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Exhibit B

COPY

**THIRD AMENDMENT TO AGREEMENT BETWEEN  
CITY OF FAIR OAKS RANCH, TEXAS AND  
GUADALUPE-BLANCO RIVER AUTHORITY**

This Third Amendment (this "Third Amendment") to the Agreement between the City of Fair Oaks Ranch, Texas and the Guadalupe-Blanco River Authority dated February 10, 2000 (the "2000 Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, but effective January 1, 2012, by and between the City of Fair Oaks Ranch, Texas (the "City" or "Participant") and the Guadalupe-Blanco River Authority (the "GBRA").

WHEREAS, on February 10, 2000 the City and GBRA entered into the 2000 Agreement relating to the development, permitting, design, financing, construction and operation of a water supply project to serve the City and other parties; and

WHEREAS, pursuant to the 2000 Agreement, the parties agreed that the Raw Water Reservation amount is 1,400 acre-feet of water per year and the initial Annual Commitment is 800 acre-feet of water per year; and

WHEREAS, on November 1, 2006, the City and GBRA entered into the First Amendment to the 2000 Agreement to, among other things, increase the Raw Water Reservation amount up to 1,600 acre-feet per year and the Annual Commitment up to 840 acre-feet per year delivered at a rate of 0.75 million gallons per day; and

WHEREAS, on September 23, 2008, the City and GBRA entered into the Second Amendment to the 2000 Agreement to, among other things, increase the Raw Water Reservation amount up to 1,850 acre-feet per year and the Annual Commitment up to 890 acre-feet per year delivered at a rate of 0.795 million gallons per day; and

WHEREAS, the City desires that the 2000 Agreement, as amended, be amended to increase the Annual Commitment an additional 52 acre-feet per year; and

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual benefits and provisions hereinafter contained in this Third Amendment, the City and GBRA agree to amend, modify, and change certain sections of the 2000 Agreement as amended, as follows. All other terms and conditions of the 2000 Agreement, as amended, not expressly amended by this Third Amendment shall continue in full force.

Section 3.4 Annual Commitment, is amended in its entirety to read as follows:


- (a) GBRA shall not be required under any circumstances to supply an amount of treated potable water to the Participant during any calendar year in excess of the annual commitment in effect for the Participant during that year (the "Annual Commitment"). The Annual Commitment for treated potable water to be supplied to the Participant shall be nine hundred forty two (942) acre-feet per year delivered at a rate of (0.795) million gallons per day ("mgd"), subject to adjustments set forth in subsection (b), below.

- (b) Each calendar year, Participant shall notify GBRA of the amount of treated water (expressed in acre-feet per year) that will be needed by Participant during the following year on or before December 31. The amount shall be the actual use for the preceding year, the contracted Annual Commitment for the preceding year or an amount stated by the Participant, whichever is greater; provided, however, under no circumstances shall the Annual Commitment for any year exceed 1,850 acre-feet less treatment and delivery losses, unless otherwise agreed to by the Parties in writing.

IN WHITNESS WHEREOF, this Third Amendment is executed as of the date first written above, but effective January 1, 2012, on behalf of the City and GBRA by their respective authorized officers, in multiple counterparts, each of which shall constitute an original.

CITY OF FAIR OAKS RANCH, TEXAS

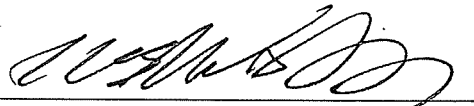
By:



Cheryl Landman

GUADALUPE-BLANCO RIVER AUTHORITY

By:



W.E. West, Jr., General Manager

APPROVED

LEGAL OCW

THE STATE OF TEXAS

§

§

COUNTY OF GUADALUPE

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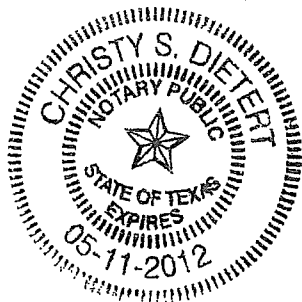
BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared W.E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day of January, 2012.



Notary Public  
The State of Texas

(Seal)



THE STATE OF TEXAS

§

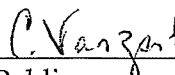
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COUNTY OF BEXAR

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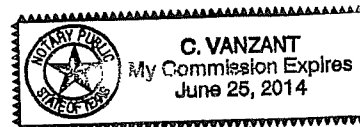
BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Cheryl Landman, Mayor of City of Fair Oaks Ranch, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30 day of January, 2012.



Notary Public  
The State of Texas

(Seal)



Second Amendment to Agreement Between City of Fair Oaks Ranch, Texas  
and Guadalupe-Blanco River Authority

This Second Amendment (this "Second Amendment") to the Agreement between the City of Fair Oaks Ranch, Texas and the Guadalupe-Blanco River Authority dated February 10, 2000 (the "2000 Agreement") is made and entered into as of this 23<sup>RD</sup> day of SEPTEMBER, 2008, by and between the City of Fair Oaks Ranch, Texas (the "City" or "Participant") and the Guadalupe-Blanco River Authority (the "GBRA").

WHEREAS, on February 10, 2000 the City and GBRA entered into the 2000 Agreement relating to the development, permitting, design, financing, construction and operation of a water supply project to serve the City and other parties; and

WHEREAS, pursuant to the 2000 Agreement, the parties agreed that the Raw Water Reservation amount is 1,400 acre-feet of water per year and the initial Annual Commitment is 800 acre-feet of water per year; and

WHEREAS, on November 1, 2006, the City and GBRA entered into the First Amendment to the 2000 Agreement to, among other things, increase the Raw Water Reservation amount up to 1,600 acre-feet per year and the Annual Commitment up to 840 acre-feet per year delivered at a rate of 0.75 million gallons per day; and

WHEREAS, the City desires that the 2000 Agreement, as amended, be amended to increase the Raw Water Reservation amount and the Annual Commitment and additionally GBRA and the City desire that the 2000 Agreement, as amended, be amended in other respects relating to the City's payment obligations to GBRA; and

WHEREAS, on December 7, 2006, the City and the City of Bulverde ("Bulverde") entered into a Texas Water Code, § 13.248 Service Agreement ("§ 13.248 Service Agreement") wherein the City and Bulverde agreed to dual certification whereby the City and Bulverde would each be authorized to provide retail water service to a 1402.25 acre tract of land located within Bulverde's CCN No. 12864 and located within the City's extraterritorial jurisdiction.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual benefits and provisions hereinafter contained in this Second Amendment, the City and GBRA agree to add new sections to the 2000 Agreement, as amended, and to amend, modify, and change certain sections of the 2000 Agreement, as amended, as follows. All other terms and conditions of the 2000 Agreement, as amended, not expressly amended by this Second Amendment shall continue in full force and effect.

Section 3.3 Raw Water Reservation is amended in its entirety to read as follows:

The Raw Water Reservation is the amount of raw water that GBRA agrees to reserve for diversion, treatment, and delivery to Participant in any calendar year for the purposes provided in this Agreement, unless otherwise agreed to in writing

by the Parties. Subject to Section 3.4 below, the Raw Water Reservation to Participant shall be 1,850 acre-feet per year. The raw water may be from any source or combination of sources that may be available to GBRA, including the permitted yield of Canyon Reservoir. GBRA shall be under no obligation under this Agreement or otherwise to reserve or supply any raw water for use by the Participant in addition to the Raw Water Reservation for those purposes or any other purpose.

Section 3.4 Annual Commitment, is amended in its entirety to read as follows:

- (a) GBRA shall not be required under any circumstances to supply an amount of treated potable water to the Participant during any calendar year in excess of the annual commitment in effect for the Participant during that year (the "Annual Commitment"). The Annual Commitment for treated potable water to be supplied to the Participant initially shall be eight hundred ninety (890) acre-feet per year delivered at a rate of (0.795) million gallons per day ("mgd"), subject to adjustments set forth in subsection (b), below.
- (b) Each calendar year, Participant shall notify GBRA of the amount of treated water (expressed in acre-feet per year) that will be needed by Participant during the following year on or before December 31. The amount shall be the actual use for the preceding year, the contracted Annual Commitment for the preceding year or an amount stated by the Participant, whichever is greater; provided, however, under no circumstances shall the Annual Commitment for any year exceed 1,850 acre-feet less treatment and delivery losses, unless otherwise agreed to by the Parties in writing.

Section 4.3 Agreement Conditioned Upon Permitting, is amended by adding new subsection (b)(4) to read as follows:

- (4) approval by the Texas Commission on Environmental Quality ("TCEQ") of the Texas Water Code § 13.248 Service Agreement between the City and Bulverde dated December 7, 2006.

New Section 5.12 Replacement Fee Charge is added to the 2000 Agreement, as amended, to read as follows:

In accordance with the requirements of Section 8.10, Participation Criteria, of the 2000 Agreement, as amended, City agrees to pay GBRA a one-time Replacement Fee Charge of \$275 per acre-foot on the 250 acre-feet per year increase of the Raw Water Reservation amount. This Replacement Fee Charge of \$68,750 shall be paid to GBRA by the City within ten (10) business days after the Effective Date of this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment is executed as of the date first written above on behalf of the City and GBRA by their respective authorized officers, in multiple counterparts, each of which shall constitute an original. The "Effective Date" of this Second Amendment shall be date on which TCEQ's approval of the § 13.248 Service Agreement is final and non-appealable.

CITY OF FAIR OAKS RANCH, TEXAS

By: *Daniel E. Kaspro*  
Daniel E. Kaspro, Mayor

GUADALUPE-BLANCO RIVER AUTHORITY

By: *William E. West, Jr.*  
William E. West, Jr., General Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

APPROVED

LEGAL *Bew*

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day of September, 2008.

(Seal)



*Christy S. Dietert*  
Notary Public  
The State of Texas

THE STATE OF TEXAS           §  
  §  
COUNTY OF Bexar           §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Daniel E. Kasprovicz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2 day of Sept, 2008.

C. Vanzant  
Notary Public  
The State of Texas

(Seal)

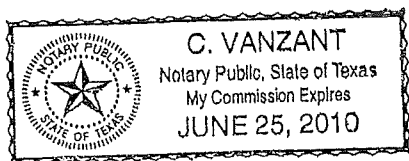


Exhibit B  
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JAN 29 2007

CITY OF FAIR OAKS RANCH



Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Martin A. Hubert, *Commissioner*  
Glenn Shankle, *Executive Director*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 23, 2007

Guadalupe-Blanco River Authority  
Attn: Fred M. Blumberg  
933 East Court Street  
Seguin, TX 78155

Re: Filing of Amendment to Water Supply Contract, TCEQ No. 12095A  
City of Fair Oaks Ranch

Dear Mr. Blumberg:

The Amendment to the Water Supply Contract between the Guadalupe-Blanco River Authority and the City of Fair Oaks Ranch has been accepted for filing. The Agreement meets the filing requirements of 30 Texas Administrative Code §295.101 and §297 Sub-Chapter J.

Please note that for correspondence and reporting purposes this contract is being identified as Water Supply Contract TCEQ No. 12095A.

**Term:** 31 years, beginning November 1, 2006 and ending December 31, 2037

**Use:** Municipal, 1600 acre-feet per year

**Source:** Canyon Reservoir

**Supplier:** Guadalupe-Blanco River Authority

**Supplier's Water Right:** Certificate of Adjudication No. 18-2074D

If you have any questions concerning this matter *please feel free to contact me* at (512) 239-2270 or at [talleman@tceq.state.tx.us](mailto:talleman@tceq.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Allemand".

Tom Allemand, MS - MC 160  
Project Manager  
Water Rights Permitting Team  
Water Supply Division

cc: City of Fair Oaks Ranch



Exhibit B  
**RECEIVED**

**JAN 29 2007**

CITY OF FAIR OAKS RANCH

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Martin A. Hubert, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 23, 2007

Guadalupe-Blanco River Authority  
Attn: Fred M. Blumberg  
933 East Court Street  
Seguin, TX 78155

Re: Filing of Water Supply Contract, TCEQ No. 12095  
City of Fair Oaks Ranch

Dear Mr. Blumberg:

The Water Supply Contract between the Guadalupe-Blanco River Authority and the City of Fair Oaks Ranch has been accepted for filing. The Agreement meets the filing requirements of 30 Texas Administrative Code §295.101 and §297 Sub-Chapter J.

Please note that for correspondence and reporting purposes this contract is being identified as Water Supply Contract TCEQ No. 12095.

**Term:** 37 years, beginning February 10, 2000 and ending December 31, 2037

**Use:** Municipal, 1400 acre-feet per year

**Source:** Canyon Reservoir

**Supplier:** Guadalupe-Blanco River Authority

**Supplier's Water Right:** Certificate of Adjudication No. 18-2074D

If you have any questions concerning this matter *please feel free to contact me* at (512) 239-2270 or at [talleman@tceq.state.tx.us](mailto:talleman@tceq.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Allemand".

Tom Allemand, MS - MC 160  
Project Manager  
Water Rights Permitting Team  
Water Supply Division

cc: City of Fair Oaks Ranch

First Amendment to Agreement Between City of Fair Oaks Ranch, Texas  
and Guadalupe-Blanco River Authority

This First Amendment (this "First Amendment") to the Agreement between the City of Fair Oaks Ranch, Texas and the Guadalupe-Blanco River Authority dated February 10, 2000 (the "2000 Agreement") is made and entered into as of this 1<sup>st</sup> day of November, 2006, the "Effective Date" by and between the City of Fair Oaks Ranch, Texas (the "City" or "Participant") and the Guadalupe-Blanco River Authority (the "GBRA").

WHEREAS, on February 10, 2000 the City and GBRA entered into the 2000 Agreement relating to the development, permitting, design, financing, construction and operation of a water supply project to serve the City and other parties; and

WHEREAS, pursuant to the 2000 Agreement, the parties agreed that the Raw Water Reservation amount is 1,400 acre-feet of water per year and the initial Annual Commitment is 800 acre-feet of water per year; and

WHEREAS, the City desires that the 2000 Agreement be amended to increase the Raw Water Reservation and the Annual Commitment and GBRA and the City desire that the 2000 Agreement be amended in other respects.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual benefits and provisions hereinafter contained in this First Amendment, the City and GBRA agree to add new sections to the 2000 Agreement and to amend, modify, and change certain sections of the 2000 Agreement as follows. All other terms and conditions of the 2000 Agreement not expressly amended by this First Amendment shall continue in full force and effect.

Section 3.3 Raw Water Reservation is amended in its entirety to read as follows:

The Raw Water Reservation is the amount of raw water that GBRA agrees to reserve for diversion, treatment, and delivery to Participant in any calendar year for the purposes provided in this Agreement, unless otherwise agreed to in writing by the Parties. Subject to Section 3.4 below, the Raw Water Reservation to Participant shall be 1,600 acre-feet per year. The raw water may be from any source or combination of sources that may be available to GBRA, including the permitted yield of Canyon Reservoir. GBRA shall be under no obligation under this Agreement or otherwise to reserve or supply any raw water for use by the Participant in addition to the Raw Water Reservation for those purposes or any other purpose.

Section 3.4 Annual Commitment, is amended in its entirety to read as follows:

- (a) GBRA shall not be required under any circumstances to supply an amount of treated potable water to the Participant during any calendar year in excess of the annual commitment in effect for the Participant during that

year (the "Annual Commitment"). The Annual Commitment for treated potable water to be supplied to the Participant initially shall be eight hundred forty (840) acre-feet per year delivered at a rate of (0.75 ) million gallons per day (mgd), subject to adjustments set forth in subsection (b), below.

- (b) Each calendar year, Participant shall notify GBRA of the amount of treated water (expressed in acre-feet per year) that will be needed by Participant during the following year on or before December 31. The amount shall be the actual use for the preceding year, the contracted Annual Commitment for the preceding year or an amount stated by the Participant, whichever is greater; provided, however, under no circumstances shall the Annual Commitment for any year exceed 1,600 acre-feet less treatment and delivery losses, unless otherwise agreed to by the Parties in writing.

New Section 8.10 Participation Criteria is added to the 2000 Agreement to read as follows:

This Agreement is subject to and the parties hereto agree to comply with the Participation Criteria for Treated Water Service from the Western Canyon Regional Treated Water Supply System (May 9, 2005) initially approved by the GBRA Board of Directors on May 18, 2005, as such criteria may be amended by the GBRA Board of Directors from time to time.

New Section 8.11 Charges for Expansion of Initial Project is added to the 2000 Agreement to read as follows:

The City acknowledges that the Initial Project was financed with proceeds of a series of Bonds issued prior to the City entering into this First Amendment (the "Initial Water Project Bonds"). Pursuant to the Bond Resolution, which authorized the issuance of the Initial Bonds and contracts entered into by GBRA with other customers at the time the Initial Bonds were issued (the "Original Water Customers"), each Original Water Customer that enters into an agreement with GBRA to receive additional treated water from the Initial Project after the delivery of the Initial Water Project Bonds, including the City, is obligated to pay its pro rata portion of the Annual Debt Service Requirement and the Annual Miscellaneous Bond Requirement related to the Initial Water Project Bonds consistent with the purchase of additional treated water. The City further acknowledges that entering into this First Amendment by the City and other Customers will cause GBRA to expand, extend, and otherwise modify the Initial Project. Therefore, for purposes of paying debt service on Bonds issued to finance the expansion, extension or otherwise the modification of the Initial Project, the City agrees that GBRA shall be authorized to set rates for the City under the terms of this First Amendment in a manner deemed necessary and appropriate by GBRA, in its sole discretion, which will be sufficient to collect

from the City amounts that aggregate (i) the appropriate portion of the Annual Debt Service Requirement and Annual Miscellaneous Bond Requirement on the Initial Water Project Bonds, and (ii) all or an appropriate pro rata portion of the Annual Debt Service Requirement and Annual Miscellaneous Bond Requirement on all additional Bonds issued by GBRA for purposes of expanding, extending or otherwise modifying the Initial Project to accommodate the treated water requirements of the City. Therefore, the City acknowledges that contractual obligations GBRA has with the Original Water Customers and other factors may result in GBRA setting rates for the City's Annual Debt Service Requirement and Annual Miscellaneous Bond Requirement, which exceed the rates set by GBRA for the Original Water Customers who have not purchased additional treated water from the Water Project. Further, City understands and agrees that the obligation to make payments related to the Annual Debt Service Requirement is a take or pay obligation that must be paid whether any water is received or not. The charge to recover the Annual Debt Service Requirement take or pay obligation will be the City's appropriate portion of such Requirement as described above and will be based upon the City's then current Annual Commitment as it compares to the then current annualized Plant Daily Capacity expressed in number of acre feet per year.

New Section 8.12 References to Western Canyon Project is added to the 2000 Agreement to read as follows:

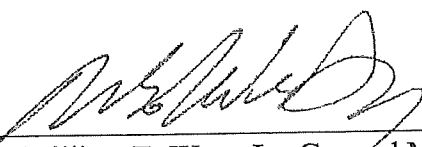
The Parties agree that references in this Agreement to the Initial Project or Initial Treated Water Supply Project, and at times referred to as the Western Canyon Regional Treated Water Supply System, Western Canyon Regional Treated Water Supply Project, Western Canyon Treated Water Supply System and Western Canyon Treated Water Supply Project ("Western Canyon Project") also includes extensions, expansions, maintenance, repairs, improvements, upgrades, and other modifications to the Western Canyon Project. The Parties further agree that all references in this Agreement to the Initial Daily Capacity and the Initial Monthly Capacity means the current capacity as certified by the GBRA General Manager after any extensions, expansions, improvements, upgrades, or other modifications.

IN WITNESS WHEREOF, this First Amendment is executed as of the date first written above on behalf of the City and GBRA by their respective authorized officers, in multiple counterparts, each of which shall constitute an original.

CITY OF FAIR OAKS RANCH, TEXAS

By: 

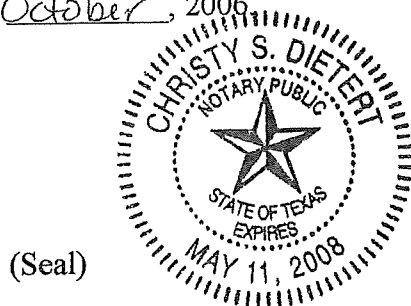
GUADALUPE-BLANCO RIVER AUTHORITY

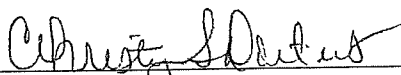
By:   
 William E. West, Jr., General Manager

THE STATE OF TEXAS           §  
    §  
 COUNTY OF GUADALUPE       §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26th day of October, 2006.

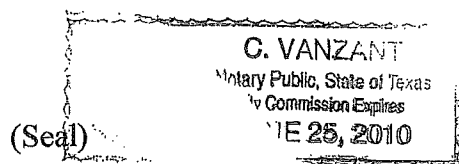


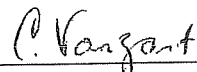
  
 Notary Public  
 The State of Texas

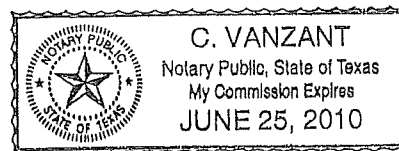
THE STATE OF TEXAS           §  
    §  
 COUNTY OF Bexar           §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared C. Manzana, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 19 day of October, 2006.



  
 Notary Public  
 The State of Texas



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

**COPY**

**AGREEMENT BETWEEN  
CITY OF FAIR OAKS RANCH, TEXAS  
AND  
GUADALUPE-BLANCO RIVER AUTHORITY**

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**AGREEMENT BETWEEN  
CITY OF FAIR OAKS RANCH, TEXAS  
AND  
GUADALUPE-BLANCO RIVER AUTHORITY**

This Agreement Between City of Fair Oaks Ranch, Texas and Guadalupe-Blanco River Authority (this Agreement) is made and entered into as of the 10<sup>th</sup> day of FEBRUARY 2000, by and between the CITY OF FAIR OAKS RANCH, TEXAS (Participant), 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.

Participant's certificated service area includes areas within Kendall, Comal and Bexar Counties. Less than 50% of Participant's certificated area lies within Bexar County, and GBRA has determined that the supply of water by GBRA for use within Participant's certificated area should be on the same terms and conditions as the supply for use in areas that lie entirely within GBRA's ten-county statutory service area.

GBRA and Participant recognize that there is a need in Bexar County and surrounding areas for substantial amounts of treated water from additional sources, to supplement the available supply of water from the Edwards Aquifer.

Section 2(d) of the GBRA Act, Chapter 75, Acts of the 43rd Legislature, 1933, as amended (formerly codified at Article 8280-106, V.T.C.S.), provides, in part, that

...[GBRA] shall not enter into any agreement which contemplates or results in the removal from the watershed of the Guadalupe and Blanco Rivers and their tributaries of any surface water of [GBRA] necessary to supply the reasonably foreseeable future water requirements for municipal uses during the next ensuing fifty-year period within such watershed, except on a temporary, interim basis; ...

Based on current forecasts of demand for water in the Guadalupe River Basin, GBRA has concluded that surface waters from the Guadalupe River Basin can be made available for use in that portion of Participant's certificated service area that lies within Bexar County on a long-term basis.

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 Participant and GBRA relating to the diversion and treatment of raw water from Canyon Reservoir, and the conveyance and delivery to Participant of that treated water.

GBRA and Participant anticipate that GBRA will enter into contracts with other entities for the supply of treated water from the project. This Agreement further contains certain terms and conditions relating to the supply of treated water to such other entities.

## **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 Participant 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 Participant during that year as specified in Section 3.4 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 Participant 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 Requirements"** 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 including, without limitation of the generality of the foregoing, any costs necessary or desirable to maintain 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.

**"Daily Commitment"** in effect for any calendar year means the maximum amount of treated water that GBRA shall be obligated to deliver to Participant on a constant basis over any 24-hour period during that year, as specified in Section 3.5 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 \$61.00 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 4.2 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.

**"Interim Supply Termination Date"** means the expiration date of the term of this Agreement, as defined in Section 7.1 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 Participant”** 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.

**“Participant’s Debt Service Component”** means the component of the price for treated water to be paid by the Participant as determined and described in Section 5.3 of this Agreement.

**“Participant’s Debt Service Percentage”** for any month means the quotient, expressed as a percentage, equal to the Participant’s Required Monthly Treated Water Purchase for that month, divided by the Plant Initial Monthly Capacity for that month.

**“Participant’s Raw Water Component”** means the component for the charge for raw water to be paid by the Participant as determined and described in Section 5.6 of this Agreement.

**“Participant’s Miscellaneous Bond Requirements Component”** means the component of the price for treated water to be paid by the Participant as determined and described in Section 5.5 of this Agreement.

**“Participant’s Operation and Maintenance Component”** means the component of the price for treated water to be paid by the Participant as determined and described in Section 5.4 of this Agreement.

**“Participant’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 Participant during that month, divided by the Plant Current Monthly Capacity for that month.

**“Participant’s Raw Water Charges Commencement Month”** means the month defined in Section 5.6(a) of the Agreement.

**“Participant’s Required Monthly Raw Water Purchase”** for any month means the amount of raw water that the Participant is obligated to pay for that month, as specified in Section 5.1(b) of this Agreement.

**“Participant’s Required Monthly Treated Water Purchase”** for any month means the amount of treated water from the Project that the Participant is obligated to pay for that month, as specified in Section 5.1(a) of this Agreement.

**“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 Participant and all Other Participants 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 Participant, as such point is identified in Section 3.2 of this Agreement.

**“Point of Diversion”** means the point on the perimeter of Canyon Reservoir at which raw water to which Participant 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 6.1 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 Participant in any calendar year as specified in Section 3.3 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 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. GBRA shall consult with and seek advice from the Project Management Committee with respect to GBRA's selection of any consultant.

#### **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.

**Section 2.4    Preliminary Design and Cost Estimate.**

(a) After GBRA is satisfied that all other potential customers have had a reasonable opportunity to enter into contracts with GBRA for the supply of treated water from the Initial Project, GBRA will determine whether sufficient contractual commitments have been made to supply water for use within Comal and Kendall Counties to justify proceeding at that time with an Initial Project. If GBRA determines that sufficient contractual commitments have not been made to supply water for use within Comal and Kendall Counties, then GBRA shall have the right to terminate this Agreement by giving Participant written notice of termination and after consultation with Participant to review and consider alternatives for delivery of treated water. If GBRA determines that sufficient contractual commitments have been made to supply water for use within Comal and Kendall Counties, then GBRA will give Participant written notification of that determination, and it 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 Participants, as well as any other information that GBRA considers relevant. GBRA will then prepare a preliminary design and cost estimate of the Initial Project, and will provide copies to Participant and all Other Participants. GBRA shall then proceed with final design, acquisition, construction and financing of the Initial Project.

(b) Participant shall have the right to terminate this Agreement by giving GBRA written notice of termination within 30 days after GBRA delivers the preliminary design and cost estimate of the Initial Project to Participant pursuant to subsection (a) of this Section.

(c) If GBRA determines for any reason, at any time before GBRA sells any of its Bonds under this Agreement, that there are not sufficient contractual commitments in effect at that time to supply water for use within Comal and Kendall Counties to justify proceeding at that time with an Initial Project, then GBRA shall have the right to terminate this Agreement by giving Participant written notice of termination. The reason or reasons for such a determination may include, without limitation, any contract for the supply of treated water from the Project for use within Comal or Kendall Counties being terminated for any reason.

(d) If this Agreement is terminated by either GBRA or Participant, the parties agree to meet at mutually convenient times and places in an effort to identify and evaluate other potential alternative supplies of water for Participant.

**Section 2.5    Preparation of Plans and Specifications; Competitive Bids.**

GBRA shall cause plans, specifications and contract documents for construction of all facilities comprising the Initial Project to be prepared as soon as practicable after GBRA is authorized to proceed with final design and construction of the Initial Project pursuant to Section 2.4 of this Agreement. Plans and specifications for any portion of the Initial Project shall be subject to approval by the GBRA General Manager, after consultation with the Project Management Committee. Any significant change in the Initial Project from the description of the Initial Project set forth in Section 2.1 and Exhibit 1 shall be subject to the approval of the Project Management

Committee. After the required approval or approvals of plans and specifications for any portion of the Initial Project, GBRA will advertise for competitive bids for construction of that portion and GBRA shall determine which construction bid or bids to accept.

#### **Section 2.6    Financing of Project.**

(a) After GBRA determines that there are sufficient contractual commitments 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 shall prepare such data, materials and documents as may be necessary to facilitate the sale and delivery of the Bonds, and Participant 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 further approval from the Participant if the issuance of such Bonds does not result in an increase in the total debt service requirements to be paid by the Participant or extend the final maturity of all Bonds then outstanding.

#### **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. Participant 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 Participant during that month, as set forth in this Agreement.



### **Section 2.8    Additional Customers.**

GBRA may enter into contracts with new Other Participants to supply treated water from the Project, and may amend existing contracts with Other Participants 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 Participant under this Agreement continue to be satisfied.

## **ARTICLE III**

### **SUPPLY OF TREATED WATER**

#### **Section 3.1    Diversion, Treatment and Delivery of Water to Participant.**

After completion of construction of the Initial Project, 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 Participant at the Point of Delivery in amounts and at delivery rates as may be requested by Participant, subject to the limitations provided in this Agreement.

#### **Section 3.2    Point of Delivery.**

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

(b) Participant shall take all steps necessary to prevent backflow of water supplied by GBRA, or any flow of any other water or other substance, from Participant's system to the Project at the Point of Delivery. If Participant fails to install, operate or maintain any facilities needed for such purpose within 60 days after GBRA gives Participant notice to do so, then GBRA may design, install, construct, maintain and operate such facilities, and Participant shall be solely responsible for the costs thereby incurred by GBRA.

#### **Section 3.3    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 Participant in any calendar year. The Raw Water Reservation shall be 1,400 acre-feet per year.

#### **Section 3.4    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 Participant during that year. The Annual Commitment initially shall be 0.71 million gallons per day (800 acre-feet per year), subject to increases as set forth in subsection (b), below.

(b) Participant 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 Participant 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 3.5 Daily Commitment.**

The maximum amount of treated water that GBRA shall be obligated to deliver to Participant over any 24-hour period (the "Daily Commitment") in effect for any calendar year shall be the Annual Commitment for that year divided by 365.

### **Section 3.6 Maximum Delivery Rate and Pressure.**

GBRA shall not be obligated to deliver treated water to Participant 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 Participant at any time during any calendar year at a pressure in excess of TNRCC requirements.

### **Section 3.7 Purpose of Use.**

All water delivered by GBRA to Participant under this Agreement shall be used for municipal and domestic purposes only, as such purposes of use are defined by the Rules of the TNRCC.

### **Section 3.8 Place of Use.**

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

### **Section 3.9 Allocation of Water During Drought.**

During severe drought conditions as defined in the GBRA Water Conservation Plan or Drought Contingency Plan, or as revised by any water conservation or drought contingency plan 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 3.10 Conservation.**

GBRA and Participant 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. Participant further agrees to implement 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 Participant 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.

### **Section 3.11 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 Participant 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 Participant 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.

### **Section 3.12 Measurement of Water.**

(a) GBRA shall provide, operate, maintain, and read one or more meters which shall record treated water taken by Participant 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 Participants 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 Participant during any period of time shall be the greater of the following amounts:

- (1) the amount of treated water delivered to Participant 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 Participant and each Other Participant 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 and not less than once in each calendar year, GBRA shall calibrate its water meter(s) that records treated water taken by Participant at the Point of Delivery. GBRA shall give Participant notice of the date and time when any such calibration is to be made and, if a representative of Participant is not present at the time set, calibration and adjustment may proceed in the absence of any representative of Participant.

(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 ( $\frac{1}{2}$ ) 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 Participant 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 Participant upon the basis of the best data available, and, upon written request, GBRA shall install new meters or repair existing meters. If GBRA and Participant 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 3.13 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 Participant.

## ARTICLE IV

**PERMITTING AND OTHER REGULATORY REQUIREMENTS****Section 4.1 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 4.2 Cooperation.**

Participant 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, Participant 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 4.3 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 Participant for use within Participant'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 3.9, 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, 2001, or if it enters such an order before January 1, 2001 but the order does not become final and not appealable before that date, then GBRA and Participant 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 4.4 Development Within Participant's Service Area.**

Participant agrees that the supply of water to Participant under this Agreement for use on any lands shall be conditioned 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. Participant further agrees that it will not supply any water supplied to Participant 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, Participant shall demonstrate to GBRA its compliance with the requirements of this Section 4.4. If Participant fails to comply with the requirements of this Section 4.4 with respect to Participant's supply of water for use on any lands, then GBRA shall provide Participant with written notice of such failure to comply, and Participant shall have 60 days thereafter to correct such non-compliance. If Participant fails to correct such non-compliance within such time, GBRA shall have available all remedies allowed by law.

### **ARTICLE V**

#### **CHARGES FOR WATER**

##### **Section 5.1 Participant's Required Monthly Water Purchase.**

(a) Participant's Required Monthly Treated Water Purchase for each month during any calendar year shall be 1/12th of the Annual Commitment for that year. Participant agrees to pay GBRA each month for Participant's Required Monthly Treated Water Purchase, in accordance with paragraphs (1) and (3) of Section 5.2, below, whether or not such amount, or any of it, is taken by Participant.

(b) Participant's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation. Participant agrees to pay GBRA each month for Participant's Required Monthly Raw Water Purchase, in accordance with paragraph (4) of Section 5.2, below, whether or not such amount, or any of it, is taken by Participant.

**Section 5.2 Charges.**

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

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

**Section 5.3 Participant's Debt Service Component.**

(a) Subject to the provisions of subsection (b), below, Participant's Debt Service Component for any month shall equal one-twelfth (1/12) of the product of the Annual Debt Service Requirement for that year multiplied by Participant's Debt Service Percentage for that month.

(b) If a debt service reserve fund is established by GBRA in the bond resolution to secure payment of debt service on the Bonds, the money on deposit in such debt service reserve fund will be used to pay the final debt service requirements on the Bonds when the remaining total outstanding debt service requirements on the Bonds equals the amount of money on deposit in such debt service reserve fund.

(c) 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, from all other funds received under this Agreement. Funds on deposit in such account may be used by GBRA in support of its "Water Resource 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) for any other lawful purpose related to the cost of operations of the Water Resource Division.

**Section 5.4 Participant's Operation and Maintenance Component.**

Participant's Operation and Maintenance Component for any month shall equal one-twelfth (1/12) of the product of the Annual Operation and Maintenance Requirement for that year multiplied by Participant's Operation and Maintenance Percentage for that month.

**Section 5.5 Participant's Miscellaneous Bond Requirements Component.**

Participant's Miscellaneous Bond Requirements Component for any month shall equal one-twelfth (1/12) of the product of the Annual Miscellaneous Bond Requirements for that year multiplied by Participant's Debt Service Percentage for that month.

**Section 5.6 Participant's Raw Water Component.**

(a) Participant's Raw Water Component shall be zero until the month in which GBRA gives Participant written notice pursuant to Section 2.4(a) of this Agreement of GBRA's determination that sufficient contractual commitments have been made to supply water for use within Comal and Kendall Counties to justify proceeding with an Initial Project ("Participant's Raw Water Charges Commencement Month").

(b) Participant's Raw Water Component for each month beginning with Participant's Raw Water Charges Commencement Month, through the earlier of December 2000 or the month in which an order of the TNRCC granting, in whole, GBRA's Application to Amend the Canyon Certificate becomes final and not appealable, shall equal one-half of the product of Participant's Required Monthly Raw Water Purchase for each month times the District-Wide Raw Water Rate in effect that month.

(c) Participant's Raw Water Component for each month beginning the earlier of January 2001 or the month immediately following the month in which an order of the TNRCC granting, in whole, GBRA's Application to Amend the Canyon Certificate becomes final and not appealable, through December 31, 2037, shall equal the product of Participant's Required Monthly Raw Water Purchase for each month times the District-Wide Raw Water Rate in effect that month; provided, however, that if Participant's payments under this subsection (c) extend for more than 36 months before commencement of delivery of treated water to Participant, then Participant's Raw Water Component beginning the 37th month through the month immediately preceding the month in which delivery commences shall equal one-half of the product of Participant's Required Monthly Raw Water Purchase each month times the District-Wide Raw Water Rate in effect that month until water is delivered to Participant and thereafter Participant shall pay the District-Wide Raw Water Rate.

(d) If the Interim Supply Termination Date is extended beyond December 31, 2037 pursuant to the terms of Section 7.1, below, then Participant's Raw Water Component for each month beginning January, 2038, shall equal the product of Participant's Required Monthly Raw Water Purchase for each month times the Extension Raw Water Rate in effect that month as established pursuant to Section 7.1(e).

(e) The District-Wide Raw Water Rate and the Extension Raw Water Rate may be changed by the GBRA Board of Directors at any time and from time to time, with notice 60 days in advance to Participant.



(f) GBRA shall have the right to use all funds received by GBRA from Participant during any year under this Agreement that are for raw water, and all other funds received by GBRA from Participant during any year under this Agreement that are in excess of requirements for that year for the Initial Project and Bond Resolution requirements (including, without limitation, all funds received pursuant to the debt coverage factor determined by GBRA as part of the Annual Debt Service Requirement) for any purpose or purposes desired by GBRA consistent with GBRA's statutory powers and duties.

#### **Section 5.7 Payments by Participant Unconditional.**

GBRA and Participant recognize that the Bonds will be payable from and secured by a pledge of the sums of money to be received by GBRA from Participant under this Agreement and from other customers under similar contracts. In order to make the Bonds marketable at the lowest available interest rate, it is to the mutual advantage of GBRA and Participant that Participant's obligation to make the payments required hereunder be, and the same is hereby, made unconditional. All sums payable hereunder to GBRA shall, so long as any part of the Bonds are outstanding and unpaid, be paid by Participant without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of the Bonds are outstanding and unpaid, this Agreement shall not terminate, nor shall Participant have any right to terminate this Agreement nor be entitled to the abatement of any payment or any reduction thereof nor shall the obligations hereunder of Participant be otherwise affected for any reason, it being the intention of the parties that so long as any portion of the Bonds are outstanding and unpaid, all sums required to be paid by Participant to GBRA shall continue to be payable in all events and the obligations of Participant hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of this Agreement.

#### **Section 5.8 Operating Expense of Participant; Source of Payments from Participant.**

(a) The parties agree and Participant represents and covenants that all moneys required to be paid by Participant under this Agreement shall constitute an operating expense of Participant's water and wastewater system ("Participant's System") as authorized by the Constitution and laws of the State of Texas.

(b) All payments required to be made by Participant to GBRA under this Agreement shall be payable from the income of Participant's System. GBRA shall never have the right to demand payment by Participant of any obligations assumed by or imposed upon it under or by virtue of this Agreement from any funds raised or to be raised by taxation and Participant's obligation under this Agreement shall never be construed to be a debt of Participant of such kind as to require it under the Constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation.

#### **Section 5.9 Participant's Covenant to Maintain Sufficient Income.**

Participant agrees to fix and maintain rates and collect charges for the facilities and services provided by Participant's System as will be adequate to permit Participant to make prompt payment

of all expenses of operating and maintaining Participant's System, including payments under this Agreement and to make prompt payment of the interest on and principal of any bonds or other obligations of Participant payable, in whole or in part, from the revenues of Participant's System. Participant further agrees to comply with all of the provisions of the ordinances, resolutions, orders or indentures authorizing its bonds or other obligations which are payable, in whole or in part, from the revenues of Participant's System.

#### **Section 5.10 Billing.**

GBRA will render bills to Participant once each month for the payments required by this Article. GBRA shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at GBRA's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Participant, whichever is later. GBRA may, however, by sixty (60) days written notice change the monthly date by which it shall render bills, and all bills shall thereafter be due and payable ten (10) days after such date or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Participant, whichever is later. Participant shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to GBRA at its office in the City of Seguin, Texas, or at such other place as GBRA may from time to time designate by sixty (60) days written notice.

#### **Section 5.11 Delinquency in Payment.**

All amounts due and owing to GBRA by Participant shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Participant is placed with an attorney for collection by GBRA, Participant shall pay to GBRA, in addition to all other payments provided for by this Agreement, including interest, GBRA's collection expenses, including court costs and attorney's fees. Participant further agrees that GBRA may, at its option, discontinue delivering treated water to Participant until all amounts due and unpaid are paid in full with interest as herein specified. Any such discontinuation shall not, however, relieve Participant of its unconditional obligation to make the payments required hereunder, as provided by Section 5.7 of this Agreement.

### **ARTICLE VI**

#### **PROJECT REPRESENTATION**

##### **Section 6.1 Project Management Committee.**

An advisory committee (the "Project Management Committee") will be established and maintained for so long as the Project is in operation, to provide advice to GBRA with respect to the Project and Project-related actions proposed to be taken by GBRA including, without limitation, advice to GBRA with respect to GBRA's preparation of any operating plans for the Project. GBRA

and each municipal customer shall each have one representative on the Project Management Committee. Each non-municipal customer that contracts and pays for an initial Annual Commitment of at least 500 acre-feet per year shall have a representative on the Project Management Committee.

GBRA's representative shall be designated by GBRA's General Manager and shall be the Chairman of the Project Management Committee. Participant's representative shall be designated by Participant's City Council. The Project Management Committee shall meet at least twice a year as called by GBRA.

## **Section 6.2. Budgets, Audits, and Records.**

GBRA will provide the Project Management Committee with the first annual Project budget four months prior to Project start-up, and it will thereafter provide subsequent annual Project budgets. The Project budgets will include all Operation and Maintenance Expenses, debt service, and capital improvements. GBRA will also submit annual audited financial statements of GBRA to the Project Management Committee.

# **ARTICLE VII**

## **TERM OF AGREEMENT, EXTENSION, AND RIGHTS AFTER TERMINATION**

### **Section 7.1 Term and Extension of Term.**

(a) This Agreement shall be effective as of the date first written above and, unless it is terminated earlier pursuant to its terms, shall continue in effect until the Interim Supply Termination Date (as such date is defined initially under subsection (c), below, or as it may be extended pursuant to subsections (d), (e) or (f), below), on which date this Agreement shall terminate.

(b) From and after the Interim Supply Termination Date, Participant shall have no right to be supplied any water, and GBRA shall have no obligation to supply any water to Participant.

(c) The Interim Supply Termination Date shall be December 31, 2037, unless such date is extended pursuant to subsections (d), (e) or (f), below.

(d) If all of the Project Debt Instruments (including principal and interest) for the Initial Project will not be fully paid by the Interim Supply Termination Date, then GBRA shall have the right, at any time before such date, to extend the Interim Supply Termination Date to December 31 of the year in which the Project Debt Instruments are to be paid. Any extension by GBRA pursuant to this subsection shall be effective as of the date that GBRA gives Participant written notice of the extension.

(e) During the month of January 2037, GBRA shall give Participant written notice of the "Extension Raw Water Rate" to be utilized in calculating Participant's Raw Water Component to be paid by Participant if the Interim Supply Termination Date is extended beyond December 31, 2037. If GBRA fails to give Participant timely written notice of the Extension Raw Water Rate as

set forth above in this subsection (e), then the Extension Raw Water Rate for each month beginning January 2038 shall be the District-Wide Raw Water Rate in effect that month. If Participant desires to extend the Interim Supply Termination Date, then it shall give GBRA, after January 31, 2037 and by not later than June 30, 2037, written notice of extension. If Participant gives GBRA timely written notice of extension, then the Interim Supply Termination Date shall be extended to December 31, 2057.

(f) If the Interim Supply Termination Date is extended to December 31, 2057 pursuant to subsection (e), above, then during the month of January 2057, GBRA shall give Participant written notice of the "Extension Raw Water Rate" to be utilized in calculating Participant's Raw Water Component to be paid by Participant if the Interim Supply Termination Date is extended beyond December 31, 2057. If GBRA fails to give Participant timely written notice of the Extension Raw Water Rate as set forth above in this subsection (f), then the Extension Raw Water Rate for each month beginning January 2058 shall be the District-Wide Raw Water Rate in effect that month. If Participant desires to extend the Interim Supply Termination Date, then it shall give GBRA, after January 31, 2057 and by not later than June 30, 2057, written notice of extension. If Participant gives GBRA timely written notice of extension, then the Interim Supply Termination Date shall be extended to December 31, 2077. Any extension thereafter shall be by mutual agreement of the parties.

## **Section 7.2 Rights after Termination.**

Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

# **ARTICLE VIII**

## **OTHER PROVISIONS**

### **Section 8.1 Waiver and Amendment.**

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by Participant or GBRA shall not be deemed a waiver by GBRA or Participant of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of GBRA or Participant is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by GBRA's and Participant's authorized representatives.

### **Section 8.2 Remedies.**

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party hereto and shall be cumulative.

**Section 8.3    Force Majeure.**

If for any reason of force majeure, either GBRA or Participant shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of Participant to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accident or intentional), and any inability on the part of GBRA to deliver treated water on account of any other cause not reasonably within the control of GBRA.

**Section 8.4    Non-Assignability.**

Participant may not assign this Agreement without first obtaining the written consent of GBRA.

**Section 8.5    Entire Agreement.**

This Agreement constitutes the entire agreement between GBRA and Participant and supersedes any prior understanding or oral or written agreements between GBRA and Participant respecting the subject matter of this Agreement.

**Section 8.6    Severability.**

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

**Section 8.7    Captions.**

The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

**Section 8.8    No Third Party Beneficiaries.**

This Agreement does not create any third party benefits to any person or entity other than the signatories hereto, and is solely for the consideration herein expressed.

**Section 8.9    Notices.**

All notices, payments and communications ("Notices") required or allowed by this Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority  
Attention: General Manager  
933 E. Court Street  
Seguin, Texas 78155

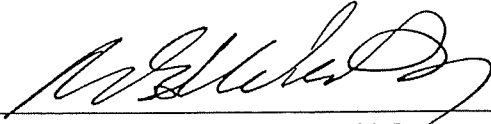
And for Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change its address by giving written notice of the change to the other party at least fourteen (14) days before the change becomes effective.

In witness whereof, the parties hereto, acting under the authority of the respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

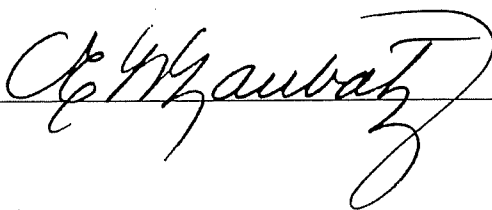
**GUADALUPE-BLANCO RIVER AUTHORITY**

By:   
William E. West, Jr., General Manager

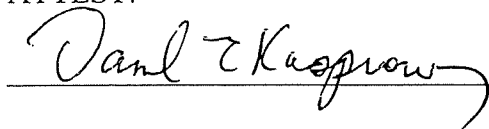
ATTEST:



**CITY OF FAIR OAKS RANCH, TEXAS**

By: 

ATTEST:

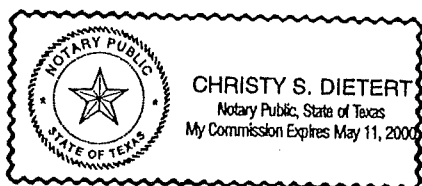


THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 11th day of January  
19 2000



(Seal)

Christy S. Dietert  
 Notary Public

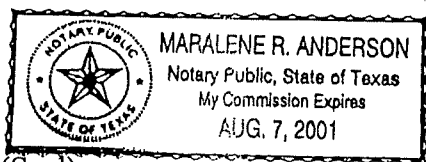
The State of Texas

THE STATE OF TEXAS §

COUNTY OF Bexar §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Erwin S. Gaudatz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10<sup>th</sup> day of February  
199 2000



(Seal)

Maralene R. Anderson  
 Notary Public

The State of Texas