and GBRA relating to the diversion and treatment of raw water from Canyon Reservoir, and the conveyance and delivery to Customer of that treated water.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GBRA and Customer agree as follows:

ARTICLE I

DEFINITIONS

"Acre-Foot" means that volume defined by an area of one acre, one foot deep. One acre-foot of water equals 325,851 gallons.

"Annual Commitment" for any calendar year means the maximum amount of treated water that GBRA shall be obligated to deliver to Customer during that year as specified in Section 4.4 of this Agreement.

"Annual Debt Service Requirement" means the total principal and interest scheduled to come due on all Bonds during each twelve month period ending on August 31 of each year, plus a debt service coverage factor as determined by GBRA and provided by the Bond Resolution but not to exceed 10% of such principal and interest unless GBRA and Customer mutually agree upon a greater percentage, less interest to be paid out of Bond proceeds as permitted by the applicable Bond Resolution, if any.

"Annual Operation and Maintenance Requirement" means the total amount budgeted by GBRA for each twelve month period ending on August 31 of each year to pay all estimated Operation and Maintenance Expenses for the Project.

"Annual Miscellaneous Bond Requirement" means the total amount determined by GBRA for each twelve month period ending on August 31 of each year to be required to pay the following:

- (1) the amount of any debt service reserve and contingency funds required to be established and maintained by the provisions of the Bond Resolution which are not otherwise provided from proceeds of Bonds;
- (2) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of the Bond Resolution;
- (3) any amounts due under a reimbursement agreement between GBRA and any credit facility provider providing a credit facility issued to cause the balance on deposit in any debt service reserve funds to satisfy the requirements of the Bond Resolution; and

- (4) any charges of the bank or banks where the Bonds are payable.

"Bonds" means all bonds and other obligations issued and outstanding from time to time by GBRA to finance or refinance the costs of construction, acquisition, repair, improvements and upgrading related to the Initial Project and any extension, expansion, maintenance, repair, improvement, upgrade or other modification of the Project including, without limitation of the generality of the foregoing, any costs necessary or desirable to maintain or increase the Plant Initial Daily Capacity and comply with applicable laws, rules and regulations relating to the supply of potable water.

"Bond Resolution" means the resolution or resolutions approved by the Board of Directors of GBRA which authorize the issuance of each series of Bonds, including all amendments related thereto.

"Customer's Commencement Month" means the month during which Customer's System is connected to the Project

"Customer's Debt Service Component" means the component of the price for treated water to be paid by the Customer as determined and described in Section 6.2 of this Agreement.

"Customer's Debt Service Percentage" for any month means the quotient, expressed as a percentage, equal to the Customer's Required Monthly Treated Water Purchase for that month, divided by the Plant Monthly Capacity for that month.

"Customer's Miscellaneous Bond Requirements Component" means the component of the price for treated water to be paid by the Customer as determined and described in Section 6.4 of this Agreement.

"Customer's Operation and Maintenance Percentage" for any month means the quotient, expressed as a percentage, equal to the amount of treated water actually delivered to Customer during that month, divided by the Plant Current Monthly Capacity for that month.

"Customer's Operation and Maintenance Component" means the component of the price for treated water to be paid by the Customer as determined and described in Section 6.3 of this Agreement.

"Customer's Raw Water Component" means the component for the charge for raw water to be paid by the Customer as determined and described in Section 6.3 of this Agreement.

"Customer's Required Monthly Raw Water Purchase" for any month means the amount of raw water that the Customer is obligated to pay for that month, as specified in Section 6.1(c) of this Agreement.

"Customer's Required Monthly Treated Water Purchase" for any month means the amount of treated water from the Project that the Customer is obligated to pay for that month, as specified in Section 6.1(b) of this Agreement.

"Daily Commitment" in effect for any calendar year means the maximum amount of treated water that GBRA shall be obligated to deliver to Customer on a constant basis over any 24-hour period during that year, as specified in Section 4.5 of this Agreement.

"District-Wide Raw Water Rate" at any time is the rate charged by GBRA at that time for stored water from Canyon Reservoir for use within GBRA's ten-county statutory district. The present rate is \$69.00 per acre-foot per year.

"GBRA's Application to Amend the Canyon Certificate" means that certain application filed by GBRA with the TNRCC identified in Section 5.2 of this Agreement, as such application may be amended by GBRA.

"Initial Project" means the surface water supply project described in Section 2.1 of this Agreement, as such project is further defined, constructed, upgraded and maintained pursuant to the terms of this Agreement.

"mgd" means million gallons per day.

"Operation and Maintenance Expenses" means all costs and expenses of operation and maintenance of the Project, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements which are not paid from a special fund created in the Bond Resolutions or other Project debt instruments, employee salaries, benefits and other expenses, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, other services, supplies, charges by GBRA for administrative and general expenses, and equipment necessary for proper operation and maintenance of the Project.

"Other Customer" means another customer of GBRA's for the supply of treated water from the Project, regardless of when GBRA and the customer enter into the contract for the supply of such water.

"Plant" means the water treatment plant that is included as part of the Project, described generally in Section 2.1 of this Agreement.

"Plant Current Monthly Capacity" for any month means the Plant Daily Capacity during that month, times the number of days during that month.

"Plant Daily Capacity" at any time means the amount of water which the Plant is designed to treat on an average daily basis, based on standards that exist at that time, expressed in terms of million gallons per day, as certified by the General Manager of GBRA and provided in writing to

the Customer and all Other Customers or, if GBRA determines that the entire amount should not be committed, the portion of such amount that GBRA determines should be committed.

"Plant Initial Daily Capacity" means the appropriate Plant Daily Capacity for the Initial Project, as determined by GBRA pursuant to Section 2.4 of this Agreement.

"Plant Initial Monthly Capacity" for any month means the Plant Initial Daily Capacity times the number of days during that month.

"Point of Delivery" means the point on the Project's treated water conveyance system at which treated water is to be delivered to Customer, as such point is identified in Section 4.2 of this Agreement.

"Point of Diversion" means the point on the perimeter of Canyon Reservoir at which raw water to which Customer is entitled under this Agreement is diverted for supply to the Plant under this Agreement, as such point is identified in Section 2.1 of this Agreement.

"Project" at any time means the Initial Project, together with any and all extensions, expansions or other modifications, as it or they exist at that time.

"Project Management Committee" means the committee established pursuant to Section 7.1 of this Agreement.

"Raw Water Reservation" means the maximum amount of raw water that GBRA shall be obligated to reserve for diversion, treatment and delivery to Customer in any calendar year as specified in Section 4.3 of this Agreement.

"Termination Date" means the expiration date of the term of this Agreement, as defined in Section 8.1 of this Agreement.

"TNRCC" means the Texas Natural Resource Conservation Commission.

ARTICLE II

DESIGN, CONSTRUCTION AND OPERATION OF THE PROJECT

Section 2.1 Description of the Initial Project.

The Initial Project will consist of facilities for the diversion of raw water from Canyon Reservoir, a water treatment plant (the "Plant"), facilities to convey the raw water after diversion from Canyon Reservoir to the Plant, and facilities to convey treated water from the Plant for use in areas within portions of Comal, Kendall and Bexar Counties. The scope and capacity of the Initial Project will depend upon which other entities enter into contracts with GBRA for the supply of treated water before the design of the Initial Project is finalized as set forth in this Agreement, the amounts of water contracted to be supplied to each, and other factors such as the timing and outcome of GBRA's applications for permits, amendments to permits or other governmental authorizations required for the Initial Project or portions thereof. In any case, the Initial Project may also include storage and other facilities necessary or desirable for the supply of treated water to GBRA's customers. The Initial Project also includes all lands and interests in lands necessary or desirable for the construction, operation and maintenance of Initial Project facilities. The Initial Project is further described by the map and facility plan attached as Exhibit 1 showing the general location of the point of diversion from Canyon Reservoir and the general routings of treated water conveyance facilities.

Section 2.2 GBRA Responsibilities.

- (a) GBRA shall be responsible for the design, permitting, financing, construction, operation and maintenance of the Initial Project.
- (b) GBRA will select and retain all legal, financial, engineering and other consultants that GBRA determines are necessary or desirable for GBRA to satisfy its obligations under this Agreement.

Section 2.3 Ownership of Project.

- (a) Except as provided otherwise in subsection (b), below, GBRA shall own all facilities, lands and interests in land comprising the Project.
- (b) If the Project extends into Bexar County, then GBRA may transfer title to any facilities, lands and interests in lands within Bexar County comprising a portion of the Project to one or more other Participants who may be so entitled pursuant to the terms of its or their contracts with GBRA, but only after the Bonds have been fully retired, or redeemed; provided, however, if the portion of the Project to be transferred is used to deliver water to Customer, GBRA may not transfer that portion of the Project used to deliver water to Customer until Customer consents to the transfer or this Agreement has terminated.

Section 2.4 Preliminary Design and Cost Estimate.

(a) GBRA will determine the appropriate Plant Initial Daily Capacity, taking into account the total amount of water required to be treated and delivered under this Agreement and all other contracts that have been entered into at that time with Other Customers, as well as any other information that GBRA considers relevant. GBRA will also prepare a preliminary design and cost estimate of the Initial Project (the "Basis of Design Report, including amendments thereto approved by the GBRA Board of Directors"), and will provide copies to Customer and all Other Customers. GBRA will then proceed with final design, acquisition, construction and financing of the Initial Project.

(b) Customer shall have the right to terminate this Agreement by giving GBRA written notice of termination within 30 days after GBRA delivers Basis of Design Report, as amended, to Customer pursuant to subsection (a) of this Section.

(c) At any time before GBRA sells any of its Bonds, GBRA shall have the right to terminate this Agreement for any reason by giving Customer written notice of termination; provided, however, GBRA will not discriminate against Customer in regards to the termination of contracts relating to the Project and will not grant preferential treatment to other persons in regards to the termination of this Agreement.

Section 2.5 Preparation of Plans and Specifications; Competitive Bids.

(a) GBRA will cause to be prepared plans, specifications and contract documents for construction of all facilities comprising the Initial Project. Plans and specifications for any portion of the Initial Project shall be subject to approval by the GBRA General Manager, after which GBRA will advertise for competitive bids for construction of that portion and GBRA shall determine which construction bid or bids to accept.

(b) If GBRA determines that the total amount of the projected costs of the Initial Project may exceed or will exceed the estimated construction costs stated in the Basis of Design Report, as amended, by ten percent or more, GBRA will notify Customer.

Section 2.6 Financing of Project.

(a) If GBRA determines to proceed with the Initial Project, GBRA may finalize the terms and conditions (including maturity) of GBRA's Bonds necessary to finance the design, acquisition, construction and testing of all facilities, lands and interests in lands comprising the portion of the Initial Project being constructed. GBRA will prepare such data, materials and documents as may be necessary to facilitate the sale and delivery of the Bonds, and Customer agrees to furnish GBRA with such data, projections and related information as may reasonably be required by GBRA in the sale of the Bonds in compliance with all applicable laws, rules and regulations. In addition to the

amounts paid under the construction contract or contracts, the proceeds of the Bonds will also be used to pay additional costs such as Initial Project development costs (including, without limitation, preliminary engineering costs, employee salaries, benefits and other expenses, legal, and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs incurred in developing and pursuing information, contracts and permit applications related directly to the Initial Project); land acquisition costs, interest during construction, employee salaries, benefits and other expenses, printing costs, engineering, legal, financial and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs incurred in the issuance of the Bonds and in the design, acquisition, construction and testing of the facilities, lands, and interests in lands comprising the Initial Project.

(b) GBRA shall be authorized from time to time to issue Bonds to refund outstanding Bonds or otherwise refinance costs of the Initial Project. Such refunding Bonds may be issued without approval from the Customer.

Section 2.7 Extensions or Other Modifications of Project.

GBRA may extend, expand, maintain, repair, improve, upgrade or otherwise modify the Project from time to time, as it determines to be necessary or desirable. GBRA shall be authorized from time to time to issue Bonds for any such expansion, maintenance, repair, improvement, upgrade or other modification of the Project. Such Bonds may be issued without approval from the Customer. Customer shall not be liable under this Agreement for any portion of the costs of construction of new facilities in addition to those facilities initially constructed as the Initial Project, except replacement facilities or facilities that are necessary or desirable to maintain the Plant Initial Daily Capacity or comply with applicable state or federal laws, rules and regulations relating to the supply of potable water. Participant shall be liable for its share of Operation and Maintenance Expenses of the Project as it may exist at any time, based on the Plant Daily Capacity at that time and the amount of treated water actually delivered to Customer during the month, as set forth in this Agreement.

Section 2.8 Additional Customers.

GBRA may enter into contracts with new Other Customers to supply treated water from the Project, and may amend existing contracts with Other Customers to supply greater or lesser amounts of treated water from the Project, at any time and from time to time, so long as GBRA's obligations to Customer under this Agreement continue to be satisfied.

Section 2.9. Plant Capacity.

The Initial Project will be sized to divert, treat, and deliver to the Point of Delivery the entire amount of Customer's Raw Water Reservation less reasonable amounts, not to exceed 5%, for

losses during treatment and transmission. This capacity will be available for use by GBRA to meet Customer's demands for treated potable water to the extent limited by this Agreement regardless of the provisions of Section 2.8.

ARTICLE III

CONNECTION FEE; DEADLINE FOR CONNECTION

Section 3.1 Connection Fee.

Upon execution of this Agreement, Customer shall pay GBRA a connection fee of \$25,000, which shall allow Customer the right, until December 31, 2005, (the "Connection Deadline") to have GBRA connect the potable water distribution system serving Customer's service area defined in Exhibit 2 ("Customer's System") to the Project at the Point of Delivery in accordance with the terms of this Agreement. The connection fee is based on the Raw Water Reservation, as set forth in the schedule attached hereto as Exhibit 3. GBRA may modify the schedule attached as Exhibit 3 from time to time, and such modified schedule shall be applicable to any new agreement or amendment to this Agreement entered into by the parties after the date of adoption of the modified schedule by the GBRA.

Section 3.2 Connection by GBRA.

(a) Customer shall be responsible, at its sole cost, for extending Customer's System to the Point of Delivery. GBRA shall not be required to obtain any lands or interests in land that may be needed by Customer to extend Customer's System to the Point of Delivery.

(b) Connection of Customer's System to the Project at the Point of Delivery shall be made by GBRA upon the written request of Customer, in accordance with plans, specifications and requirements prepared or adopted by GBRA; provided, however, that GBRA shall not be required to connect or allow Customer to connect Customer's System to the Project at the Point of Delivery at any time unless, on the date of Customer's written request: (i) the Project was in operation; and (ii) Customer held a valid and effective certificate of convenience and necessity from the TNRCC authorizing Customer to provide potable water service to all areas within Customer's Service Area defined in Exhibit 2. Connection shall be accomplished by GBRA setting the meter at the Point of Delivery.

(c) In addition to payment of the connection fee, Customer shall also pay all costs associated with connecting Customer's System to the Project at the Point of Delivery including, without limitation, all costs of design, construction, installation, operation and maintenance of all connection facilities and equipment, including one or more meters, valves, and telemetry equipment.

Section 3.3 Termination if Connection is Not Made by Deadline.

(a) If Customer's System is not connected to the Project at the Point of Delivery before the Connection Deadline, then GBRA shall have the right to terminate this Agreement by giving written notice of termination to Customer unless Customer requested in writing before such notice is given that GBRA make such connection and, on the date of the request: (i) the Project was in operation; and (ii) Customer held a valid and effective certificate of convenience and necessity from the TNRCC authorizing Customer to provide potable water service to all areas within Customer's Service Area defined in Exhibit 2. If the Project is not in operation on the Connection Deadline or the delay in making the connection is attributable to GBRA, the City of Boerne, or to some other person or event other than the sole delay by Customer, GBRA may not terminate this Agreement if Customer is ready and able to connect.

(b) Regardless of Section 3.3(a) above, GBRA waives the right to terminate this Agreement pursuant to Section 3.3(a) above if and for so long as Customer pays the monthly payments required by this Contract.

Section 3.4 Refund of Connection Fee.

Customer shall be entitled to a refund of the connection fee paid by Customer pursuant to Section 3.1, above, if: (i) this Agreement is terminated by GBRA pursuant to Section 3.3 and the Project was not completed and in operation on the date of termination; or (ii) GBRA terminates this Agreement prior to the Connection Deadline for some reason other than default by the Customer.

ARTICLE IV

SUPPLY OF TREATED WATER

Section 4.1 Diversion, Treatment and Delivery of Water to Customer.

After completion of construction of the Initial Project and commencing upon connection of Customer's System to the Project at the Point of Delivery, GBRA shall divert from Canyon Reservoir at the Point of Diversion and convey to the Plant raw water, and treat such water and convey and deliver treated water to Customer at the Point of Delivery in amounts and at delivery rates as may be requested by Customer, subject to the limitations provided in this Agreement.

Section 4.2 Point of Delivery.

(a) The Point of Delivery for all treated water supplied by GBRA to Customer under this Agreement shall be as shown on Exhibit 1.

(b) GBRA and Customer agree that the Point of Delivery shall be the point at which treated water is supplied through the meter prior to Customer's storage tank. Customer shall be responsible for all costs of design and construction of such additional facilities. Customer shall further acquire and convey to GBRA, at no cost to GBRA, all necessary lands or interests in lands on which such additional facilities are to be located. GBRA shall not be required to obtain any such lands or interests in land.

(c) Customer shall take all steps necessary to prevent backflow of water supplied by GBRA, or any flow of any other water or other substance, from Customer's system to the Project at the Point of Delivery. If Customer fails to install, operate or maintain any facilities needed for such purpose within 10 days after GBRA gives Customer notice to do so, then GBRA may design, install, construct, maintain and operate such facilities, and Customer shall be solely responsible for the costs thereby incurred by GBRA.

(d) Customer plans to contract with the City of Boerne to use a common Point of Delivery and to have Boerne receive and transport Customer water to a location to be designated by the City and the Customer. In the event Customer and Boerne do not enter into a contract for a common Point of Delivery and water transmission services, Customer may receive water from GBRA at either an additional or alternative Point of Delivery. The location(s) of the additional or alternative Point of Delivery will be at a location mutually acceptable to Customer and GBRA and absent an agreement to the contrary, GBRA and Customer agree that the location of the alternative/additional Point of Delivery depicted on Exhibit 1 is acceptable to both, provided Customer pays GBRA in accordance with this subsection. Customer will pay GBRA's actual costs of designing and constructing any additional facilities that may be necessary for the additional or alternative Points of Delivery and obtaining land and right of way and such costs shall not be included as a Project cost.

(e) The parties agree that the system treated water will be discharged into a ground storage tank with an air gap of at least three feet within the tank and that the meters and other measuring devices will be located prior to the discharge into Customer's tank.

Section 4.3 Raw Water Reservation.

The Raw Water Reservation is the maximum amount of raw water that GBRA shall be obligated to reserve for diversion, treatment and delivery to Customer in any calendar year. The Raw Water Reservation shall be five hundred (500) acre-feet per year.

Section 4.4 Annual Commitment.

(a) The Annual Commitment for any calendar year is the maximum amount of treated water that GBRA shall be obligated to deliver to Customer during that year. The Annual

Commitment initially shall be 48.88 million gallons (150 ac-ft) per year, subject to increases as set forth in subsection (b), below.

(b) Customer may from time to time request that the Annual Commitment be increased commencing January 1 of a specified year, up to an amount not to exceed the Raw Water Reservation, by giving GBRA a written request for such increase before December 1 immediately preceding the January 1 on which the increase is requested to take effect. The Annual Commitment shall be increased commencing the specified January 1 as requested by Customer up to, but not to exceed, the Raw Water Reservation. The Annual Commitment in effect at any time shall continue in effect through the term of this Agreement unless and until it is increased pursuant to this subsection (b), and it may never be decreased without the written agreement of GBRA.

Section 4.5 Daily Commitment.

The maximum amount of treated water that GBRA shall be obligated to deliver to Customer over any 24-hour period (the "Daily Commitment") in effect for any calendar year shall be the Annual Commitment for that year divided by the number of days in that year. In the event GBRA allows any other customer or participant of the Project to obtain water on a daily basis in excess of the rate of delivery calculated in accordance with this paragraph, GBRA will provide Customer the opportunity to obtain service on the same basis.

Section 4.6 Maximum Delivery Rate and Pressure.

GBRA shall not be obligated to deliver treated water to Customer at any time during any calendar year at a rate in excess of that rate, expressed in gallons per minute, calculated by multiplying the Daily Commitment (in mgd) in effect for that year by 694.44. GBRA shall not be obligated to deliver treated water to Customer at any time during any calendar year at a pressure in excess of TNRCC minimum requirements.

Section 4.7 Purpose of Use.

All water delivered by GBRA to Customer under this Agreement shall be used for municipal and domestic purposes only, as such purposes of use are defined by Chapter 297.1 (16) and (30) of the Rules of the TNRCC, in effect on the date this Agreement is signed.

Section 4.8 Place of Use.

All water delivered by GBRA to Customer under this Agreement shall be used exclusively within Kendall County within Customer's service area defined in Exhibit 2, as the service area may be modified from time to time, and Customer may not use, or supply or resell for use, any water delivered by GBRA to Customer under this Agreement outside Customer's service area defined in Exhibit 2 unless, and except to the extent that, Customer obtains GBRA's prior written approval for use outside such service area. Customer is not prohibited from selling water from a different source.

GBRA shall not be required to supply any water to Customer for any period of time during which Customer does not have in effect a certificate of convenience and necessity from the TNRCC authorizing Customer to provide potable water service.

Section 4.9 Allocation of Water During Drought.

During severe drought conditions as may be defined by conservation or drought management plans adopted by GBRA, or in any other condition when water cannot be supplied to meet the demands of all customers, the water to be distributed shall be divided among all customers of stored water from Canyon Reservoir pro rata, according to the amount each may otherwise be entitled to under their respective contracts with GBRA, subject to reasonable conservation and drought management plans and requirements based on particular purposes of use of the water, so that preference is given to no one and everyone suffers alike. Commencement of a drought shall be initially defined as a period of 45 consecutive days when the inflow to Canyon Reservoir is 90 cfs average or less. GBRA may redefine commencement of a drought so long as the definition applies to all customers uniformly.

Section 4.10 Conservation.

GBRA and Customer each agrees to provide to the maximum extent practicable for the conservation of water, and each agrees that it will operate and maintain its facilities in a manner that will prevent waste of water. Customer further agrees to implement, to the extent allowed by law, water conservation and drought management plans applicable to the use of treated water from the Project that, at a minimum, comply with all minimum standards that may be required or recommended by the Texas Water Development Board (the "TWDB"), the TNRCC or GBRA. Such standards may include, but shall not be limited to, conservation rate incentives or surcharges to be imposed by Customer on its customers for use of water in excess of amounts that are determined by the TWDB, the TNRCC or GBRA to be adequate for essential indoor domestic uses, to the extent such incentives or surcharges may be allowed by law. GBRA required or recommended minimum standards under this section must apply to all of its customers uniformly. Customer shall not be obligated under this Agreement to implement water conservation and drought management plans that are more stringent than the water conservation and drought management plans that GBRA requires other participants and customers of the Project to implement.

Section 4.11 Water Quality.

(a) The sole source of raw water for the Project will be untreated water in Canyon Reservoir at the Point of Diversion. GBRA agrees to use reasonable diligence and care in treating water diverted from Canyon Reservoir at the Plant, as it may be expanded or otherwise modified by GBRA, and GBRA will use its best efforts to deliver to Customer water of quality that meets or exceeds the standards of the TNRCC or any other applicable regulatory agency for potable water.

(b) GBRA shall periodically collect samples of treated water delivered to Customer and Other Customers and cause same to be analyzed consistent with guidelines established by the TNRCC using the then-current edition of Standard Methods for Examination of Water and Wastewater as published by the American Water Works Association and others.

(c) GBRA and Customer recognize that Customer plans to commingle the water with groundwater produced from Customer's wells producing from formations consisting of the Middle Trinity Aquifer and that the groundwater is disinfected with chlorine, and the ratio of treated and disinfected surface water to disinfected groundwater will vary from time to time. GBRA at the request of Customer and at the expense of Customer will install the treatment and disinfection processes required to reduce adverse taste and odor characteristics in the water, if any, delivered by Customer's system.

Section 4.12 Measurement of Water.

(a) GBRA shall provide, operate, maintain, and read one or more meters which shall record treated water taken by Customer at the Point of Delivery. GBRA shall also provide, operate, maintain, and read one or more meters which shall record treated water taken by Other Customers receiving treated water from the Project at the points of delivery for them. GBRA shall also provide, operate, maintain, and read one or more meters which shall record the total amount of raw water diverted at Canyon Reservoir at the Point of Diversion and conveyed to the Plant. All meters shall be conventional types of approved meter(s).

(b) For all purposes under this Agreement, the amount of raw water diverted from Canyon Reservoir by GBRA and conveyed to the Plant for Customer during any period of time shall be the greater of the following amounts:

- (1) the amount of treated water delivered to Customer during that period of time, as measured at the Point of Delivery; or
- (2) an amount of water determined by allocating the total amount of raw water diverted during that period of time, as measured at the Point of Diversion, pro rata, based on the amounts of treated water delivered to Customer and each Other Customer during that period of time.

(c) GBRA shall keep accurate records of all measurements of water required under this Agreement, and the measuring device(s) and such records shall be open for inspection at all reasonable times. Measuring devices and recording equipment shall be accessible for adjusting and testing and the installation of check meter(s). If requested in writing but not less than once in each calendar year, GBRA shall calibrate its water meter(s) that record treated water taken by Customer

at the Point of Delivery. GBRA shall give Customer notice of the date and time when any such calibration is to be made and, if a representative of Customer is not present at the time set, calibration and adjustment may proceed in the absence of any representative of Customer.

(d) If upon any test of the water meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of five percent (5%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (½) of the time elapsed since the last date of calibration, but in no event further back than period of six (6) months. If any meter(s) that record treated water taken by Customer at the Point of Delivery are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters(s) are out of service or out of repair shall be estimated and agreed upon by GBRA and Customer upon the basis of the best data available, and, upon written request and with reasonable advance notice, GBRA shall install new meters or repair existing meters and such cost shall be included as a Project cost. If GBRA and Customer fail to agree on the amount of water delivered during such period, the amount of water delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Section 4.13 Title to Water.

Title to and responsibility for all water supplied hereunder shall be in GBRA from the Point of Diversion to the Point of Delivery, at which point title to and responsibility for such water shall pass to Customer.

Section 4.14. Other Sources. Nothing in this Agreement is intended by the Parties to limit Customer's options to obtain water from other sources or to limit Customer's use of water from such other sources, nor shall this Agreement be deemed to have the effect of limiting Customer's options to obtain or use water from other sources.

ARTICLE V

PERMITTING AND OTHER REGULATORY REQUIREMENTS

Section 5.1 Applicable Laws and Regulations.

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TNRCC, or any successor agency.

Section 5.2 Cooperation.

Customer agrees to cooperate with GBRA in pursuing all permits and approvals that GBRA determines to be necessary or desirable for the Project, to complete and file all required reports, and to comply with all applicable laws, rules and regulations. Without limiting the generality of and in addition to the foregoing, Customer expressly agrees to support the granting, in whole, of that certain application filed by GBRA with the TNRCC on August 29, 1997, for various amendments to Certificate of Adjudication No. 18-2074C, as such application may be amended by GBRA ("GBRA's Application to Amend the Canyon Certificate").

Section 5.3 Agreement Conditioned upon Permitting.

(a) GBRA's obligations under this Agreement are expressly conditioned upon GBRA obtaining the necessary permits, amendments to permits, licenses and other governmental authorizations to allow GBRA to construct and operate the Initial Project and supply treated water to Customer for use within Customer's Service Area as provided herein.

(b) Without limiting the generality of the condition set forth in subsection (a), above, and in addition to that condition, GBRA's obligations under this Agreement are expressly conditioned upon:

- (1) the granting, in whole, of GBRA's Application to Amend the Canyon Certificate;
- (2) confirmation by the TNRCC in its order granting the amendment that neither the inflows authorized to be stored in Canyon Reservoir nor the total amount of water authorized to be used from Canyon Reservoir will be reduced in any way during any period of time, solely because water from Canyon Reservoir is being supplied from the Project for use in Bexar County; and
- (3) confirmation by the TNRCC in its order granting the amendment that the terms, conditions and guidelines for allocation during drought set forth in

Section 4.9, above, will apply notwithstanding the fact that water from Canyon Reservoir is being supplied from the Project for use in Bexar County.

(c) If the TNRCC does not enter an order granting, in whole, GBRA's Application to Amend the Canyon Certificate and containing the confirmation provisions required pursuant to subsection (b), above, before January 1, 2002, or if it enters such an order before January 1, 2002 but the order does not become final and not appealable before that date, then GBRA and Customer each shall have the right, on that date or at any time thereafter, but only for so long as no such final and not appealable order of the TNRCC exists, to terminate this Agreement by giving written notice of termination to the other party.

Section 5.4 Development Within Customer's Service Area.

Customer agrees that the supply of water to Customer under this Agreement for use on any lands within a CCN in Kendall County shall be conditioned, to the extent allowed by law, on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with all federal, state and local laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Customer further agrees that, to the extent allowed by law, it will not supply any water supplied to Customer under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Customer shall demonstrate to GBRA its compliance with the requirements of this Section 5.4. If Customer fails to comply with the requirements of this Section 5.4 with respect to Customer's supply of water for use on any lands, GBRA shall have available all remedies allowed by law including, without limitation, termination of this Agreement, or suspension or reduction of the supply of treated water under this Agreement until Customer demonstrates that compliance has been achieved; provided, however, GBRA will notify Customer of the violation and provide Customer a reasonable time to cure the violation. Customer will not be obligated to implement any requirement that GBRA does not require all other Project customers or participants to implement.

ARTICLE VI
CHARGES FOR WATER

Section 6.1 Charges.

(a) The amount to be paid by Customer to GBRA each month under this Agreement shall be the sum of the following four components:

- (1) Customer's Debt Service Component;
- (2) Customer's Operation and Maintenance Component;
- (3) Customer's Miscellaneous Bond Requirements Component; and
- (4) Customer's Raw Water Component.

(b) Customer's Required Monthly Treated Water Purchase for each month during any calendar year shall be 1/12th of the Annual Commitment for that year. Customer agrees to pay GBRA each month for Customer's Required Monthly Treated Water Purchase, in accordance with paragraphs (1) and (3) of subsection (a) of this Section, whether or not such amount, or any of it, is taken by Customer.

(c) Customer's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation. Customer agrees to pay GBRA each month for Customer's Required Monthly Raw Water Purchase, in accordance with paragraph (4) of subsection (a) of this Section, whether or not such amount, or any of it, is taken by Customer.

(d) GBRA shall have the right to use all funds received by GBRA from Customer under this Agreement for any purpose or purposes desired by GBRA in GBRA's discretion.

(e) All funds received by GBRA from Participant's Debt Service Component which constitute payment of the debt service coverage factor as a component of the Annual Debt Service Requirement shall be deposited by GBRA into a separate account, or shall be accounted for separately by GBRA in support of its "Water Resources Division" (of which the Project is or will be a part) for any of the following purposes: (1) paying the cost of improvements, enlargements, extensions, additions, replacements, or other capital expenditures related to the Water Resource Division, (2) paying the costs of unexpected or extraordinary repairs or replacements in connection with the Water Resource Division, (3) paying any bonds, loans or other obligations of the Water Resource Division, or (4) any other lawful purpose related to the cost of operations of the Water Resource Division.