

Texas Commission on Environmental Quality
Application for Comanche Bend Trust
and
Palo Pinto County Municipal Water District No. 1



June 2025

Received: June 17, 2025
Water Availability Division

Texas Commission on Environmental Quality
Application for Comanche Bend Trust
and
Palo Pinto County Municipal Water District No. 1

Submitted to:

Texas Commission on Environmental Quality
Water Supply Division, Water Rights Permitting (MC-160)
12100 Park 35 Circle
Austin, Texas 78753

Prepared For:

Comanche Bend Trust and Palo Pinto County Municipal Water District No. 1
Attn: David J. Klein
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, Texas 78701

Prepared by:

Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, Texas 78701

**Comanche Bend Trust and Palo Pinto County Municipal Water
District No. 1
Application to Amend Certificate of Adjudication 12-4012**

<u>CONTENTS</u>	<u>TAB NUMBER</u>
Administrative Information Report	1
Technical Information Report	2
Worksheets 1.0-8.0	3
Water Right Lease Agreement	4
Affidavit of Successor Trusteeship	5
District Resolution Authorizing the Filing of a Water Right Application	6
Recorded Deed Describing Diversion Point Location.....	7
Map Showing Project Details	8
Photos of Diversion Point	9
Marshall Criteria Addendum	10
Water Conservation Plan and Documentation of Adoption	11
Brazos Water Master Approval of Diversion Point.....	12
Fees	13
Public Involvement Plan Form	14
Water Supply Contracts	15
Authorization to Execute and File Application on Behalf of Trust.....	16
Addendum to Worksheet 5.0	17

TAB 1

Administrative Information Report

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ WATER RIGHTS PERMITTING APPLICATION

ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page 5.

APPLICANT(S): Comanche Bend Trust and Palo Pinto County Municipal Water District No. 1

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

Y/N

Y **Administrative Information Report**

Y Additional Co-Applicant Information

N Additional Co-Applicant Signature Pages

Y Written Evidence of Signature Authority

Y **Technical Information Report**

N USGS Map (or equivalent)

Y Map Showing Project Details

Y Original Photographs

N Water Availability Analysis

Y **Worksheet 1.0**

Y Recorded Deeds for Irrigated Land

Y Consent for Irrigated Land

N **Worksheet 1.1**

N Addendum to Worksheet 1.1

Y **Worksheet 1.2**

N **Worksheet 2.0**

N Additional W.S. 2.0 for Each Reservoir

N Dam Safety Documents

N Notice(s) to Governing Bodies

N Recorded Deeds for Inundated Land

N Consent for Inundated Land

Y/N

Y **Worksheet 3.0**

N Additional W.S. 3.0 for each Point

Y Recorded Deeds for Diversion Points

N Consent for Diversion Access

N **Worksheet 4.0**

N TPDES Permit(s)

N WWTP Discharge Data

N Groundwater Well Permit

N Signed Water Supply Contract

N **Worksheet 4.1**

Y **Worksheet 5.0**

Y Addendum to Worksheet 5.0

Y **Worksheet 6.0**

Y Water Conservation Plan(s)

Y Drought Contingency Plan(s)

Y Documentation of Adoption

N **Worksheet 7.0**

N Accounting Plan

Y **Worksheet 8.0**

Y Fees

Y Public Involvement Plan

ADMINISTRATIVE INFORMATION REPORT

The following information is required for all new applications and amendments.

***** Applicants are REQUIRED to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4600.**

1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

☐ New Appropriation of State Water
☒ Amendment to a Water Right *
☐ Bed and Banks

****If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2 does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.***

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

Palo Pinto County Municipal Water District No. 1 (the "District"), acting on behalf of Comanche Bend Trust ("CBT") as authorized in the Water Right Lease Agreement attached hereto at Tab 4, seeks the amendment of Certificate of Adjudication ("COA") No. 12-4012 ("Amendment"). Pursuant to the Water Right Lease Agreement, the District seeks this Amendment to (i) add industrial and municipal purposes of use within the District's service area in Palo Pinto and Parker Counties, and (ii) add an additional diversion point on Palo Pinto Creek. Such diversion point has already been authorized for use by the District pursuant to several water supply contracts entered into by the District, see Tab 15, and the requested third diversion point is located upstream of the existing diversion point. This Amendment does not seek to appropriate any additional state water that is not already contemplated by the existing water right, COA 12-4012.

2. APPLICANT INFORMATION (Instructions, Page. 6)

a. Applicant

Indicate the number of Applicants/Co-Applicants 2
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

Palo Pinto County Municipal Water District No. 1

(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?

You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : 600674303 (leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Howard Huffman

Title: General Manager

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application? Y/N Y

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: Palo Pinto County Municipal Water District No. 1, Attn: Howard Huffman

Mailing Address: 265 Prairie View Trail

City: Fredericksburg State: Texas ZIP Code: 78624

Indicate an X next to the type of Applicant:

<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietorship-D.B.A.
<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation
<input type="checkbox"/> Trust	<input type="checkbox"/> Estate
<input type="checkbox"/> Federal Government	<input type="checkbox"/> State Government
<input type="checkbox"/> County Government	<input type="checkbox"/> City Government
<input type="checkbox"/> Other Government	<input checked="" type="checkbox"/> Other <u>special water district</u>

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: _____ SOS Charter (filing) Number: _____

2. APPLICANT INFORMATION (Instructions, Page. 6)

a. Applicant

Indicate the number of Applicants/Co-Applicants 2
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

Comanche Bend Trust

(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?

You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : _____ (leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: Jennifer Gardner Boyd

Title: Trustee, see Tab 5

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application? Y/N Y

See Tabs 5 and 16

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: Jennifer Gardner Boyd

Mailing Address: 265 Prairie View Trail

City: Fredericksburg State: Texas ZIP Code: 78624

Indicate an X next to the type of Applicant:

☐ Individual ☐ Sole Proprietorship-D.B.A.

☐ Partnership ☐ Corporation

☒ Trust ☐ Estate

☐ Federal Government ☐ State Government

☐ County Government ☐ City Government

☐ Other Government ☐ Other _____

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: _____ SOS Charter (filing) Number: _____

3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: David J. Klein (Main point of contact)

Title: Attorney for the District

Organization Name: Lloyd Gosselink Rochelle & Townsend, P.C.

Mailing Address: 816 Congress Ave. Suite 1900

City: Austin State: Texas ZIP Code: 78701

Phone Number: 512-322-5818

Fax Number: 512-472-0532

E-mail Address: [REDACTED]

First and Last Name: Prichard Bevis (Secondary point of contact)

Title: Attorney for CBT

Organization: Decker Jones, P.C.

Mailing Address: 801 Cherry Street, Suite 2000, Unit #46 Fort Worth TX 76102-6836

Phone Number: 817-632-4910

E-mail Address: [REDACTED]

4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name: _____

Title: _____

Organization Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP Code: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

- a. The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.
1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No** No
If **yes**, provide the following information:
Account number: _____ Amount past due: _____
2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No** No
If **yes**, please provide the following information:
Enforcement order number: _____ Amount past due: _____
- b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>
Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No** N/A
- c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5). Applicants should check survey status on the TWDB website prior to filing:
https://www3.twdb.texas.gov/apps/reports/WU_REP/SurveyStatus_PriorThreeYears
Applicant has submitted all required TWDB surveys of groundwater and surface water?
Yes / No Yes

6. SIGNATURE PAGE (Instructions, Page. 11)

Applicant:

I, Howard B. Huffman
(Typed or printed name)

General Manager
(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature: [Signature]

(Use blue ink)

Date: 21-May-2025

Subscribed and Sworn to before me by the said

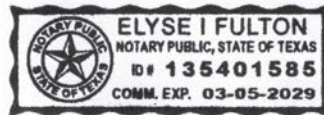
on this 21st day of May, 2025.

My commission expires on the 3rd day of March, 2025.

Notary Public

Travis

County, Texas



[SEAL]

If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page

See Tab 6 and 16

TAB 2

Technical Information Report

TECHNICAL INFORMATION REPORT

WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicants are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

Applicants are REQUIRED to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please contact the Water Availability Division at (512) 239-4600 or WRPT@tceq.texas.gov to schedule a meeting.

Date of pre-application meeting: March 12, 2025

1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

State Water is: *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N N
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N N (If yes, indicate the Certificate or Permit number: N/A)

If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? Y / N N/A

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N N (If yes, indicate the Term Certificate or Permit number: N/A)

If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees**
- **Fees calculated on Worksheet 8.0 – see instructions Page. 34.**
- **Maps – See instructions Page. 15.**
- **Photographs – See instructions Page. 30.**

Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).

Additional Documents and Worksheets may be required (see within).

2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. ***If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. If the application does not contain consent from the current owner to make the requested amendment, TCEQ will not begin processing the amendment application until the Change of Ownership has been completed and will consider the Received Date for the application to be the date the Change of Ownership is completed. See instructions page. 6.***

Water Right (Certificate or Permit) number you are requesting to amend: COA 12-4012

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N N (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right
N/A	N/A

- a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? Y / N N

If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? Y / N N

If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? Y / N Y
If yes, submit:

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: “Marshall Criteria”**

- d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? Y / N Y
If yes, submit:

- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)
- **Worksheet 5.0 – Environmental Information** (Required for any new diversion points that are not already authorized in a water right)

- e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? Y / N N

If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet (submit one worksheet for each impoundment or reservoir)

- f. Other - Applicant requests to change any provision of an authorization not mentioned above? Y / N *If yes, call the Water Availability Division at (512) 239-4600 to discuss.*

Additionally, all amendments require:

- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

3. Bed and Banks. TWC § 11.042 (Instructions, Page 13)

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N

If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:

- 1. Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
- 2. Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.

****Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

Worksheets and information:

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)

- **Worksheet 4.0 – Discharge Information Worksheet** (for each discharge point)
- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

4. **General Information, Response Required for all Water Right Applications (Instructions, Page 15)**

- a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled “Addendum Regarding the State and Regional Water Plans”:

This amendment application addresses the District's water supply need consistent with the State and Region G Water Plans. As forecasted by the Brazos G Regional Water Plan, the District currently anticipates a water supply shortage. 2021 Brazos G Regional Water Plan, page 5.38-15 and 5.38-16. This amendment, if approved, would assist the District in addressing this supply shortage. The proposed inclusion of additional municipal and industrial purposes of use harmonizes with the State Plan's anticipated and planned for decrease in agricultural irrigation demand due to transfers of surface water rights from agricultural to municipal users. 2022 State Water Plan, page 6.

- b. Did the Applicant perform its own Water Availability Analysis? Y / N N/A Application does not seek to impound or appropriate any additional state water.

If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.

- c. Does the application include required Maps? (Instructions Page. 15) Y / N Y See Tab 8

TAB 3

Worksheets 1.0-8.0

WORKSHEET 1.0

Quantity, Purpose and Place of Use

1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre- feet) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>

_____ Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*)

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

a. Location Information Regarding the Lands to be Irrigated

- i) Applicant proposes to irrigate a total of _____ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of _____ acres in _____ County, TX.
- ii) Location of land to be irrigated: In the _____ Original Survey No. _____, Abstract No. 78624.

A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.

If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.

Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

2. Amendments - Purpose or Place of Use (Instructions, Page. 12)

- a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**
236	Irrigation	Add municipal and industrial purposes of use in Palo Pinto and Parker Counties, keep existing irrigation purpose of use in Palo Pinto County	Palo Pinto County	Palo Pinto and Parker Counties

**If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."*

***If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."*

Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.

- b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:
- Applicant proposes to irrigate a total of N/A acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of N/A acres in N/A County, TX.
 - Location of land to be irrigated: In the N/A Original Survey No. N/A, Abstract No. N/A.

A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.

Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

- Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.
- See Worksheet 1.2, Marshall Criteria, and submit if required.
- See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

WORKSHEET 1.1

INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N_____

1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin._____
- b. Provide the quantity of water to be transferred (acre-feet)._____
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:

2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N__
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N__
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N__
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N__

3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);

- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: (<http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
 - (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
 - (ii) the amount and purposes of use in the receiving basin for which water is needed;
 - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
 - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
 - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
 - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- f. proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- g. the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

WORKSHEET 1.2

NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for amendments such as certain amendments to special conditions or changes to off-channel storage. These criteria address whether the proposed amendment will impact other water right holders or the on- stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is **not required** for Applications in the Rio Grande Basin requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is **not required** for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) – (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how the proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

WORKSHEET 2.0

Impoundment/Dam Information

This worksheet **is required** for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g., maps).

1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable:_____
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level:_____.
- c. The impoundment is on-channel_____or off-channel_____(mark one)
 - i. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4600? **Y / N**_____
 - ii. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? **Y / N**_____
- d. Is the impoundment structure already constructed? **Y / N**_____
 - i. For already constructed **on-channel** structures:
 1. Date of Construction:_____
 2. Was it constructed to be an exempt structure under TWC § 11.142? **Y / N**_____
 - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? **Y / N**_____
 - b. If No, has the structure been issued a notice of violation by TCEQ? **Y / N**_____
 3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? **Y / N**_____
 - a. If yes, provide the Site No._____and watershed project name_____;
 - b. Authorization to close "ports" in the service spillway requested? **Y / N**_____
 - ii. For **any** proposed new structures or modifications to structures:
 1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? **Y / N**_____ Provide the date and the name of the Staff Person_____
 2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
 - a. No additional dam safety documents required with the Application. **Y / N**_____
 - b. Plans (with engineer's seal) for the structure required. **Y / N**_____
 - c. Engineer's signed and sealed hazard classification required. **Y / N**_____
 - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. **Y / N**_____

3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / N_____

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level:_____.
 2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they may do so at their option.
Applicant has calculated the drainage area. Y/N_____
- If yes, the drainage area is_____sq. miles.
(If assistance is needed, call the Surface Water Availability Team prior to submitting the application, (512) 239-4600).

2. Structure Location (Instructions, Page. 23)

- a. On Watercourse (if on-channel) (USGS name):_____
- b. Zip Code: _____
- c. In the_____Original Survey No._____, Abstract No._____,
_____County, Texas.

**** A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.***

*****If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

- d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude_____°N, Longitude_____°W.

****Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***

- i. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program):_____
- ii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / N_____

WORKSHEET 3.0

DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet **is required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g., maps).

1. Diversion Information (Instructions, Page. 24)

a. This Worksheet is to add new (select 1 of 3 below):

1. Y Diversion Point No.
2. Upstream Limit of Diversion Reach No.
3. Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** 3.24 cfs (cubic feet per second)
or 1460 gpm (gallons per minute)

c. Does this point share a diversion rate with other points? Y / N
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* 3.24 (unchanged) cfs or 1460 gpm

d. For amendments, is Applicant seeking to increase combined diversion rate? Y / N

*** An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed:

Check one		Write: Existing or Proposed
<input checked="" type="checkbox"/>	Directly from stream	Existing
<input type="checkbox"/>	From an on-channel reservoir	
<input type="checkbox"/>	From a stream to an on-channel reservoir	
<input type="checkbox"/>	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. Y / N

If yes, the drainage area is sq. miles.

(If assistance is needed, call the Surface Water Availability Team at (512) 239-4600, prior to submitting application)

2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Palo Pinto Creek
- b. Zip Code: 76484
- c. Location of point: In the T. & P. RR Original Survey No. 38, Abstract No. 1112, Palo Pinto County, Texas.

A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure.

See Tab 7

For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.

- d. Point is at: Latitude 32.657902°N, Longitude 98.124425°W.
Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): GIS applications
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 15.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

WORKSHEET 4.0

DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be_____.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses_____(% or amount) and explain the method of calculation:_____
- c. Is the source of the discharged water return flows? Y / N_____If yes, provide the following information:
 1. The TPDES Permit Number(s)_____ (attach a copy of the **current** TPDES permit(s))
 2. Applicant is the owner/holder of each TPDES permit listed above? Y / N_____

PLEASE NOTE: If Applicant is not the discharger of the return flows, or the Applicant is not the water right owner of the underlying surface water right, or the Applicant does not have a contract with the discharger, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, the surface water right holder, or the contract holder, then the application should be submitted under Section 3, Bed and Banks.

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
4. The percentage of return flows from groundwater_____, surface water_____?
5. If any percentage is surface water, provide the base water right number(s)_____.
- d. Is the source of the water being discharged groundwater? Y / N____ If yes, provide the following information:
 1. Source aquifer(s) from which water will be pumped:_____
 2. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbbrpt.asp>. Additionally, provide well numbers or identifiers_____.
 3. Indicate how the groundwater will be conveyed to the stream or reservoir.
 4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.
- di. Is the source of the water being discharged a surface water supply contract? Y / N____
If yes, provide the signed contract(s).
- dii. Identify any other source of the water_____

WORKSHEET 4.1

DISCHARGE POINT INFORMATION

This worksheet is required for **each** discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g., maps).

Instructions, Page 27.

For water discharged at this location provide:

- a. The amount of water that will be discharged at this point is _____ acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of _____ cfs or _____ gpm.
- c. Name of Watercourse as shown on Official USGS maps: _____
- d. Zip Code _____
- e. Location of point: In the _____ Original Survey No. _____, Abstract No. _____, _____ County, Texas.
- f. Point is at:
Latitude _____ °N, Longitude _____ °W.
****Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- g. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): _____

Map submitted must clearly identify each discharge point. See instructions Page. 15.

WORKSHEET 5.0 ENVIRONMENTAL INFORMATION

1. Impingement and Entrainment

This section is required for any new diversion point that is not already authorized. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). **Instructions, Page 28.**

Adding the proposed new diversion point to COA No. 12-4012 will not result in an increased impingement or entrainment of aquatic organisms, as the District is already diverting water through existing facilities at this proposed diversion point location under its contracts for its other water supplies. Further, the District will implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures may include the installation of screens and diversion structures.

2. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

This section is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins and in all basins for requests to change a diversion point. **Instructions, Page 30.**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

☒ Stream

☐ Reservoir

Average depth of the entire water body, in feet: N/A

☐ Other, specify: _____

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

☐ Intermittent – dry for at least one week during most years

☒ Intermittent with Perennial Pools – enduring pools

☐ Perennial – normally flowing

Check the method used to characterize the area downstream of the new diversion location.

☐ USGS flow records

☒ Historical observation by adjacent landowners

☐ Personal observation

☐ Other, specify: _____

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

☐ Wilderness: outstanding natural beauty; usually wooded or unpastured area; water clarity exceptional

☒ Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored

☐ Common Setting: not offensive; developed but uncluttered; water may be colored or turbid

☐ Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

☐ Primary contact recreation (swimming or direct contact with water)

☒ Secondary contact recreation (fishing, canoeing, or limited contact with water)

☐ Non-contact recreation

e. Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

See Tab 17

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the maps submitted with the application indicating the location of the photograph and the direction of the shot.
2. If the application includes a proposed reservoir, also include:
 - i. A brief description of the area that will be inundated by the reservoir.
 - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
 - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

3. Alternate Sources of Water and/or Bed and Banks Applications

This section is required for applications using an alternate source of water and bed and banks applications in any basins. **Instructions, page 31.**

a. For all bed and banks applications:

- i. Submit an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.

b. For all alternate source applications:

- i. If the alternate source is treated return flows, provide the TPDES permit number _____
- ii. If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:
Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L	N/A	N/A	N/A	N/A	
Chloride, mg/L	N/A	N/A	N/A	N/A	N/A
Total Dissolved Solids, mg/L	N/A	N/A	N/A	N/A	N/A
pH, standard units	N/A	N/A	N/A	N/A	N/A
Temperature*, degrees Celsius	N/A	N/A	N/A	N/A	N/A

* Temperature must be measured onsite at the time the groundwater sample is collected.

- iii. If groundwater will be used, provide the depth of the well N/A and the name of the aquifer from which water is withdrawn N/A.

WORKSHEET 6.0

Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.

Instructions, Page 31.

*The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4600, or e-mail wras@tceq.texas.gov. The model plans can also be downloaded from the TCEQ webpage. **Please use the most up-to-date plan documents available on the webpage.***

1. Water Conservation Plans

- a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture – including irrigation, wholesale):

1. Request for a new appropriation or use of State Water.
2. Request to amend water right to increase appropriation of State Water.
3. Request to amend water right to extend a term.
4. Request to amend water right to change a place of use.
**does not apply to a request to expand irrigation acreage to adjacent tracts.*
5. Request to amend water right to change the purpose of use.
**applicant need only address new uses.*
6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water.
**including return flows, contract water, or other State Water.*

- b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:

1. ☒ Municipal Use. See 30 TAC § 288.2. **
2. ☒ Industrial or Mining Use. See 30 TAC § 288.3.
3. ☐ Agricultural Use, including irrigation. See 30 TAC § 288.4.
4. ☒ Wholesale Water Suppliers. See 30 TAC § 288.5. **

****If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N ☒**

- c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan? Y / N Y

2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above – indicate each that applies:
1. X Municipal Uses by public water suppliers. See 30 TAC § 288.20.
 2. Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
 3. X Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc. See 30 TAC § 288.30*) Y / N Y

WORKSHEET 7.0

ACCOUNTING PLAN INFORMATION WORKSHEET

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4600 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

1. Is Accounting Plan Required

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

2. Accounting Plan Requirements

- a. A **text file** that includes:
 1. an introduction explaining the water rights and what they authorize;
 2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
 3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
 4. Should provide a summary of all sources of water.
- b. A **spreadsheet** that includes:
 1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
 2. Method for accounting for inflows if needed;
 3. Reporting of all water use from all authorizations, both existing and proposed;
 4. An accounting for all sources of water;
 5. An accounting of water by priority date;
 6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
 7. Accounting for conveyance losses;
 8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
 9. An accounting for spills of other water added to the reservoir; and
 10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.

WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

1. NEW APPROPRIATION

	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under Amount (\$) . <u>In Acre-Feet</u> a. Less than 100 \$100.00 b. 100 - 5,000 \$250.00 c. 5,001 - 10,000 \$500.00 d. 10,001 - 250,000 \$1,000.00 e. More than 250,000 \$2,000.00	0
Recording Fee		\$25.00
Agriculture Use Fee	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **	0
Use Fee	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x _____ Maximum annual diversion of State Water in acre-feet. **	0
Recreational Storage Fee	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x _____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	0
Storage Fee	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.	0
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600.	0
TOTAL		\$0

2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
Filing Fee	Amendment: \$100 OR Sever and Combine: \$100 x _____ of water rights to combine	100
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	0
TOTAL INCLUDED		\$112.50

3. BED AND BANKS

	Description	Amount (\$)
Filing Fee		\$100.00
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	0
TOTAL INCLUDED		\$0

TAB 4

Water Right Lease Agreement

STATE OF TEXAS

§

COUNTY OF PALO PINTO

§

§

**WATER RIGHT LEASE/AMENDMENT AGREEMENT
BETWEEN PALO PINTO COUNTY MUNICIPAL WATER
DISTRICT NO. 1 AND COMANCHE BEND TRUST
(Certificate of Adjudication No. 12-4012)**

This Water Right Lease/Amendment Agreement (the "*Agreement*") is made and entered into on the Effective Date (defined herein) by and between the **PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1** (the "*Lessee*"), a political subdivision of the State of Texas, **COMANCHE BEND TRUST**, and **JENNIFER GARDNER BOYD, TRUSTEE, UNDER DECLARATION OF TRUST DATED APRIL 22, 1985 NAMED COMANCHE BEND TRUST**, a Texas Inter Vivos Trust ("*Lessors*") (Lessors and Lessee are collectively, the "*Parties*").

RECITALS

WHEREAS, Lessors are the Owner of Certificate of Adjudication ("*COA*") No. 12-4012, a Texas surface water right in part authorizing Lessors to divert and use not to exceed 236 acre-feet of water per annum from Palo Pinto Creek and the Brazos River to irrigate a maximum of 118 acres of a specific 233.2 acre tract of land in Palo Pinto County Texas, with a priority date of September 30, 1964; and a copy of COA No. 12-4012 is attached hereto as Exhibit A, incorporated herein for all purposes;

WHEREAS, Lessee is a conservation and reclamation district created by the Texas Legislature pursuant to the provisions of Art. XVI, Section 59 of the Texas Constitution;

WHEREAS, Lessee is seeking to secure additional firm water supplies for its customers;

WHEREAS, Lessee desires to enter into this Agreement with Lessors to lease a portion of the water rights contemplated by COA No. 12-4012 at a reasonable cost, with the right of first refusal to acquire the water right in the future;

WHEREAS, Lessors desire to lease a portion of the water rights contemplated by COA No. 12-4012 to Lessee at a reasonable cost and to grant Lessee the right of first refusal to acquire this water right from Lessors in the future at a reasonable cost, in the event that Lessors desire to sell it in the future;

WHEREAS, the Parties recognize that in order for Lessee to utilize the water supply under COA No. 12-4012, an application to amend such water right will need to be prepared, filed, and prosecuted at the Texas Commission on Environmental Quality ("*TCEQ*"), to at least (i) add

municipal and industrial purposes of use (the "*Additional Purposes of Use*") to the water supply contemplated by such water right and (ii) add an additional diversion point for such water supply on Palo Pinto Creek, generally located at Latitude 32.657902, Longitude -98.124425 (the "*New Diversion Point*"), so that Lessee can divert such water; and the New Diversion Point is more specifically depicted in Exhibit B, attached hereto and incorporated herein for all purposes; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize the terms and conditions under which Lessors will lease the water authorized under COA No. 12-4012 to Lessee.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **LEASED WATER RIGHT.** Lessors hereby lease to Lessee, and Lessee hereby leases from Lessors the right to divert and use 200 acre-feet ("*ac-ft*") of water per twelve-month period, beginning on January 1 of each calendar year and ending on December 31 of the following calendar year (each such twelve-month period is a "*Contract Year*"), as authorized under COA No. 12-4012 (the "*Water Supply*"). For purposes of clarity, Lessors shall retain the right to divert and use the remaining 36 acre-feet of water per year under COA No. 12-4012 (the "*Irrigation Water Supply*"); provided, however, that Lessors may not lease the Irrigation Water Supply except as provided in this Section 1. On or before October 31 of each calendar year, Lessors shall provide written notice to Lessee as to whether Lessors are willing to lease any portion of the Irrigation Water Supply to Lessee in the upcoming Contract Year beginning on January 1 of the following calendar year ("*Irrigation Water Notice*"). For any Irrigation Water Notice indicating that Lessors are willing to lease any portion of the Irrigation Water Supply in the upcoming Contract Year, Lessors agree to provide Lessee the option and first right of refusal to purchase such portion of the Irrigation Water Supply, and Lessee shall have thirty (30) days after receiving the Irrigation Water Notice to notify Lessors that it will purchase the Irrigation Water Supply for the upcoming Contract Year. The per acre-foot cost of the Irrigation Water Supply water shall be same as the per acre-foot cost for the Water Supply, as provided in Section 3 of this Agreement. A failure by Lessors to timely provide Lessee with the Irrigation Water Notice (A) shall be deemed to be an indication that Lessors will not lease the Irrigation Water Supply in the upcoming Contract Year and (B) Lessors may not sell the Irrigation Water Supply to a third party in the upcoming Contract Year. In the event that Lessee does not provide a timely response to Lessors that it will purchase the Irrigation Water Supply or that Lessee provides a timely response but does not agree to purchase any or all of the Irrigation Water Supply, then Lessors may sell such unsold portion of the Irrigation Water Supply to a third party for that upcoming Contract Year only.
2. **TERM.** The term of the Agreement shall commence on the Effective Date and terminate on December 31, 2034 (the "*Initial Term*"). This Agreement shall automatically renew for additional, subsequent one (1) year terms after the end of the Initial Term on the same terms and conditions as set forth herein (the "*Term*") unless Lessors or Lessee provides the other

Party with six (6) months prior written notice that the Agreement shall terminate and the end of that current Term.

3. **RATE AND ADJUSTMENTS.** The rate charged by Lessors to Lessee for the Water Supply ("**Water Lease Rate**") shall be the then current "System Rate" for Interruptible Water charged by the Brazos River Authority for raw water provided for non-agricultural/municipal purposes ("**BRA Rate**"). As of the Effective Date, according to the Brazos River Authority's website, located at <https://brazos.org/About-Us/Water-Supply/Contracting>, the BRA Rate is \$99.50 per acre-foot per year for the Brazos River Authority's 2025 fiscal year. If the BRA Rate increases during a Contract Year, then the Water Lease Rate shall increase to that increased BRA Rate on the beginning of the next Contract Year. The Parties agree that the BRA Rate, as may be amended from time to time, (i) represents the fair market value of raw water used for municipal or industrial purposes in Palo Pinto County, Texas, considering Lessors' water priority rights, and (ii) does not adversely affect the public interest.

4. **COMPENSATION.**

- a. Each Contract Year, Lessee shall pay Lessors for the entire Water Supply on a take or pay basis, regardless of whether Lessee actually diverts and uses such water; provided, however, that (i) Lessee shall only pay Lessors for the actual amount of water diverted by Lessee under COA No. 12-4012 during the 2025 calendar year (the "**Initial Contract Year**") at the current BRA System Rate for the 2025 calendar year, currently \$99.50 per acre-foot per year; (ii) subject to Paragraphs 4.a.(iii), 4.b, and 11.b. herein, Lessee is not required to pay Lessors for the Water Supply in any Contract Year unless and until the TCEQ issues an order amending COA No. 12-4012 with all changes contemplated for the Amendment Application (defined herein) under Section 5 of this Agreement, and such order is final and non-appealable (such order, once issued and becoming final and non-appealable, is the "**Final Order**"); and (iii) Lessee shall pay Lessors the higher of the cost of the actual amount of water diverted by Lessee under COA No. 12-4012 during the Initial Contract Year if the Final Order is received in that year, at the then current BRA System Rate, or TWO THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$2,500). Lessee shall not take any portion of the Water Supply in calendar year 2024 and no payment is due from Lessee to Lessor for any portion of the calendar year 2024.
- b. For the Initial Contract Year, Lessee shall deliver payment(s) to Lessors for the Water Supply as follows: Lessee shall pay Lessor \$2,500.00 by January 31, 2025, and for any additional amount that could be due and owing according to Section 4.a.(iii) above, Lessee shall pay Lessor by December 31, 2025. For each Contract Year thereafter, Lessee shall deliver its payment for the Water Supply to Lessors no later than January 31st of that Contract Year.
- c. If the TCEQ prohibits Lessee from exercising its right to divert the Water Supply due to Lessors' failure to comply with applicable TCEQ requirements, then Lessee shall provide Lessors with a pro-rata credit for the portion of the year when Lessee is unable to divert such Water Supply, which will be applied to the payment to be made in the subsequent year. If the TCEQ prohibits Lessee from exercising its right to divert the Water Supply due to Lessee's failure to comply with applicable TCEQ requirements at any time, it shall not

affect the Lessee's duty to pay the Water Lease Rate in full for the year of the TCEQ's prohibition or any subsequent year.

- d. Any payment from Lessee to one of the Lessors shall be considered a payment made to all Lessors under this Agreement. In the event that there is a dispute between the Lessors regarding the terms and conditions of this Agreement or otherwise, Lessors agree to hold Lessee harmless from any such dispute.
5. **MODIFICATIONS TO COA NO. 12-4012.** The Parties acknowledge and agree that in order for Lessee to divert and utilize the Water Supply, COA No. 12-4012 must be amended by the TCEQ to authorize the Additional Purposes of Use and the New Diversion Point. Accordingly, the Parties agree that Lessee, at Lessee's sole cost, may prepare, file, and prosecute an application at the TCEQ to amend COA No. 12-4012 ("*Amendment Application*") to (i) add the Additional Purposes of Use to such water right and (ii) add the New Diversion Point. Lessors shall cooperate with Lessee by promptly and timely providing documentation as reasonably necessary to secure TCEQ approval of the Amendment Application, including, but not limited to, Lessors executing the Amendment Application and Lessors authorizing in writing Lessee to prosecute the Amendment Application at the TCEQ on behalf of Lessor. Lessors shall promptly provide Lessee with any and all communications from the TCEQ regarding the Amendment Application.
6. **OPTION TO PURCHASE.** If during the Term of this Agreement Lessors choose to sell some or all of the water rights contemplated by COA No. 12-4012, then Lessors shall provide Lessee the option and right of first refusal to purchase such water rights during the Term (the "*Option*"). In providing Lessee the Option, Lessors shall notify Lessee in writing of its desire to sell any portion of the water rights contemplated by COA No. 12-4012, and no later than sixty (60) days after receiving such notice, Lessee shall notify Lessors in writing as to whether it wants to purchase such water rights for the price requested by Lessor.
7. **WARRANTIES.** Lessors represent and warrant that (a) Lessors have the legal authority to enter into this Agreement without the joinder, consent, or approval of any third party; (b) Lessors have not taken any action to encumber, transfer or otherwise impact their interest in COA No. 12-4012; (c) there are no recorded or unrecorded encumbrances affecting the water rights contemplated by COA No. 12-4012; (d) there are no outstanding debts, liens, mortgages, judgments, decrees, attachments, or orders, nor any suits or proceedings (including bankruptcy, insolvency or receivership) pending against Lessors or affecting COA No. 12-4012; and (e) Lessors have exercised their rights under COA No. 12-4012 during one (1) or more of the ten (10) years immediately preceding the Effective Date, and have not received any notices of violations of law, statutes, regulations, or ordinances, orders, or requirements issued by any governmental authority affecting COA No. 12-4012. Lessee represents and warrants that (a) it has the legal authority to enter into this Agreement without the joinder, consent, or approval of any third party, (b) the individuals executing this Agreement on behalf of Lessee are duly authorized to do so, and (c) it acknowledges that Lessors have exercised their rights under COA No. 12-4012 during one (1) or more of the ten (10) years immediately preceding the Effective Date. The Parties acknowledge and agree that this Agreement is binding upon each Party and enforceable against each Party in accordance with its terms and conditions.

8. **NOTICES.** Any notice, demand, request, consent, or approval that either Party desires or is required to give to the other Party under this Agreement will be in writing and will be sent to the following address:

If to Lessors:

Comanche Bend Trust
c/o Jennifer Gardner Boyd, Trustee
304 E Rusk St.
Santo, Texas 76472

With a copy to, which shall not constitute service under a lawsuit between the Parties unless so designated by Lessors in such lawsuit:

Decker Jones, P.C. Attn: Prichard Bevis
801 Cherry Street, Suite 2000, Unit #46
Burnett Plaza, Suite 2000
Fort Worth, Texas 76102

If to Lessee:

Palo Pinto County Municipal Water District No. 1
Attn: General Manager
P.O. Box 387
Mineral Wells, Texas 76068

With a copy to, which shall not constitute service under a lawsuit between the Parties unless so designated by Lessee in such lawsuit :

Lloyd Gosselink Rochelle & Townsend, P.C.
Attn: David Klein
816 Congress Ave., Suite 1900
Austin, Texas 78701

Notices may be sent by any of the following means: (i) by delivery in person, (ii) by certified U.S. mail, return receipt requested, postage prepaid, (iii) by Federal Express or other reputable "overnight" delivery service, provided that next-business-day delivery is requested by the sender; or (iv) by email if provided by a Party. Notices delivered in person or by certified mail will be deemed effective immediately upon receipt (or refusal of delivery or receipt). Notices sent by Federal Express or other reputable "overnight" delivery service will be deemed given on the date deposited with the delivery service. Notices sent by email will be effective on the date sent. Either Party may, from time to time, by written notice to the other, designate a different address, which will be substituted for the relevant one(s) above specified.

9. **SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall apply to and bind the successors and assigns of each of the Parties. Lessors shall provide a copy of this Agreement to any transferee, under any deed, lease, or other legal agreement, by which Lessors divest of any or all interest in COA No. 12-4012. The obligations under this Agreement shall run with the land.

10. AMENDMENT. This Agreement shall not be modified or amended except in writing executed by Lessee and Lessor.

11. TERMINATION AND REMEDIES.

- a. In the event that either Party breaches any of the material terms and/or conditions of this Agreement and upon written notice of such breach by the non-breaching Party to the breaching Party, the breaching Party shall have thirty (30) days to cure any default(s) after notice is provided to Lessee pursuant to Section 8 of this Agreement. If such default(s) are not corrected within the allotted time, then the non-breaching Party may terminate this Agreement by providing written notice of termination delivered to the breaching Party on or before thirty (30) days before the date specified in said notice of suspension or termination. The non-breaching Party may pursue any remedy available at law or equity, including specific performance.
- b. If the TCEQ denies the Amendment Application, then the Lessee has the right to terminate this Agreement for convenience at any time, with no obligation or liability to Lessor. If there is no Final Order within three (3) years of the Effective Date or if the TCEQ prohibits Lessee from exercising its right to divert the Water Supply due to Lessee's failure to comply with applicable TCEQ requirements, then the Lessors have the right to terminate this Agreement for convenience at any time, with no obligation or liability to Lessee. If, during Lessee's prosecution of the Amendment Application, Lessee misses any TCEQ prescribed deadlines, Lessors may complete any work necessary to remedy the missed deadline at Lessee's sole cost.
- c. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive the Parties of any means they would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions under this Agreement.

12. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement of the Parties as to the transaction described herein and supersedes all prior agreements, representations, or understandings, written or oral.

13. REGULATORY REQUIREMENTS; VENUE; MEDIATION OPTION. The provisions of this Agreement shall be governed by and construed and enforced in accordance with all present and future valid laws, orders, rules, and regulations of the State of Texas. The actions performable under this Agreement shall be construed as occurring in Palo Pinto County, Texas. Any dispute between the Parties related to this Agreement that is not resolved through informal discussions may be submitted to a mutually acceptable mediation service or provider if both parties are amenable to mediation. The Parties shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

14. FORCE MAJEURE. In the event either Party is rendered unable, wholly or in part, by force majeure, to carry out any of these obligations under this contract, then the obligations of such party, to the extent affected by such force majeure and performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent

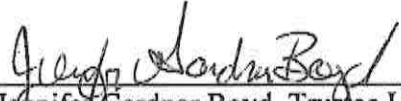
provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall include, without limitations of the generality hereof, acts of God, strikes, lockouts, or other kind of industrial disturbances, acts of the public enemy, orders of any civil or military authority, insurrections, riots, epidemics, restraints of government, civil disturbances, explosions, and any other incapacities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability and which such party could not have anticipated and could not have avoided by the exercise of due diligence and care; provided, however, notwithstanding anything herein, the inability of Lessee to divert the Water Supply due to drought or other weather or environmental related condition(s) and/or occurrence(s) shall not be deemed a force majeure event excusing Lessee from payment of the Water Lease Rate. It is understood and agreed that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes lockouts or contract disputes by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

15. **SEVERABILITY.** The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions 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.
16. **RECORDATION OF LEASE.** Lessee, at its sole cost, shall record a Memorandum of Agreement for this Agreement in the official public records of Palo Pinto County, Texas.
17. **CONDITION, NOT COVENANT.** Lessee's payments of the Water Lease Rate to Lessors as provided for and as calculated herein and at all times provided herein are conditions, and not covenants, of this Agreement, and subject to Paragraph 11.a., Lessee's failure to make such payments shall be a material breach of this Agreement.

[remainder of page intentionally blank]

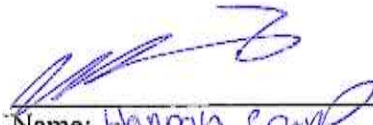
IN WITNESS WHEREOF, the Parties, acting under the authority of their respective authorized representatives, have caused this Agreement to be duly executed, effective as of November 1, 2024 (the "*Effective Date*").

LESSOR:
COMANCHE BEND TRUST

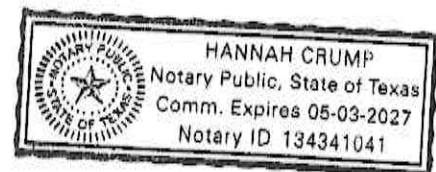
By: 
Jennifer Gardner Boyd, Trustee Under
Declaration of Trust Dated April 22, 1985
Named Comanche Bend Trust

STATE OF TEXAS §
 §
COUNTY OF Gillespie §

This instrument was acknowledged before me on 6th of December, 2024, by Jennifer Gardner Boyd, Trustee Under Declaration of Trust, Dated April 22, 1985, Named Comanche Bend Trust, on behalf of said Trust.


Name: Hannah Crump
Notary Public, State of Texas

My commission expires: 05-03-2027



LESSEE:


PALO PINTO COUNTY MUNICIPAL WATER
DISTRICT NO. 1

By: 
Howard Huffman, General Manager

STATE OF TEXAS §
 §
COUNTY OF Palo Pinto §

This instrument was acknowledged before me on the 20th November, 2024, by Mr. Howard Huffman, General Manager of Palo Pinto County Municipal Water District No. 1, on behalf of said District.




Name:
Notary Public, State of Texas

My commission expires: 04/05/2026

EXHIBIT A

COA NO. 12-4012

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4012 OWNERS: Earl W. Gardner and wife,
Anita B. Gardner
Route 1, Box 32A
Santo, Texas 76472

COUNTY: Palo Pinto PRIORITY DATE: September 30, 1964

WATERCOURSE: Palo Pinto Creek,
tributary of Brazos
River and Brazos River BASIN: Brazos River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1965, a right was recognized under Claim 2421 authorizing Earl W. Gardner and wife, Anita B. Gardner to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to Earl W. Gardner and wife, Anita B. Gardner, subject to the following terms and conditions:

1. USE

Owners are authorized to divert and use not to exceed 236 acre-feet of water per annum from Palo Pinto Creek and the Brazos River to irrigate a maximum of 118 acres of land out of that portion of a 233.2 acre tract located in the G. W. Blutcher Survey 50, Abstract 1011 and the G. R. and J. T. Jowell Survey 38, Abstract 1112, Palo Pinto County, Texas, said 233.2 acre tract being described as follows:

- (1) BEGINNING at a point on the west bank of the Brazos River, being the northeast corner of the G. W. Blutcher Survey 50, Abstract 1011;
- (2) THENCE down said river with its meanders as follows: S 23°E, 169.6 feet; S 25°E, 236.1 feet; S 27°E, 722.2 feet and S 30°E, 1630.0 feet to the southeast corner of this tract;
- (3) THENCE S 84°W, 2235.8 feet to a corner;
- (4) THENCE N 18°55'W, 659.9 feet to a corner;
- (5) THENCE N 73°09'W, 276.0 feet to a corner;
- (6) THENCE S 59°59'W, 581.0 feet to the east bank of Palo Pinto Creek;
- (7) THENCE up said creek with its meanders as follows: N 01°28'E, 983.81 feet; N 05°W, 190.4 feet; N 07°30'E, 483.3 feet and N 08°30'W, 483.9 feet;
- (8) THENCE N 10°W, 1125.0 feet to a corner;
- (9) THENCE N 84°E, 214.0 feet to a corner;
- (10) THENCE N 06°W, 1436.1 feet to the northwest corner of this tract, being on the south right-of-way of the T. & P. RR;
- (11) THENCE N 74°23'E, 1291.7 feet with said R.O.W. to the west bank of the Brazos River;
- (12) THENCE down said river with its meanders S 15°30'E, 1675.0 feet and S 16°15'E, 1180.6 feet to the place of beginning.

Certificate of Adjudication 12-4012

2. DIVERSION

A. Location

At a point on Palo Pinto Creek in the C. W. Blutcher Survey 50, Abstract 1011 and a point on the Brazos River in G.R. & J. T. Jowell Survey 38, Abstract 1112, Palo Pinto County, Texas.

B. Maximum combined rate: 3.24 cfs (1460 gpm).

3. PRIORITY

The time priority of owners' right is September 30, 1964.

The locations of pertinent features related to this certificate are shown on Page 4 of the Brazos II River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Palo Pinto County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 91st Judicial District Court of Eastland County, Texas, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment of the Brazos River Basin, dated November 8, 1985, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Brazos River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owner or seller at the time of the transaction.

TEXAS WATER COMMISSION

Paul Hopkins
Paul Hopkins, Chairman

DATE ISSUED:

FEB 24 1986

ATTEST:

Mary Ann Hefner
Mary Ann Hefner, Chief Clerk

EXHIBIT B

NEW DIVERSION POINT

APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION 12-4012

Map

The location of the requested additional diversion point on Palo Pinto Creek and the locations and direction of photographs are shown on USGS topographic mapping extracted from the TCEQ Texas Water Rights Viewer in Figure 1.

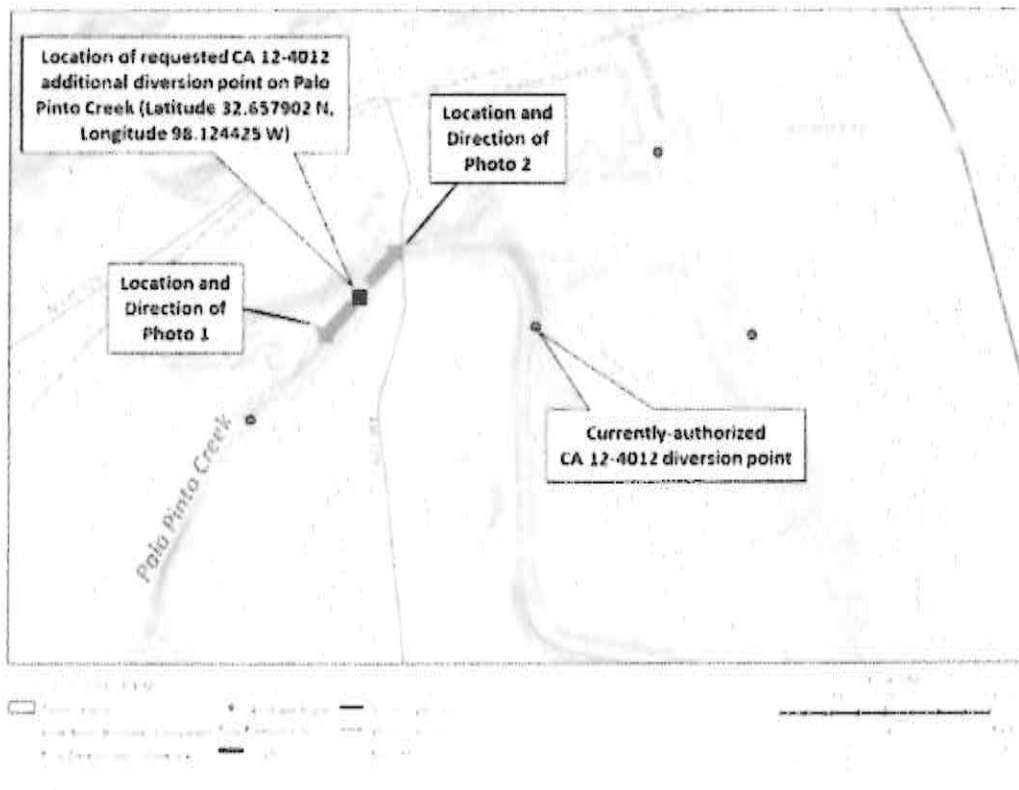


Figure 1. Location of Currently-Authorized and Requested Diversion Points

TAB 5

Affidavit of Successor Trusteeship

AFFIDAVIT OF SUCCESSOR TRUSTEESHIP

On this day, Jennifer Gardner Boyd, being first duly sworn upon oath, deposes and states:

"WHEREAS, on May 17, 2021, Earl W. Gardner, Jr. and Anita B. Gardner, created the Fourth Amendment and Restatement of the Declaration of Trust Establishing the Comanche Bend Trust dated April 22, 1985; and

WHEREAS, Earl W. Gardner, Jr. and Anita B. Gardner, were named as the Trustees; and


WHEREAS, Anita Brown Gardner died on April 18, 2023, and Earl W. Gardner, Jr. became unable to serve as Trustee; and

WHEREAS, the Trust named Jennifer Gardner Boyd to serve as Successor Trustee in the event of the death of Anita Brown Gardner and the inability of Earl W. Gardner, Jr. to serve as Trustee; and

WHEREAS, as a result of the death of Anita Brown Gardner and the inability of Earl W. Gardner, Jr. to serve as Trustee, Jennifer Gardner Boyd is the current Successor Trustee of the Trust.

NOW, THEREFORE, the undersigned, hereby affirms that Jennifer Gardner Boyd is the Successor Trustee of the Trust."

Dated: Sept. 27, 2023.

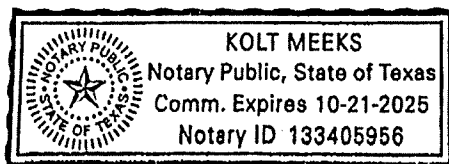

Jennifer Gardner Boyd

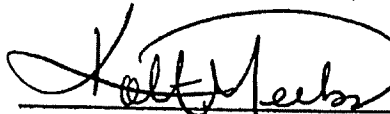
THE STATE OF TEXAS

COUNTY OF GILLESPIE

§
§
§

This instrument was acknowledged before me on the 27th day of September, 2022, by Jennifer Gardner Boyd.




Notary Public, State of Texas

14748.14000/495839

TAB 6

District Resolution Authorizing the Filing of a Water Right Application

THE STATE OF TEXAS
COUNTY OF PALO PINTO
PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1

§
§
§

RESOLUTION NO. 2025.04.25B

A RESOLUTION OF THE BOARD OF DIRECTORS OF
PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1
AUTHORIZING THE PREPARATION AND FILING OF
AN APPLICATION AT THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY TO AMEND A WATER RIGHT

WHEREAS, Palo Pinto County Municipal Water District No. 1 (the “*District*”) has entered into a “Water Right Lease/Amendment Agreement” (“*Lease Agreement*”) with Comanche Bend Trust (“*CBT*”), effective on November 1, 2024, contemplating the terms and conditions under which CBT will lease CBT’s rights under CBT’s Certificate of Adjudication (“*COA*”) 12-4012, to the District;

WHEREAS, COA 12-4012 authorizes CBT to divert and use 236 acre-feet of water per annum from Palo Pinto Creek and the Brazos River for the irrigation of a specific tract owned by CBT;

WHEREAS, for the District to be able to exercise its rights from CBT for the District’s needs, COA 12-4012 must be amended to include additional purposes of use and to add a diversion point to divert such water;

WHEREAS, under Section 5 of the Lease Agreement, CBT and the District agreed that (i) the District may prepare, file, and prosecute an application at the Texas Commission on Environmental Quality (“*TCEQ*”) to amend COA No. 12-4012 to add such purposes of use and new diversion point (the “*Amendment Application*”), and (ii) CBT shall cooperate with the District in such effort, including, but not limited to, CBT executing the Amendment Application and authorizing in writing that the District may prosecute the Amendment Application at the TCEQ on behalf of CBT (“*Written Consent*”);

WHEREAS, the District is ready to work with CBT to obtain the Written Consent, and upon securing such Written Consent, the District desires to prepare, file, and prosecute the Amendment Application; and

WHEREAS, the Board of Directors of the District desires to authorize the General Manager and the District’s engineers and legal counsel to work with CBT to secure the Written Consent and to prepare, execute, and file the Amendment Application to amend COA 12-4012 at the TCEQ.

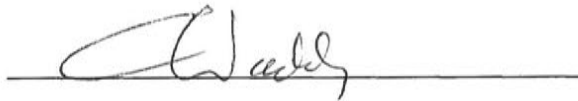
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1 THAT:

1. The recitals set forth above are true and correct and incorporated herein for all purposes.
2. The Board of the District hereby authorizes and directs its General Manager to secure the Written Consent from CBT and to prepare, file, and prosecute the Amendment Application and any other documents as are necessary to secure an amendment to COA 12-4012 from the TCEQ.
3. The Board of the District hereby authorizes and directs Lloyd Gosselink Rochelle & Townsend, P.C. to: (i) prepare and file the Amendment Application as well as appear and arrange for the appearances of persons representing the District at hearings and other proceedings on the Amendment Application before the TCEQ and other governmental entities; (ii) prosecute the Amendment Application on behalf of the District in its role on behalf of CBT; and (iii) assist the General Manager with the preparation and filing of future applications, if necessary to achieve the purposes and goals of the Lease Agreement.
4. This resolution shall take effect and be in full force and effect from and after the date of its adoption, and it is so resolved that all resolutions of the Board of Directors of the District in conflict herewith are hereby amended or repealed to the extent of such conflict.
5. The District's General Manager and his delegates are hereby directed and authorized on behalf of the Board of Directors to implement and to take further actions as necessary that are consistent with the purposes of this resolution. The Board of Directors of the District hereby ratifies any and all actions taken by the General Manager and his delegates regarding the Amendment Application prior to the adoption of this Resolution.

ROLL CALL

Dr. David Turk	(✓) In Favor () Against () Abstain () Absent
Eugene Waddy	(✓) In Favor () Against () Abstain () Absent
Don Crawford	(✓) In Favor () Against () Abstain () Absent
Rich Kidwell	(✓) In Favor () Against () Abstain () Absent
Kelly Rawlings	(✓) In Favor () Against () Abstain () Absent

PASSED AND APPROVED BY THE PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1 BOARD OF DIRECTORS by a vote of 5 to 0, adopts this resolution on this 25th day of April, 2025 in a public meeting.



Eugene Waddy, Secretary

I, Dr. David Turk, the President of the Board of Directors of the District, do hereby certify that the foregoing is a correct copy of a resolution adopted as set forth.



Dr. David Turk, President

TAB 7

Recorded Deeds Describing Diversion Point Location

Alisa Terrell Starbird



NORTH TEXAS COMMERCIAL ASSOCIATION OF REALTORS®

COMMERCIAL LEASE AGREEMENT

between

CARL GRADY BEHRENS

(Landlord)

and

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1

(Tenant)

TABLE OF CONTENTS

Article

1. Defined Terms
2. Lease and Term
3. Rent and Security Deposit
4. Taxes
5. Insurance and Indemnity
6. Use of Premises
7. Property Condition, Maintenance, Repairs and Alterations
8. Damage or Destruction
9. Condemnation
10. Assignment and Subletting
11. Default and Remedies
12. Landlord's Contractual Lien
13. Protection of Lenders
14. Environmental Representations and Indemnity
15. Professional Service Fees
16. Miscellaneous and Additional Provisions

COMMERCIAL LEASE AGREEMENT

[Throughout this Lease, complete all blanks and check all boxes that apply. Blanks not completed and boxes not checked do not apply.]

For good and valuable consideration, the parties to this Commercial Lease Agreement (the "Lease") agree as follows:

ARTICLE ONE

DEFINED TERMS

As used in this Lease, the terms set forth in this Article One have the following meanings:

1.01 Effective Date: The last date beneath the signatures of Landlord and Tenant on this Lease.

1.02 Landlord: CARL GRADY BEHRENS

Address: 95 West Rusk

Santo, Texas 76472

Telephone: (817) 475-2528

Fax: _____

Email: _____

1.03 Tenant: PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1

Address: PO Box 387

Mineral Wells, Texas 76068-0387

Telephone: (940) 382-7712

Fax: (940) 328-7725

Email: _____

1.04 Premises [include Suite or Unit No., if applicable]: N/A

A. Building Name: N/A

B. Street address: Acreage off of W. Rusk Street

Santo, TX 76472

in Palo Pinto County, Texas.

C. Legal description: The property on which the Premises are situated is described as: 3.348 acres tract out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas, being part of that certain Second Tract described in Volume 1891, Page 289

and may be more particularly described on the attached Exhibit "A", Survey or Legal Description (the "Property"). The term "Property" includes the land described on Exhibit "A", and any improvements on the land (including the Premises).

D. Floor Plan or Site Plan: Being a floor area of approximately N/A square feet, or a land area of approximately N/A square feet or approximately N/A acres, and being more particularly shown in outline form on the attached Exhibit "B", Floor Plan or Site Plan.

E. Tenant's Pro Rata Share: 100.000 %.

1.05 Term: Five years and 0 months beginning on April 1, 2015 (the "Commencement Date") and ending on March 31, 2020 (the "Expiration Date"). Unless the context requires otherwise, references in this Lease to the "Term" include any renewal or extension of this Lease. [See Addendum "A", Renewal Options, if applicable].

1.06 Base Rent: Base Rent is due and payable in monthly installments during the Term of this Lease as set forth in this Section. Base Rent and all other sums due or payable by Tenant to Landlord under this Lease are collectively referred to in this Lease as the "Rent."

Base Rent Payment Schedule

On or before the first day of each month during the Term of this Lease, Tenant shall pay monthly installments of Base Rent as follows:

<u>Dates</u>	<u>Monthly Base Rent</u>
From <u>April 1, 2015</u> to <u>March 31, 2020</u>	\$ <u>1,350.00</u> ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ ;
From _____ to _____	\$ _____ .

[Rent for any Renewal Term is determined pursuant to a separate Addendum, if applicable, and should not be set forth here.]

1.07 Percentage Rental Rate: N/A %. [See Addendum "D", Percentage Rental and Gross Sales Reports, if applicable]

1.08 Security Deposit: \$ N/A (due upon execution of this Lease). [See Section 3.04]

1.09 Expense Reimbursements:

A. Tenant shall pay Landlord as additional Rent (or pay the charges directly to the service provider, if applicable) the following expenses (or a portion of the expenses, if applicable) (each an "Expense Reimbursement" and collectively the "Expense Reimbursements") that are incurred by or assessed against the Premises (as each of these terms is defined in this Lease) ***[check all boxes that apply]:***

- ☒ Real Estate Taxes;
- ☐ Insurance Premiums;
- ☐ Common Area Maintenance (CAM) Expenses;
- ☐ Operating Expenses;
- ☐ Roof and Structural Maintenance Expenses;
- ☐ Electricity;
- ☐ Cable;
- ☐ Gas;
- ☐ Internet Access;

COMMERCIAL LEASE AGREEMENT - Page 3

©NTCAR 2014 -- Form No. 2 (3/2014)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Behrens

- ☐ Water;
- ☐ Sewer;
- ☐ Telephone;
- ☒ Trash Removal; and
- ☐ All other Utilities.

B. Expense Definitions.

1. Real Estate Taxes. "Real Estate Taxes" means all general real estate taxes, ad valorem taxes, general and special assessments, parking surcharges, rent taxes, and other similar governmental charges levied against or applicable to the Property for each calendar year.

~~**2. Insurance Premiums.** "Insurance Premiums" means all Landlord's insurance premiums attributable to the Property, including but not limited to insurance for fire, casualty, general liability, property damage, medical expenses, extended coverage, and loss of rents coverage for up to 12 months' Rent.~~

~~**3. Common Area Maintenance Expenses.** "Common Area Maintenance Expenses" or "CAM Expenses" means all costs of maintenance, inspection and repairs of the Common Areas of the Property, including, but not limited to, those costs for security, lighting, painting, cleaning, decorations and fixtures, Utilities, ice and snow removal, trash disposal, project signs, roof repairs, pest control, project promotional expenses, property owners' association dues, wages and salary costs of maintenance personnel, and other expenses benefiting all the Property that may be incurred by Landlord, in its discretion, including sales taxes and a reasonable service charge for the administration thereof. The term "Common Areas" is defined as that part of the Property intended for the collective use of all tenants including, but not limited to, the parking areas, driveways, loading areas, landscaping, gutters and downspouts, plumbing, electrical systems, HVAC systems, roof, exterior walls, sidewalks, malls, promenades (enclosed or otherwise), meeting rooms, doors, windows, corridors and public rest rooms. CAM Expenses do not include the cost of capital improvements, the cost of management office equipment and furnishings, depreciation on Landlord's original investment, the cost of tenant improvements, real estate brokers' fees, advertising of space for lease, or interest or depreciation on capital investments.~~

~~**4. Operating Expenses.** "Operating Expenses" means all costs of ownership, building management, maintenance, repairs and operation of the Property, including but not limited to roof and structural maintenance, Real Estate Taxes, Insurance Premiums, CAM Expenses, reasonable management fees, wages and salary costs of building management personnel, overhead and operational costs of a management office, janitorial, Utilities, and professional services such as accounting and legal fees. Operating Expenses do not include the cost of capital improvements, the cost of management office equipment and furnishings, depreciation on Landlord's original investment, the cost of tenant improvements, real estate brokers' fees, advertising of space for lease, or interest or depreciation on capital investments.~~

~~**5. Roof and Structural Maintenance Expenses.** "Roof and Structural Maintenance Expenses" means all costs of maintenance, repair and replacement of the roof, roof deck, flashings, skylights, foundation, floor slabs, structural components and the structural soundness of the building in general.~~

~~**6. Utilities.** "Utilities" means charges for electricity, cable, gas, Internet access, water, sewer, telephone, trash removal, and any other services that are commonly understood to be utilities, including connection charges.~~

7. Other Terms. Other terms that are not expressly defined are intended to have the meanings given those terms in common usage.

C. Expense Reimbursement Limitations. The amount of Tenant's Expense Reimbursement will be determined by one of the following methods as described and defined below *[check only one]*:

- ☐ Base Year Adjustment;
- ☐ Expense Stop Adjustment;
- ☒ Pro Rata Adjustment;
- ☐ Fixed Amounts; or
- ☐ Net Lease.

D. Expense Reimbursement Limitation Definitions.

1. ~~Base Year Adjustment.~~ If "Base Year Adjustment" has been checked above, Tenant shall pay to Landlord as additional Rent Tenant's Pro Rata Share of increases in the applicable expenses (those checked in Section 1.09.A, above) for the Property for any calendar year during the Term or during any Extension of this Lease, over such amounts paid by Landlord for the Base Year 2014 (the "Base Year").

2. ~~Expense Stop Adjustment.~~ If "Expense Stop Adjustment" has been checked above, Tenant shall pay to Landlord as additional Rent Tenant's Pro Rata Share of increases in the applicable expenses (those checked in Section 1.09.A, above), for the Property for any calendar year during the Term or during any Extension of this Lease, over \$_____ per square foot of floor area (as set forth in Section 1.04D) per year.

3. **Pro Rata Adjustment.** If "Pro Rata Adjustment" has been checked above, Tenant shall pay to Landlord as additional Rent Tenant's Pro Rata Share of the total amount of the applicable expenses (those checked in Section 1.09.A, above) for every calendar year during the Term and during any extension of this Lease.

4. ~~Fixed Amounts.~~ If "Fixed Amounts" has been checked above, Tenant shall pay to Landlord as additional Rent the following monthly amounts (regardless of whether they have been checked in Section 1.09.A, above) as Tenant's Expense Reimbursements to Landlord for the following expenses that are incurred by or assessed against the Property:

Real Estate Taxes	\$ _____	per month.
Insurance Premiums	\$ _____	per month.
CAM Expenses	\$ _____	per month.
Operating Expenses	\$ _____	per month.
Roof & Structural Maintenance Expenses	\$ _____	per month.
Electricity	\$ _____	per month.
Cable	\$ _____	per month.
Gas	\$ _____	per month.
Internet Access	\$ _____	per month.
Water	\$ _____	per month.
Sewer	\$ _____	per month.
Telephone	\$ _____	per month.
Trash Removal	\$ _____	per month.
All Other Utilities	\$ _____	per month.

5. ~~Net Lease.~~ If "Net Lease" has been checked above, then notwithstanding anything contained in this Lease to the contrary in Section 6.02, Article Seven or otherwise, Tenant shall be responsible for paying Tenant's Pro Rata Share of all costs of compliance with laws, ownership, maintenance, repairs, replacements, operation of the Premises, and operation of the Property, including but not limited to all costs of Real Estate Taxes, Insurance Premiums, Common Area Maintenance Expenses, Operating Expenses, Roof and Structural Maintenance Expenses, and all Utilities (regardless of whether they have been checked in Section 1.09.A, above).

E. First Payment. The sum of the Monthly Base Rent for the first month of the Term for which Base Rent is due (which may be later than the first month of the Term, if there is a free rent period), and the initial estimated monthly Expense Reimbursement payments (before adjustments) is set forth below. Upon the execution of this Lease, in addition to the Security Deposit, Tenant shall pay the first monthly payment in the sum of the amounts set forth below.

Initial Monthly Base Rent	\$ 1,350.00
Real Estate Taxes	\$
Insurance Premiums	\$
CAM Expenses	\$
Operating Expenses	\$
Roof & Structural Maintenance Expenses	\$
Electricity	\$
Cable	\$
Gas	\$
Internet Access	\$
Water	\$
Sewer	\$
Telephone	\$
Trash Removal	\$
All Other Utilities	\$
Total	\$ 1,350.00

[Complete the amount of the first Base Rent payment to be due, as well as estimated amounts of any other monthly payments that start at the beginning of the Term of this Lease. Put N/A or strike through the rest. Any estimated amounts are subject to adjustment pursuant to other provisions of this Lease. If any expense payments are not due at the beginning of the Term, they may begin later in the Term pursuant to other provisions of this Lease.]

F. Expense Reimbursement Payments. Tenant agrees to pay any end-of-year lump sum Expense Reimbursement within 30 days after receiving an invoice from Landlord. Any time during the Term, Landlord may direct Tenant to pay monthly an estimated portion of the projected future Expense Reimbursement amount. Any such payment directed by Landlord will be due and payable monthly on the same day that the Base Rent is due. Landlord may, at Landlord's option and to the extent allowed by applicable law, impose a Late Charge on any Expense Reimbursement payments that are not actually received by Landlord on or before the due date, in the amount and manner set forth in Section 3.03 of this Lease. Any Expense Reimbursements relating to partial calendar years will be prorated accordingly. If Tenant's Pro Rata Share is not expressed in Section 1.04.E of this Lease, then Tenant's Pro Rata Share of such Expense Reimbursements will be based on the square footage of useable area contained in the Premises in proportion to the square footage of useable building area of the Property. Tenant may audit or examine those items of expense in Landlord's records that relate to Tenant's obligations under this Lease. Landlord shall promptly refund to Tenant any overpayment that is established by an audit or examination. If the audit or examination reveals an error of more than 5% over the figures billed to Tenant, Landlord shall pay the reasonable cost of the audit or examination.

G. ☐ Gross-Up Provisions. *[Check this only if applicable.]* If the Property is a multi-tenant building and is not fully occupied during the Base Year or any portion of the Term, an adjustment will be made in computing the variable costs for the Base Year and each applicable calendar year of the Term. Variable costs will include only those items of expense that vary directly proportionately to the occupancy of the Property. Variable costs that are included in the CAM Expenses, Operating Expenses and Utilities will be increased proportionately to the amounts that, in Landlord's reasonable judgment, would have been incurred had 95% of the useable area of the Property been occupied during these years.

1.10 Permitted Use: installation and operation of reverse osmosis water treatment equipment & construction of related berms & lagoons [See Section 6.01]

1.11 Party to whom Tenant is to deliver payments under this Lease is the Landlord, unless one of the following boxes is checked, in which case Tenant shall deliver payments to: ☐ Principal Broker, or ☐ Other [Set forth name and address, if other than Landlord or Principal Broker]:
N/A

1.12 Principal Broker: N/A is acting as the agent for Landlord exclusively, unless one of the following boxes is checked, in which case Principal Broker is acting as: ☐ the agent for Tenant exclusively, or ☐ an intermediary.

Principal Broker's Address: _____

Telephone: _____ Fax: _____

Email: _____

1.13 Cooperating Broker: N/A is acting as the agent for Tenant exclusively, unless one of the following boxes is checked, in which case Cooperating Broker is acting as: ☐ the agent for Landlord exclusively, or ☐ an intermediary.

Cooperating Broker's Address: _____

Telephone: _____ Fax: _____

Email: _____

1.14 The Professional Service Fee (the "Fee"):

A. The percentages applicable in Section 15.01 and Section 15.02 to leases will be _____ % of the Base Rent to Principal Broker and _____ % of the Base Rent to Cooperating Broker. If the Fee is based on an amount per square foot, that amount is \$ _____ per square foot to Principal Broker and \$ _____ per square foot to Cooperating Broker. The Fee will be paid in the manner described in Subsection 15.01A (half on execution and half on the Commencement Date), unless this box ☐ is checked, in which case the Fee will be paid in the manner described in Subsection 15.01B (monthly).

B. The percentages applicable in Section 15.03 in the event of a sale will be _____ % to Principal Broker and _____ % to Cooperating Broker.

1.15 Disclosure of Dual Capacity as Broker and Principal. [Complete if applicable]

A. _____ is a licensed Texas real estate broker and is acting in a dual capacity as broker for Landlord and as a principal in this transaction, as he or she may be Landlord (or one of the owners of Landlord).

B. _____ is a licensed Texas real estate broker and is acting in a dual capacity as broker for Tenant and as a principal in this transaction, as he or she may be Tenant (or one of the owners of Tenant).

1.16 Exhibits and Addenda. Any exhibit or addendum attached to this Lease (as indicated by the boxes checked below) is incorporated as a part of this Lease. Any term not specifically defined in an Addendum will have the same meaning given to it in the body of this Lease.

- | | |
|---|---|
| <input checked="" type="checkbox"/> Exhibit "A" | Survey and/or Legal Description of the Property |
| <input type="checkbox"/> Exhibit "B" | Floor Plan and/or Site Plan |
| <input type="checkbox"/> Exhibit "C" | Information About Brokerage Services |
| <input type="checkbox"/> Exhibit "D" | Other <u>N/A</u> |

COMMERCIAL LEASE AGREEMENT - Page 7

©NTCAR 2014 - Form No. 2 (3/2014)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Behrens

- ☒ Addendum "A" Renewal Options
- ☐ Addendum "B" Construction of Improvements by Landlord
- ☐ Addendum "C" Construction of Improvements by Tenant
- ☐ Addendum "D" Percentage Rental and Gross Sales Reports
- ☐ Addendum "E" Right of First Refusal for Additional Space
- ☐ Addendum "F" Guaranty
- ☐ Addendum "G" Rules and Regulations
- ☐ Addendum "H" Rooftop Lease
- ☐ Addendum "I" Parking
- ☒ Addendum "J" Additional Provisions Addendum
- ☐ Addendum "K" Other N/A

ARTICLE TWO

LEASE AND TERM

2.01 Lease of Premises for Term. Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term stated in Section 1.05. The Commencement Date is the date specified in Section 1.05, unless advanced or delayed under any provision of this Lease.

~~**2.02 Delays in Commencement.** Landlord will not be liable to Tenant if Landlord does not deliver possession of the Premises to Tenant on the Commencement Date specified in Section 1.05 above. Landlord's non-delivery of possession of the Premises to Tenant on the Commencement Date will not affect this Lease or the obligations of Tenant under this Lease. However, the Commencement Date will be delayed until possession of the Premises is delivered to Tenant. The Term will be extended for a period equal to the delay in delivery of possession of the Premises to Tenant, plus the number of days necessary for the Term to expire on the last day of a month. If Landlord does not deliver possession of the Premises to Tenant within 60 days after the Commencement Date specified in Section 1.05, Tenant may cancel this Lease by giving a written notice to Landlord at any time after the 60 day period ends, but before Landlord actually delivers possession of the Premises to Tenant. If Tenant gives such notice, this Lease will be canceled effective as of the date of its execution, any prepaid amounts will be reimbursed to Tenant, and no party will have any rights or obligations under this Lease. If Tenant does not give such notice within the time specified, Tenant will have no right to cancel this Lease, and the Term will commence upon the delivery of possession of the Premises to Tenant. If delivery of possession of the Premises to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the revised Commencement Date and Expiration Date of the Term.~~

2.03 Early Occupancy. If Tenant occupies the Premises before the Commencement Date, Tenant's occupancy of the Premises will be subject to all of the provisions of this Lease. Early occupancy of the Premises will not advance the Expiration Date. Unless otherwise provided in this Lease, Tenant shall pay Base Rent and all other charges specified in this Lease for the period of occupancy.

2.04 Holding Over. Tenant shall vacate the Premises immediately upon the expiration of the Term or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages incurred by Landlord as a result of any delay by Tenant in vacating the Premises. If Tenant does not vacate the Premises upon the expiration of the Term or earlier termination of this Lease, Tenant's occupancy of the Premises will be a day-to-day tenancy, subject to all of the terms of this Lease, except that the Base Rent during the holdover period will be increased to an amount that is one-and-one-half (1½) times the Base Rent in effect on the expiration or termination of this Lease, computed on a daily basis for each day of the holdover period, plus all additional sums due under this Lease. This Section will not be construed as Landlord's consent for Tenant to hold over or to extend this Lease.

ARTICLE THREE

RENT AND SECURITY DEPOSIT

3.01 Manner of Payment. Tenant shall pay the Rent to Landlord at the address set forth in Section 1.02, unless another person is designated in Section 1.11, or to any other party or address Landlord may designate in any written notice delivered to Tenant. Landlord may designate, in a written notice delivered to Tenant, the party authorized to receive Rent and act on behalf of Landlord to enforce this Lease. Any such authorization will remain in effect until it is revoked by Landlord in a subsequent written notice delivered to Tenant. Any payments made to a third party designated by Landlord will be deemed made to Landlord when received by the designated third party. All sums payable by Tenant under this Lease, whether or not expressly denominated as Rent, will constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code and for all other purposes.

3.02 Time of Payment. Upon execution of this Lease, Tenant shall pay the installment of Base Rent for the first month of the Term for which Base Rent is due (which may be later than the first month of the Term, if there is a free rent period). On or before the **first day** of the next month and each month thereafter, the installment of Base Rent and other sums due under this Lease will be due and payable, in advance, without off-set, deduction or prior demand. Tenant shall cause payments to be properly mailed or otherwise delivered so as to be actually received (and not merely deposited in the mail) by Landlord (or the party identified in Section 1.11, or any other third party designated by Landlord) on or before the due date. If the Term commences or ends on a day other than the first or last day of a calendar month, the rent for any partial calendar month following the Commencement Date or preceding the end of the Term will be prorated. Tenant shall pay any such prorated portion for a partial calendar month at the beginning of the Term on the Commencement Date. Tenant shall pay any such prorated portion for a partial calendar month at the end of the Term on the first day of that calendar month.

3.03 Late Charges. Tenant's failure to promptly pay sums due under this Lease may cause Landlord to incur unanticipated costs. The exact amount of those costs is impractical or extremely difficult to ascertain. The costs may include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by any ground lease or deed of trust encumbering the Premises. Payments due to Landlord under this Lease are not an extension of credit. Therefore, if any payment under this Lease is not actually received on or before the due date (and not merely deposited in the mail), Landlord may, at Landlord's option and to the extent allowed by applicable law, impose a Late Charge on any late payments in an amount equal to 10% of the amount of the past due payment (the "Late Charge") after the payment is more than five days past due. A Late Charge may be imposed only once on each past due payment. Any Late Charge will be in addition to Landlord's other remedies for nonpayment of Rent. If any check tendered by Tenant under this Lease is dishonored for any reason, Tenant shall pay to Landlord a dishonored check fee of \$30.00, plus (at Landlord's option) a Late Charge as provided above until Good Funds (defined below) are received by Landlord. The parties agree that any Late Charge and dishonored check fee represent a fair and reasonable estimate of the costs Landlord will incur by reason of the late payment or dishonored check. If there are any Late Charges, dishonored check fees, installments of Base Rent, and any other unpaid charges or reimbursements due to Landlord, then Landlord may apply any payments received from Tenant to any amounts due in any order Landlord may choose. Notwithstanding the foregoing, Landlord will not impose a Late Charge as to the first late payment in any calendar year, unless Tenant fails to pay the late payment to Landlord within three business days after the delivery of a written notice from Landlord to Tenant demanding the late payment be paid. However, Landlord may impose a Late Charge without advance notice to Tenant on any subsequent late payment in the same calendar year.

3.04 Security Deposit. Upon execution of this Lease, in addition to the installment of Base Rent due under Section 3.02, and in addition to any other amounts that are due from Tenant upon the execution of this Lease, Tenant shall deliver to Landlord a Security Deposit in the amount stated in Section 1.09. Landlord may apply all or part of the Security Deposit to any unpaid Rent, and damages and charges for which Tenant is legally liable under this Lease, and damages and charges that result from a breach of this Lease, including but not limited to, the cost to cure Tenant's failure to comply with Section 7.05 and any other provision that requires Tenant to leave the Premises in a certain condition upon the expiration or termination of this Lease. If Landlord uses any part of the Security Deposit, Tenant shall

~~restore the Security Deposit to its full amount within 10 days after Landlord's written demand. Tenant's failure to restore the full amount of the Security Deposit within the time specified will be a default under this Lease. No interest will be paid on the Security Deposit. Landlord will not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After the expiration of this Lease, Landlord shall refund the unused portion of the Security Deposit, if any, to Tenant within 60 days after the date Tenant surrenders possession of the Premises and provides a written notice to Landlord of Tenant's forwarding address for the purpose of refunding the Security Deposit. The provisions of this Section will survive the expiration or termination of this Lease.~~

3.05 Good Funds Payments. If any two or more payments by check from Tenant to Landlord for Rent are dishonored and returned unpaid, thereafter Landlord may, at Landlord's option, by the delivery of a written notice to Tenant, require that all future payments of Rent for the remaining Term of this Lease must be made by cash, certified check, cashier's check, official bank check, money order, wire transfer or automatic electronic funds transfer ("Good Funds"), and that the delivery of Tenant's personal or corporate check will no longer constitute payment of Rent under this Lease. Any acceptance by Landlord of a payment for Rent by Tenant's personal or corporate check thereafter will not be construed as a waiver of Landlord's right to insist upon payment by Good Funds as set forth in this Section.

ARTICLE FOUR

TAXES

4.01 Payment by Landlord. Landlord shall pay the real estate taxes on the Premises during the Term, subject to reimbursement by Tenant pursuant to any other provision in this Lease.

4.02 Improvements by Tenant. If the real estate taxes levied against the Premises for the year in which the Term commences are increased as a result of any additions or improvements made by Tenant, or by Landlord at Tenant's request, Tenant shall pay to Landlord upon demand the amount of the increase and continue to pay the increase during the Term. Landlord shall use reasonable efforts to obtain from the tax assessor a written statement of the amount of the increase due to such additions or improvements.

~~**4.03 Joint Assessment.** If the real estate taxes are assessed against the Premises jointly with other property that is not part of the Premises, the real estate taxes applicable to the Premises will be equal to the amount bearing the same proportion to the aggregate assessment that the total square feet of building area in the Premises bears to the total square feet of building area included in the joint assessment. If there are no improvements on the Property or the other property, then land area will be used instead of building area for the calculation of the proportional assessment. If there are improvements on one of the jointly assessed properties but not on the other property, then the calculation of the proportional assessment must be done in a reasonable manner.~~

4.04 Personal Property Taxes. Tenant shall pay all taxes assessed against trade fixtures, furnishings, equipment, inventory, products, or any other personal property belonging to Tenant. Tenant shall use reasonable efforts to have Tenant's property taxed separately from the Premises. If any of Tenant's property is taxed with the Premises, Tenant shall pay the taxes for Tenant's property to Landlord within 15 days after Tenant receives a written statement from Landlord for the property taxes.

~~**4.05 Waiver of Right to Protest Taxes.** Unless otherwise provided in this Lease: (i) Landlord retains the right to protest the tax assessment of the Property, and Tenant waives the right to protest; and (ii) Tenant waives Landlord's obligation to provide Tenant with a notice of the tax valuation of the Property.~~

ARTICLE FIVE

INSURANCE AND INDEMNITY

~~**5.01 Property Insurance.** During the Term, Landlord shall maintain insurance policies covering damage to the Premises in an amount or percentage of replacement value as Landlord deems reasonable in relation to the age, location, type of construction and physical condition of the Premises~~

COMMERCIAL LEASE AGREEMENT Page 10

©NTECAR 2014 Form No. 2 (3/2014)

Produced with zipForm® by zipLegal - 10070 Fifteen Mile Road, Fraser, Michigan 48026 - www.zipLegal.com

Bchrens

~~and the availability of insurance at reasonable rates. The policies will provide protection against risks and causes of loss that Landlord reasonably deems necessary. Landlord may, at Landlord's option, obtain insurance coverage for Tenant's fixtures, equipment and improvements in or on the Premises. Promptly after the receipt of a written request from Tenant, Landlord shall provide a certificate of insurance showing the insurance coverage then in effect. Tenant shall, at Tenant's expense, obtain and maintain insurance on Tenant's fixtures, equipment and improvements in or on the Premises as Tenant reasonably deems necessary to protect Tenant's interest. Any property insurance carried by Landlord or Tenant will be for the sole benefit of the party carrying the insurance and under its sole control.~~

5.02 Increases in Premiums. Tenant shall not conduct or permit any operation or activity, or store or use any materials, in or around the Premises that would cause suspension or cancellation of any insurance policy carried by Landlord. If Tenant's use or occupancy of the Premises causes Landlord's insurance premiums to increase, then Tenant shall pay to Landlord, as additional Rent, the amount of the increase within 10 days after Landlord delivers written evidence of the increase to Tenant.

5.03 Liability Insurance. During the Term, Tenant shall maintain a commercial general liability insurance policy, at Tenant's expense, insuring Tenant against liability arising out of the use or occupancy of the Premises, and naming Landlord as an additional insured. The initial amounts of the insurance must be at least \$1,000,000 or, if the following blank is completed \$N/A for Each Occurrence, \$2,000,000 or, if the following blank is completed \$N/A General Aggregate per policy year, and \$10,000 for Medical Expense. If Tenant's liability insurance coverage is less than \$5,000,000, and if this box ☒ is checked, then Tenant must also maintain a commercial liability umbrella policy in amount to provide a combination of liability insurance coverage to equal a \$5,000,000 total limit. The coverage amounts will be subject to periodic increases as Landlord may reasonably determine from time to time. The amounts of the insurance will not limit Tenant's liability or relieve Tenant of any obligation under this Lease. The policies must contain cross-liability endorsements and must insure Tenant's performance of the indemnity provisions of Section 5.04. The policies must contain a provision that prohibits cancellation or modification of the policy except upon 30 days' prior written notice to Landlord. Tenant shall deliver a copy of the policy or certificate of insurance to Landlord before the Commencement Date and before the expiration of the policy during the Term. If Tenant fails to maintain the policy, Landlord may elect to maintain the insurance at Tenant's expense.

5.04 Indemnity. Landlord will not be liable to Tenant or to Tenant's employees, agents, invitees or visitors, or to any other person, for any injury to persons or damage to property on or about the Premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, subtenants, agents, licensees or concessionaires or any other person entering the Premises under express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of Tenant's business, or arising out of any breach or default by Tenant in the performance of Tenant's obligations under this Lease. Tenant hereby agrees to defend, indemnify and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury. Tenant will not be liable for any injury or damage caused by the negligence or misconduct of Landlord, or Landlord's employees or agents, and Landlord agrees to indemnify and hold Tenant harmless from any loss, expense or damage arising out of such damage or injury.

5.05 Waiver of Subrogation. Each party to this Lease waives any and every claim that arises or may arise in its favor against the other party during the Term of this Lease for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, to the extent the loss or damage is covered by and recoverable under valid and collectible insurance policies. These mutual waivers are in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties. Inasmuch as these mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party agrees to immediately give to each insurance company that has issued an insurance policy to such party written notice of the terms of such mutual waivers, and to cause the policies to be endorsed to prevent the invalidation of the insurance coverage by reason of these waivers.

ARTICLE SIX
USE OF PREMISES

6.01 Permitted Use. Tenant may use the Premises only for the Permitted Use stated in Section 1.10. Tenant acknowledges that: (i) the current use of the Premises or the improvements located on the Premises, or both, may not conform to city ordinances or restrictive covenants with respect to the permitted use, zoning, height limitations, setback requirements, minimum parking requirements, coverage ratio of improvements to land area, and other matters that may have a significant impact upon the Tenant's intended use of the Premises; (ii) Tenant has independently investigated and verified to Tenant's satisfaction the extent of any limitations or non-conforming uses of the Premises; and (iii) Tenant is not relying upon any representations of Landlord or the Brokers with respect to any such matters.

6.02 Compliance with Laws. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the Premises, all at Tenant's sole expense, including any expense or cost resulting from the construction or installation of fixtures and improvements or other accommodations for handicapped or disabled persons required for compliance with governmental laws and regulations, including but not limited to the Texas Architectural Barriers Act (the "TABA") and the Americans with Disabilities Act (the "ADA"). To the extent any alterations to the Premises are required by the TABA, the ADA or other applicable laws or regulations, Tenant shall bear the expense of the alterations. ~~To the extent any alterations to areas of the Property outside the Premises are required by the TABA, the ADA or other applicable laws or regulations (for "path of travel" requirements or otherwise), Landlord shall bear the expense of the alterations.~~

6.03 Certificate of Occupancy. ~~If required, Tenant shall apply for Certificate of Occupancy from the municipality in which the Property is located before the Commencement Date, and obtain a Certificate of Occupancy before Tenant occupies the Premises. If Tenant is unable to obtain a Certificate of Occupancy after making an application and diligently pursuing it, then Tenant may terminate this Lease by delivering a written notice to Landlord, unless either Landlord or Tenant is willing and able to cure the defects that prevented the issuance of the Certificate of Occupancy. Either Landlord or Tenant may cure any such defects, at their own expense, including any repairs, replacements, or installations of any items that are not presently existing on the Premises, but neither of them have any obligation to do so (unless another provision of this Lease states otherwise). If Tenant delivers a written termination notice to Landlord under this Section, and then any defects are cured and a Certificate of Occupancy is issued within 15 days after Tenant delivered the notice, then this Lease will remain in force. If this Lease is terminated because Landlord and Tenant cannot get a Certificate of Occupancy, then Landlord will return to Tenant any prepaid rent and any Security Deposit, and the parties will have no further obligations under this Lease. References in this Lease to a "Certificate of Occupancy" mean a Certificate of Occupancy sufficient to allow the Tenant to occupy the Premises for the Permitted Use.~~

6.04 Signs. Without the prior written consent of Landlord, Tenant may not place any signs, ornaments or other objects on the Premises or the Property, including but not limited to the roof or exterior of the building or other improvements on the Property, or paint or otherwise decorate or deface the exterior of the building or other improvements on the Property. Any signs installed by Tenant must conform to applicable laws, deed restrictions, and other applicable requirements. Tenant must remove all signs, decorations and ornaments at the expiration or termination of this Lease, and must repair any damage and close any holes caused by installation or removal.

6.05 Utility Services. ~~Unless otherwise provided in this Lease, Tenant shall pay the cost of all Utilities used for the Premises, and the cost of replacing light bulbs and tubes. Unless otherwise required by law, Landlord is the party entitled to designate utility and telecommunication service providers to the Property and the Premises. Landlord may, at Landlord's option, allow Tenant to select the provider. If Tenant selects the provider, any access or alterations to the Property or the Premises necessary for the Utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold or delay. If Landlord incurs any utility or connection charges that~~

Tenant is responsible to pay and Landlord pays the charges, Tenant shall reimburse Landlord immediately upon receipt of a written notice from Landlord stating the amount of the charges.

6.06 Landlord's Access. ~~Landlord and Landlord's agents will have the right to, upon reasonable advance notice, and without unreasonably interfering with Tenant's business, enter the Premises: (a) to inspect the general condition and state of repair of the Premises, (b) to make repairs required or permitted under this Lease, (c) to show the Premises or the Property to any prospective tenant or purchaser, and (d) for any other reasonable purpose. If Tenant changes the locks on the Premises, Tenant must provide Landlord with a copy of each separate key upon Landlord's request. During the last 150 days of the Term, Landlord and Landlord's agents may erect signs on or about the Premises advertising the Premises for lease or for sale.~~

6.07 Possession. If Tenant pays the Rent, properly maintains the Premises, and complies with all other terms of this Lease, Tenant may occupy and enjoy the Premises for the full Term, subject to the provisions of this Lease.

6.08 Exemptions from Liability. Landlord will not be liable for any damage to the business (including any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees or customers, or for any injury to Tenant or Tenant's employees, invitees, customers or any other person in or about the Premises, whether the damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or wind; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising on or about the Premises or other portions of the Property, or from other sources or places; or (d) any act or omission of any other occupant of the Property. The provisions of this Section will not, however, exempt Landlord from liability for Landlord's gross negligence or willful misconduct.

ARTICLE SEVEN

PROPERTY CONDITION, MAINTENANCE, REPAIRS AND ALTERATIONS

7.01 Property Condition. ~~Except as disclosed in writing by Landlord to Tenant before the execution of this Lease, to the best of Landlord's actual knowledge: (i) the Premises have no known latent structural or construction defects of a material nature; and (ii) none of the improvements to the Premises have been constructed with materials known to be a potential health hazard to occupants of the Premises. Unless otherwise expressly set forth in this Lease, Landlord represents that on the Commencement Date (and for a period of 30 days thereafter): (a) the fixtures and equipment serving the Premises are in good operating condition, including the plumbing, electrical and lighting systems, any fire protection sprinkler system, the HVAC (defined below) systems and equipment, the roof, skylights, doors, overhead doors, windows, deck levelers and elevators; and (b) the interior of the Premises is in good condition. Tenant will have a period of 30 days after the Commencement Date to inspect the Premises and notify Landlord in writing of any defects and maintenance, repairs or replacements required to the above named fixtures, equipment and interior. Within a reasonable period of time after the timely receipt of any such written notice from Tenant, Landlord shall, at Landlord's expense, correct the defects and perform the maintenance, repairs and replacements.~~

7.02 Acceptance of Premises. Tenant has inspected, or has had an opportunity to inspect, the Premises, before the execution of this Lease. Tenant has determined that the Premises may be used for the Permitted Use. Subject to the provisions in Section 7.01, and any other express obligations of Landlord in this Lease to construct any improvements, make repairs, or correct defects, Tenant agrees to accept the Premises in "AS IS" condition and with all faults (other than latent defects). To the extent permitted by applicable law, Tenant waives any implied warranties of Landlord as to the quality or condition of the Premises or the Property, or as to the fitness or suitability of the Premises or the Property for any particular use.

7.03 Maintenance and Repairs. Landlord will not be required to perform any maintenance or repairs, or management services, in the Premises, ~~except as otherwise provided in this Lease.~~ Tenant will be fully responsible, at Tenant's expense, for all maintenance and repairs, and management services, ~~other than those that are expressly set forth in this Lease as Landlord's responsibility.~~

A. Landlord's Obligations.

~~(1) Subject to the provisions of Article Eight (Damage or Destruction) and Article Nine (Condemnation) and except for damage caused by any act or omission of Tenant, Landlord shall keep the roof, skylights, foundation, structural components and the structural portions of exterior walls of the Premises in good order, condition and repair. Landlord will not be obligated to maintain or repair windows, doors, overhead doors, plate glass or the surfaces of walls. In addition, Landlord will not be obligated to make any repairs under this Section until a reasonable time after receipt of written notice from Tenant of the need for repairs. If any repairs are required to be made by Landlord, Tenant shall, at Tenant's sole cost and expense, promptly remove Tenant's furnishings, fixtures, inventory, equipment and other property, to the extent required to enable Landlord to make repairs. Landlord's liability under this Section will be limited to the cost of those repairs or corrections. Tenant waives the benefit of any present or future law that might give Tenant the right to repair the Premises at Landlord's expense or to terminate this Lease because of the condition.~~

~~(2) All repairs, maintenance, management and other services to be performed by Landlord or Landlord's agents involve the exercise of professional judgment by service providers, and Tenant expressly waives any claims against Landlord for breach of warranty arising from the performance of those services.~~

B. Tenant's Obligations. Subject to the provisions of ~~Section 7.01, Section 7.03A, Article Eight (Damage or Destruction) and Article Nine (Condemnation)~~, Tenant shall, at all times, keep all other portions of the Premises in good order, condition and repair (except for normal wear and tear), including, but not limited to, maintenance, repairs and all necessary replacements of the windows, plate glass, doors, overhead doors, HVAC equipment, electrical and lighting systems, fire protection sprinkler system, dock levelers, elevators, interior and exterior plumbing, the interior and exterior of the Premises in general, pest control and extermination, down spouts, gutters, paving, railroad siding, care of landscaping and regular mowing of grass. In addition, Tenant shall, at Tenant's expense, repair any damage to any portion of the Property, ~~including the roof, skylights, foundation, or structural components and exterior walls of the Premises,~~ caused by Tenant's acts or omissions. ~~If Tenant fails to maintain and repair the Property as required by this Section, Landlord may, on 10 days' prior written notice, enter the Premises and perform the maintenance or repair on behalf of Tenant, except that no notice is required in case of emergency, and Tenant shall reimburse Landlord immediately upon demand for all costs incurred in performing the maintenance or repair, plus a reasonable service charge.~~

C. HVAC Service. This Section pertains to the heating, ventilation and air conditioning ("HVAC") systems and equipment that service the Premises. ~~[Check one box only.]~~

- ☐ ~~(1) Landlord is obligated to provide the HVAC services to the Premises only during the operating hours of the Property (as described below).~~
- ☐ ~~(2) Landlord will provide the HVAC services to the Premises during the operating hours of the Property (as described below) for no additional charge and will, at Tenant's request, provide HVAC services to the Premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph promptly after receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services in advance.~~
- ☐ ~~(3) Tenant will pay for the HVAC services under this Lease. For any HVAC system that services only the Premises, Tenant shall, at Tenant's own cost and expense, enter into a regularly scheduled preventative maintenance and service contract for all such HVAC systems and equipment during the Term. If Tenant fails to enter into such a service contract acceptable to Landlord, Landlord may do so on Tenant's behalf and Tenant agrees to pay Landlord the cost and expense thereof, plus a reasonable service charge, periodically upon demand.~~

D. Operating Hours of the Property. The operating hours of the Property are the times reasonably determined by Landlord unless they are specified here. *[specify the operating hours of the Property including the days of the week, and whether Saturdays, Sundays and holidays are included]:* 24 hours a day, 365 days a year

E. Cleaning. Tenant must keep the Premises clean and sanitary and promptly dispose of all trash in appropriate receptacles. Tenant will provide, at Tenant's expense, janitorial services to the Premises, ~~unless this box ☐ is checked, in which case Landlord will provide janitorial services to the Premises that are customary for the property type. Tenant will maintain, at Tenant's expense, any grease trap on the Property that Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.~~

7.04 Alterations, Additions and Improvements. ~~Tenant may not create any openings in the roof or exterior walls without the prior written consent of Landlord. Tenant may not make any alterations, additions or improvements to the Premises ("Alterations") without the prior written consent of Landlord. However, Tenant is not required to obtain the Landlord's prior written consent for non-structural Alterations that do not cost more than \$5,000 and that do not modify or affect the roof, plumbing, HVAC systems or electrical systems. Consent for non-structural Alterations in excess of \$5,000 or that modify or affect plumbing, HVAC systems or electrical systems will not be unreasonably withheld, conditioned or delayed by Landlord. Tenant may erect or install trade fixtures, shelves, bins, machinery, HVAC systems, and refrigeration equipment, provided that Tenant complies with all applicable governmental laws, ordinances, codes, and regulations. At the expiration or termination of this Lease, Tenant may, subject to the restrictions of Section 7.05, remove items installed by Tenant, provided Tenant is not in default at the time of the removal and Tenant repairs, in a good and workmanlike manner, any damage caused by the installation or removal. Tenant shall pay for all costs incurred or arising out of Alterations and will not permit any mechanic's or materialman's lien to be filed against the Premises or the Property. Upon request by Landlord, Tenant shall deliver to Landlord proof of payment, reasonably satisfactory to Landlord, of all costs incurred in connection with any Alterations.~~

7.05 Condition upon Termination. ~~Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and in the same condition as received, except for normal wear and tear and any damage caused by a casualty that Tenant is not otherwise obligated to repair under any provision of this Lease. Tenant will not be obligated to repair any damage that Landlord is required to repair under Article Seven (Property Condition) or Article Eight (Damage or Destruction). In addition, Landlord may require Tenant to remove any Alterations before the expiration or termination of this Lease and to restore the Premises to their prior condition, all at Tenant's expense. However, Tenant will not be required to remove any Alterations that were made with Landlord's consent or that were otherwise permitted under the terms of this Lease. All Alterations that Tenant does not remove will become Landlord's property upon the expiration or termination of this Lease. In no event may Tenant remove any of the following items without Landlord's prior written consent: (i) electrical wiring or power panels; (ii) lighting or lighting fixtures; (iii) wall coverings, drapes, blinds or other window coverings; (iv) carpets or other floor coverings; (v) HVAC equipment; (vi) plumbing equipment; (vii) fencing or gates; or (viii) any fixtures, equipment or other items that, if removed, would affect the operation or the appearance of the Property. However, Tenant may remove Tenant's trade fixtures, equipment used in Tenant's business, and personal property. The provisions of this Section will survive the expiration or termination of this Lease.~~

ARTICLE EIGHT

DAMAGE OR DESTRUCTION

~~8.01 Notice. If any buildings or other improvements situated on the Property are damaged or destroyed by fire, flood, windstorm, tornado or other casualty, Tenant shall immediately give written notice of the damage or destruction to Landlord.~~

~~8.02 Partial Damage. If the Premises are damaged by fire, tornado or other casualty, and rebuilding and repairs can be completed within 120 days after the date Landlord receives written notification from Tenant of the occurrence of the damage, then this Lease will not terminate, but Landlord shall proceed with reasonable diligence to rebuild and repair the Premises (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) to substantially the condition they were in before the damage. To the extent the Premises cannot be occupied (in whole or in part) after the casualty, the Rent payable under this Lease during the period the Premises cannot be fully occupied will be adjusted equitably.~~

~~If the casualty occurs during the last 18 months of the Term, Landlord will not be required to rebuild or repair the damage unless Tenant exercises Tenant's renewal option (if any) within 15 days after the date Landlord receives written notification of the occurrence of the damage. If the casualty occurs during the last 18 months of the Term and Tenant does not so exercise Tenant's renewal option, or if there is no renewal option in this Lease, Landlord may, at Landlord's option, terminate this Lease by delivering a written termination notice to Tenant, in which case the Rent will be abated for the unexpired portion of the Term, effective on the date Landlord received written notification of the damage.~~

~~8.03 Substantial or Total Destruction. If the Premises are substantially or totally destroyed by fire, tornado, or other casualty, or so damaged that rebuilding and repairs cannot reasonably be completed within 120 days after the date Landlord receives written notification from Tenant of the occurrence of the damage, either Landlord or Tenant may terminate this Lease by promptly delivering a written termination notice to the other party, in which event the monthly installments of Rent will be abated for the unexpired portion of the Term, effective on the date of the damage or destruction. If neither party promptly terminates this Lease, Landlord shall proceed with reasonable diligence to rebuild and repair the Premises (except that Tenant shall rebuild and repair Tenant's fixtures and improvements in the Premises). To the extent the Premises cannot be occupied (in whole or in part) after the casualty, the Rent payable under this Lease during the period the Premises cannot be fully occupied will be adjusted equitably.~~

ARTICLE NINE

CONDEMNATION

~~If, during the Term, all or a substantial part of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or are conveyed to the condemning authority under threat of condemnation, this Lease will terminate and the monthly installments of Rent will be abated during the unexpired portion of the Term, effective on the date of the taking. If less than a substantial part of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is conveyed to the condemning authority under threat of condemnation, Landlord shall promptly, at Landlord's expense, restore and reconstruct the Premises (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) in order to make the Premises reasonably suitable for the Permitted Use. The Rent payable under this Lease during the unexpired portion of the Term will be adjusted equitably. If there is a taking of the Property that has a material, adverse effect on the operation of Tenant's business in the Premises, then the Rent will be adjusted equitably. Landlord and Tenant will each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceeding. The termination of this Lease will not affect the rights of the parties to these awards.~~

ARTICLE TEN

ASSIGNMENT AND SUBLETTING

Tenant may not assign this Lease or sublet the Premises or any portion thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed. Any assignment or subletting will be expressly subject to all terms and provisions of this Lease, including the provisions of Section 6.01 pertaining to the use of the Premises. In the event of any assignment or subletting, Tenant will remain fully liable for the full performance of all of Tenant's obligations under this Lease. Tenant may not assign Tenant's rights under this Lease or sublet the Premises without first obtaining a written agreement from the assignee or sublessee whereby the assignee or sublessee agrees to assume the obligations of Tenant under this Lease and to be bound by the terms of this Lease. If a Default occurs while the Premises is assigned or sublet, Landlord may, at Landlord's option, in addition to any other remedies provided in this Lease or by law, collect directly from the assignee or subtenant all rents becoming due under the terms of the assignment or subletting and apply the rents against any sums due to Landlord under this Lease. No direct collection by Landlord from any assignee or subtenant will release Tenant from Tenant's obligations under this Lease.

ARTICLE ELEVEN

DEFAULT AND REMEDIES

11.01 Default. Each of the following events is a default under this Lease (a "Default"):

- A. Failure of Tenant to pay any installment of the Rent or other sum payable to Landlord under this Lease on the date that it is due, and the continuance of that failure for a period of ~~five~~ ^{TEN} days after Landlord delivers written notice of the failure to Tenant. This clause will not be construed to permit or allow a delay in paying Rent beyond the due date and will not affect Landlord's right to impose a Late Charge as permitted in Section 3.03;
- B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of Rent or other sum of money, and the continuance of that failure for a period of 30 days after Landlord delivers written notice of the failure to Tenant;
- C. Failure of Tenant or any guarantor of Tenant's obligations under this Lease to pay its debts as they become due or an admission in writing of inability to pay its debts, or the making of a general assignment for the benefit of creditors;
- D. The commencement by Tenant or any guarantor of Tenant's obligations under this Lease of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;
- E. The commencement of any case, proceeding or other action against Tenant or any guarantor of Tenant's obligations under this Lease seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and Tenant or any guarantor: (i) fails to obtain a dismissal of such case, proceeding, or other action within 60 days of its commencement; or (ii) converts the case from one chapter of the Federal Bankruptcy Code to another chapter; or (iii) is the subject of an order of relief that is not fully stayed within seven business days after the entry thereof; and
- F. ~~Vacancy or abandonment by Tenant of any substantial portion of the Premises or cessation of the use of the Premises for the purpose leased, and the continuance of that vacancy,~~

~~abandonment or cessation for a period of 30 days after Landlord delivers a written notice to Tenant.~~

11.02 Remedies. Upon the occurrence of any Default listed in Section 11.01, Landlord may pursue any one or more of the following remedies without any prior notice or demand.

- A. Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to surrender the Premises, Landlord may, without prejudice to any other remedy that Landlord may have for possession of the Premises or Rent in arrears, enter upon and take possession of the Premises and expel Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for any claim for damages due to the termination of this Lease or termination of possession. Tenant shall pay to Landlord on demand the amount of all Rent and loss and damage Landlord may suffer by reason of the termination or inability to relet the Premises up to the date of termination, in addition to any other liabilities that survive the termination of this Lease.
- B. Landlord may enter upon and take possession of the Premises, without terminating this Lease and without being liable for any claim for damages due to termination of possession, and expel Tenant and any other person who may be occupying the Premises or any part thereof. ~~Landlord may relet the Premises and receive rent from the new occupant. Tenant agrees to pay to Landlord monthly, or on demand from time to time, any deficiency that may arise by reason of any such reletting. In determining the amount of the deficiency, professional service fees, reasonable attorneys' fees, court costs, remodeling expenses and other costs of reletting will be subtracted from the amount of rent received from the new occupant.~~
- C. ~~Landlord may enter upon the Premises, without terminating this Lease and without being liable for any claim for damages due to such entry, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for expenses that Landlord incurs in performing Tenant's obligations under this Lease, together with interest thereon at the rate of 12% per annum from the date spent until paid.~~
- D. Landlord may sue Tenant for damages for breach of this Lease after Tenant's Default and abandonment of the Premises, or after Landlord terminates Tenant's possession and Tenant vacates the Premises, in which case the measure of damages is the sum of: (i) the unpaid Rent up to the date of the abandonment or vacancy, plus (ii) the difference between the Rent for the remainder of the Term after abandonment or vacancy, and the fair market rental value of this Lease for the remainder of the Term after abandonment or vacancy, such difference to be discounted to present value at a rate equal to the rate of interest that is allowed by law in the State of Texas when the parties to a contract have not agreed on any particular rate of interest (or, in the absence of such law, at the rate of 6% per annum). Neither the enforcement or collection by Landlord of those amounts nor the payment by Tenant of those amounts will constitute a waiver by Landlord of any breach, existing or in the future, of any of the terms or provisions of this Lease by Tenant or a waiver of any rights or remedies that the Landlord may have with respect to any breach.
- E. ~~In addition to the foregoing remedies, Landlord may change or modify the locks on the Premises if Tenant fails to pay the Rent when due. Landlord will not be obligated to provide another key to Tenant or allow Tenant to regain entry to the Premises unless and until Tenant pays Landlord all Rent that is delinquent. Tenant agrees that Landlord will not be liable for any damages resulting to the Tenant from the lockout. When Landlord changes or modifies the locks, Landlord or Landlord's agent shall post a written notice in accordance with Section 93.002 of the Texas Property Code, or its successor statute. Tenant may be subject to legal liability if Tenant or Tenant's representative tampers with any lock after the locks have been changed or modified.~~
- F. No re-entry or taking possession of the Premises by Landlord will be construed as an election to terminate this Lease, unless a written notice of that intention is given to Tenant. Notwithstanding any re-entry, taking possession or reletting, Landlord may, at any time

thereafter, elect to terminate this Lease for a previous Default. Pursuit of any of the foregoing remedies will not preclude pursuit of any other remedies provided by law, nor will pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any Rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the provisions in this Lease. Failure of Landlord to declare any Default immediately upon its occurrence, or failure to enforce one or more of Landlord's remedies, or forbearance by Landlord to enforce one or more of Landlord's remedies upon a Default, will not be deemed to constitute a waiver of any of Landlord's remedies for any Default. Pursuit of any one of the remedies will not preclude pursuit by Landlord of any of the other remedies provided in this Lease. The loss or damage that Landlord may suffer by reason of a Default by Tenant under this Lease, or the deficiency from any reletting, will include the expense of taking possession and any repairs performed by Landlord after a Default by Tenant. If Landlord terminates this Lease at any time for any Default, in addition to other Landlord's remedies, Landlord may recover from Tenant all damages Landlord may incur by reason of the Default, including the cost of recovering the Premises and the Rent then remaining unpaid.

- G. Nothing in this Lease will be construed as imposing any duty upon Landlord to relet the Premises. Landlord will have no duty to mitigate Landlord's damages ~~except as required by applicable law. Any duty imposed by law on Landlord to mitigate damages after a Default by Tenant will be satisfied if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:~~

~~(1) Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenant for the Premises until Landlord obtains full possession of the Premises including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;~~

~~(2) Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Property suitable for the prospective tenant's use is (or soon will be) available;~~

~~(3) Landlord will not be obligated to lease the Premises to a Substitute Tenant for an amount less than the current fair market rent then prevailing for similar uses in comparable buildings in the same market area as the Property, nor will Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Property;~~

~~(4) Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:~~

~~(i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Property;~~

~~(ii) adversely affect the reputation of the Property; or~~

~~(iii) be incompatible with other uses of the Property.~~

~~(5) Landlord will not be obligated to enter into a lease with a Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to pay the Rent under the new lease and operate the Premises in a first class manner; and~~

~~(6) Landlord will not be required to spend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:~~

~~(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's Default under this Lease); or~~

~~(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the Substitute Tenant.~~

- H. No right or remedy of Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy now or hereafter existing under this Lease, at law, in equity or by statute. **Landlord will not be liable for any damages resulting to Tenant from any right or remedy exercised by Landlord, regardless of the cause, even if it is caused by the sole, joint or concurrent negligence of Landlord.**

11.03 Notice of Default. Tenant shall give written notice of any failure by Landlord to perform any of Landlord's obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Premises whose name and address have been furnished to Tenant in writing. Landlord will not be in default under this Lease unless Landlord (or the ground lessor, mortgagee or beneficiary) fails to cure the nonperformance within 30 days after receipt of Tenant's notice. However, if the nonperformance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is thereafter diligently pursued to completion.

TEN

11.04 Limitation of Landlord's Liability. As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Premises, or the leasehold estate under a ground lease of the Premises, at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such title or estate. Any Landlord who transfers its title, estate or other interest is relieved of all liability with respect to the obligations of Landlord under this Lease accruing on or after the date of the transfer, and Tenant agrees to recognize the transferee as Landlord under this Lease. ~~However, each Landlord shall deliver to its transferee the Security Deposit held by Landlord, to the extent the Security Deposit has not then been applied under the terms of this Lease.~~

ARTICLE TWELVE

LANDLORD'S CONTRACTUAL LIEN

In addition to the statutory Landlord's lien, Tenant hereby grants to Landlord a security interest to secure payment of all Rent and other sums of money becoming due under this Lease from Tenant, upon all inventory, goods, wares, equipment, fixtures, furniture and all other personal property of Tenant situated in or on the Premises, together with the proceeds from the sale thereof. Tenant may not remove such property without the consent of Landlord until all Rent in arrears and other sums then due to Landlord under this Lease have been paid. Upon the occurrence of a Default, Landlord may, in addition to any other remedies provided in this Lease or by law, enter upon the Premises and take possession of any and all ~~goods, wares, equipment, fixtures, furniture and other personal property~~ of Tenant situated in or on the Premises without liability for trespass or conversion, and sell the property at public or private sales, with or without having the property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Unless otherwise required by law, notice to Tenant of the sale will be deemed sufficient if given in the manner prescribed in this Lease at least 10 days before the time of the sale. Any public sale made under this Article will be deemed to have been conducted in a commercially reasonable manner if held on the Premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in the county where the Premises is located for five consecutive days before the date of the sale. Landlord or its assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition pursuant to this Article, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this Article. Any surplus will be paid to Tenant or as otherwise required by law, and Tenant shall promptly pay any deficiencies. Landlord is authorized to file a financing statement to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Texas Business and Commerce Code in effect in the State of Texas. Provided Tenant is not in default under any of the

terms of this Lease, upon written request by Tenant, Landlord shall deliver a written subordination of Landlord's statutory and contractual liens to any liens and security interests securing any institutional third party financing of Tenant. Landlord shall not unreasonably withhold or delay the delivery of Landlord's written subordination.

ARTICLE THIRTEEN

PROTECTION OF LENDERS

13.01 Subordination and Attornment. Landlord may subordinate this Lease to any future ground Lease, deed of trust or mortgage encumbering the Premises, and advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Landlord's right to subordinate is subject to Landlord providing Tenant with a written Subordination, Non-disturbance and Attornment Agreement from the ground lessor, beneficiary or mortgagee wherein Tenant's right to peaceable possession of the Premises during the Term will not be disturbed if Tenant pays the Rent and performs all of Tenant's obligations under this Lease and is not otherwise in default, in which case Tenant shall attorn to the transferee of or successor to Landlord's interest in the Premises and recognize the transferee or successor as Landlord under this Lease. Tenant's rights under this Lease are subordinate to any existing ground lease, deed of trust or mortgage encumbering the Premises. However, if any ground lessor, beneficiary or mortgagee elects to have this Lease be superior to its ground lease, deed of trust or mortgage and gives Tenant written notice thereof, then this Lease will be deemed superior to the ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of the ground lease, deed of trust or mortgage or the date of recording thereof.

13.02 Signing of Documents. Tenant shall sign and deliver any document that may be requested to evidence any attornment or subordination, or any agreement to attorn or subordinate, as long as the document is consistent with the provisions of Section 13.01. If Tenant fails to do so within ~~40 days~~ TWENTY after a written request, Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver the attornment or subordination document.

13.03 Estoppel Certificates.

- A. Upon Landlord's written request, Tenant shall execute and deliver to Landlord a written statement (an "Estoppel Certificate") certifying:

- (1) whether Tenant is an assignee or subtenant;
- (2) the Expiration Date of this Lease;
- (3) the number of renewal options under this Lease, if any, and the total period of time covered by the renewal options;
- (4) that none of the terms or provisions of this Lease have been changed since the original execution of this Lease, except as shown on any attached amendments or modifications;
- (5) that no default exists under the terms of this Lease by either Landlord or Tenant;
- (6) that Tenant has no claim against Landlord under this Lease and has no defense or right of offset against collection of Rent or other charges accruing under this Lease;
- (7) the amount and payment date of the last payment of Rent, the period of time covered by that payment, and the amount of any rental payments made in advance;
- (8) the amount of any Security Deposit and other deposits, if any; and
- (9) the identity and address of any guarantor of this Lease.

Tenant shall deliver the statement to Landlord within 10 days after Landlord's request. Landlord may forward any such statement to any prospective purchaser or lender of the Premises. The purchaser or lender may rely conclusively upon the statement as true and correct.

- B. If Tenant does not deliver the Estoppel Certificate to Landlord within the 10-day period, Landlord, and any prospective purchaser or lender, may conclusively presume and rely upon the following facts: (1) that the terms and provisions of this Lease have not been

changed except as otherwise represented by Landlord; (2) that this Lease has not been terminated except as otherwise represented by Landlord; (3) that not more than one monthly installment of Base Rent and other charges have been paid in advance; (4) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent; and (5) that Landlord is not in default under this Lease. In such event, Tenant will be estopped from denying the truth of the presumed facts.

- C. Also, if Tenant does not deliver the Estoppel Certificate to Landlord within the 10-day period, Landlord may deliver a written notice to Tenant stating that Tenant must deliver an Estoppel Certificate under this Section within five days after Tenant receives the notice. If Tenant does not deliver an Estoppel Certificate to Landlord within five days after Tenant receives the notice, then Tenant's failure to deliver an Estoppel Certificate will constitute a Default under this Lease, notwithstanding any longer period of time under Section 11.01 that Tenant would otherwise be allowed to cure a failure before the failure would become a Default.

~~13.04 Tenant's Financial Condition. Within 10 days after a written request from Landlord, but not more than two times in any calendar year, Tenant shall deliver to Landlord financial statements as are reasonably required by Landlord to verify the net worth of Tenant, or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by the lender to facilitate the financing or refinancing of the Premises. Tenant represents to Landlord that each financial statement is a true, complete, and accurate statement as of the date of the statement. All financial statements will be confidential and will be used only for the purposes set forth in this Lease.~~

ARTICLE FOURTEEN

ENVIRONMENTAL REPRESENTATIONS AND INDEMNITY

14.01 Tenant's Compliance with Environmental Laws. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to Tenant's use of the Property and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as defined in Section 14.05), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupancy of the Property.

14.02 Tenant's Indemnification. Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Property by Tenant, or Tenant's agents, employees, contractors or invitees without the prior written consent of Landlord. If the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property or any other property, or if contamination of the Property or any other property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or unusable space or of any amenity or appurtenance of the Property, damages arising from any adverse impact on marketing of building space or land area, sums paid in settlement of claims, reasonable attorneys' fees, court costs, consultant fees and expert fees) that arise during or after the Term as a result of the contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial work, removal or restoration work required by any Federal, State or local government agency because of Hazardous Materials present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property (or any other property) caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided that Landlord's approval of such actions is first obtained.

14.03 Landlord's Representations. Landlord represents, to the best of Landlord's actual knowledge, that: (i) any handling, transportation, storage, treatment or usage of Hazardous Materials that has occurred on the Property to date has been in compliance with all applicable Federal, State, and local laws, regulations and ordinances; and (ii) no leak, spill, release, discharge, emission or disposal of Hazardous Materials has occurred on the Property to date and that the soil or groundwater on or under the Property is free of Hazardous Materials as of the Commencement Date, unless expressly disclosed by Landlord to Tenant in writing.

14.04 Landlord's Indemnification. Landlord hereby indemnifies, defends and holds Tenant harmless from any claims, judgments, damages, penalties, fines, costs, liabilities, (including sums paid in settlements of claims) or loss, including, without limitation, reasonable attorneys' fees, court costs, consultant fees, and expert fees, which arise during or after the Term of this Lease from or in connection with the presence or suspected presence of Hazardous Materials in the soil or groundwater on or under the Property, unless the Hazardous Material is released by Tenant or is present as a result of the negligence or willful conduct of Tenant. Without limiting the generality of the foregoing, the indemnification provided by this Section will specifically cover costs incurred in connection with any investigation of site conditions or any clean up, remedial work, removal or restoration work required by any Federal, State or local governmental authority.

14.05 Definition. For purposes of this Lease, the term "Hazardous Materials" means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, the Water Pollution Control Act, as amended, the Solid Waste Disposal Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, or rule, whether existing as of the date of this Lease or subsequently enacted.

14.06 Survival. The representations and indemnities contained in this Article Fourteen will survive the expiration or termination of this Lease.

ARTICLE FIFTEEN

PROFESSIONAL SERVICE FEES

15.01 Amount and Manner of Payment. Professional service Fees due to the Principal Broker and Cooperating Broker (together, the "Brokers") will be calculated and paid as follows:

- A. Lump Sum.** Unless the box for Section 15.01B is checked in Section 1.14A, then Landlord agrees to pay to each of the Brokers a lump sum professional service Fee for negotiating this Lease, plus any applicable sales taxes, equal to: (i) the percentages stated in Section 1.14A of the total Base Rent to become due to Landlord during the Term, if the blanks for percentages are completed; or (ii) the amounts per square foot in the Premises stated in Section 1.14A, if the blanks for amounts per square foot are completed. The Fees will be paid to the Brokers (i) one half on the date of final execution of this Lease, and (ii) the balance on the Commencement Date of this Lease.
- B. Monthly.** If the box for this Section 15.01B is checked in Section 1.14A, then Landlord agrees to pay to each of the Brokers a monthly professional service Fee for negotiating this Lease, plus any applicable sales taxes, equal to the percentages stated in Section 1.14A of each monthly Base Rent payment at the time the payment is due.

15.02 Payments on Renewal, Expansion or New Lease. Subject to the termination date stated in this Section below, if Tenant or Tenant's successors or assigns: (a) exercises any right or option to renew or extend the Term (whether contained in this Lease or in any amendment to this Lease) or enters into a new lease covering the Premises, a portion of the Premises, or the Premises and additional space; or (b) enters into any new lease, expansion or other rental agreement as to any premises located on or constituting all or part of any real property owned by Landlord adjacent to the Property, then Landlord shall pay to each of the Brokers an additional Fee covering the full period of

~~the renewal, extension, new lease, expansion or other rental agreement. The additional Fees will be due on the date of exercise of a renewal option, or the date of execution in the case of a new lease, expansion or other agreement. The additional Fees will be computed and paid under Section 15.01A or Section 15.01B above (whichever has been made applicable under Section 1.14), as if a new lease had been made for such period of time. The Brokers' right to receive these additional Fees will terminate on the date that is 10 years after the expiration of the Term of this Lease, as amended or extended.~~

~~**15.03 Payments on Sale.** Subject to the termination date stated in this Section below, if Tenant or Tenant's successors or assigns, purchases the Premises pursuant to a purchase option contained in this Lease (or in any amendment to this Lease or any other agreement) or otherwise purchases the Premises, the Property or any portion of either the Premises or the Property, then Landlord shall pay to each of the Brokers a Fee equal to the percentages stated in Section 1.14B of the purchase price, payable in Good Funds at the closing. Upon the closing of a sale to Tenant, any monthly lease Fees will terminate upon payment of the Fee on the sale. The Brokers' right to receive the Fees set forth in this Section 15.03 will terminate on the date that is 10 years after the expiration of the Term of this Lease, as amended or extended.~~

~~**15.04 Other Brokers.** Both Landlord and Tenant represent to the other party that they have had no dealings with any person, firm or agent in the negotiation of this Lease other than the Broker(s) named in this Lease, and no other broker, agent, person, firm or entity other than the Broker(s) is entitled to any commission or fee in connection with this Lease.~~

~~**15.05 Landlord's Liability.** Landlord will be liable for payment of all Fees solely to the Brokers, and Landlord will not be obligated to pay any claims by any undisclosed broker. The Principal Broker may pay a portion of the Fee to any Cooperating Broker pursuant to a separate agreement between the Brokers.~~

~~**15.06 Joint Liability of Tenant.** If Tenant enters into any new lease, extension, renewal, expansion, or other agreement to rent, occupy, or purchase any property described in Section 15.02 or Section 15.03 within the time specified in these Sections, the negotiations must be communicated through the Principal Broker (which may be done through the Cooperating Broker), otherwise Tenant will be jointly and severally liable with Landlord for any payments due or to become due to the Principal Broker.~~

~~**15.07 Assumption on Sale.** In the event of a sale or other transfer of the Premises by Landlord, Landlord shall assign this Lease to the purchaser or other transferee, and obtain from the purchaser or other transferee an Assumption Agreement in recordable form whereby the purchaser or other transferee agrees to pay the Brokers all Fees payable under this Lease. Landlord shall deliver a fully executed original counterpart of the Assumption Agreement to each of the Brokers upon the closing of the sale or other transfer of the Premises. Landlord will be released from personal liability for subsequent payments of Fees payable under this Lease only upon the delivery of the Assumption Agreement to the Brokers.~~

~~**15.08 Termination.** Landlord and Tenant agree that the Brokers are third party beneficiaries of this Lease with respect to the Fees, and that no change may be made by Landlord or Tenant as to the time of payment, amount of payment or the conditions for payment of the Fees without the written consent of the Brokers. The termination of this Lease by the mutual agreement of Landlord and Tenant will not affect the right of the Brokers to continue to receive the Fees agreed to be paid under this Lease, just as if Tenant had continued to occupy the Premises and had paid the Rent during the entire Term. Amendment or termination of this Lease under Article Eight (Damage or Destruction) and Article Nine (Condemnation) will not amend or terminate the Brokers' right to collect the Fees.~~

15.09 Intermediary Relationship.

~~A. If either of the Brokers has indicated in Section 1.12 or Section 1.13 or otherwise that they are acting as an intermediary, then Landlord and Tenant consent to the intermediary relationship, authorize such Broker or Brokers to act as an intermediary between Landlord and Tenant in connection with this Lease, and acknowledge that the source of any expected compensation to the Brokers will be Landlord, and the Brokers may also be paid a fee by Tenant. A broker, and any broker or salesperson appointed to communicate~~

~~with and carry out instructions of one party, who acts as an intermediary is required to act fairly and impartially, and may not:~~

~~(1) disclose to Tenant that Landlord will accept a rent less than the asking rent, unless otherwise instructed in a separate writing by Landlord;~~

~~(2) disclose to Landlord that Tenant will pay a rent greater than the rental submitted in a written offer to Landlord, unless otherwise instructed in a separate writing by Tenant;~~

~~(2) disclose any confidential information, or any information a party specifically instructs the real estate broker or salesperson in writing not to disclose, unless:~~

~~(a) the broker or salesperson is otherwise instructed in a separate writing by the respective party;~~

~~(b) the broker or salesperson is required to disclose the information by the Texas Real Estate License Act or a court order; or~~

~~(c) the information materially relates to the condition of the property;~~

~~(4) treat a party to the transaction dishonestly; or~~

~~(5) violate the Texas Real Estate License Act.~~

~~B. Appointments. Each Broker is authorized to appoint, by providing written notice to the parties, one or more license holders associated with the Broker to communicate with and carry out instructions of one party, and one or more other license holders associated with the Broker to communicate with and carry out instructions of the other party. An appointed license holder may provide opinions and advice during negotiations to the party to whom the license holder is appointed.~~

ARTICLE SIXTEEN

MISCELLANEOUS AND ADDITIONAL PROVISIONS

~~16.01 Disclosure. Landlord and Tenant understand that a real estate broker is not an expert in matters of law, tax, financing, surveying, hazardous materials, engineering, construction, safety, zoning, land planning, architecture, the TABA, or the ADA. The Brokers hereby advise Tenant to seek expert assistance on such matters. Brokers do not investigate a property's compliance with building codes, governmental ordinances, statutes and laws that relate to the use or condition of a property and its construction, or that relate to its acquisition. If the Brokers provide names of consultants or sources for advice or assistance, Tenant acknowledges that the Brokers do not warrant the services of the advisors or their products and cannot warrant the suitability of property to be acquired or leased. Furthermore, the Brokers do not warrant that the Landlord will disclose any or all property defects, although the Brokers will disclose to Tenant any actual knowledge possessed by Brokers regarding defects of the Premises and the Property. In this regard, Tenant agrees to make all necessary and appropriate inquiries and to use diligence in investigating the Premises and the Property before signing this Lease. Tenant acknowledges and agrees that neither the Principal Broker nor any Cooperating Broker has made any representation to Tenant with respect to the condition of the Premises, and that Tenant is relying exclusively upon Tenant's own investigations and the representations of Landlord, if any, with respect to the condition of the Premises. Landlord and Tenant agree to hold the Brokers harmless from any and all damages, claims, costs and expenses resulting from or related to Landlord's furnishing to the Brokers any inaccurate information with respect to the Premises, or Landlord's concealing any material information with respect to the Premises. Landlord and Tenant hereby agree to indemnify and defend the Brokers against any and all liabilities, claims, debts, damages, costs, or expenses, including but not limited to reasonable attorneys' fees and court costs, related to or arising out of or in any way connected to (a) representations concerning matters properly the subject of advice by experts; or (b) any dispute directly between Landlord and Tenant regarding this Lease. In addition, to the extent permitted by applicable law, the Brokers'~~

~~liability for errors, omissions, or negligence is limited to the return of the Fee, if any, paid to the Brokers pursuant to this Lease.~~

16.02 Force Majeure. If performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of the term, condition or covenant will be extended for a period equal to the period Landlord is so delayed or prevented.

16.03 Interpretation. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular will include the plural and the plural will include the singular, and the masculine, feminine and neuter genders will each include the other.

16.04 Waivers. Any waivers of any provisions of this Lease must be in writing and signed by the waiving party. Landlord's delay or failure to enforce any provisions of this Lease or Landlord's acceptance of late installments of Rent will not be a waiver and will not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a check from Tenant or in a letter accompanying a check will be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate, cash, or endorse the check without being bound to the conditions of any such statement.

16.05 Severability. A determination by a court of competent jurisdiction that any provision of this Lease is invalid or unenforceable will not invalidate the remainder of that provision or any other provision of this Lease, which will remain in full force and effect.

16.06 Joint and Several Liability. All parties signing this Lease as Tenant will be jointly and severally liable for all obligations of Tenant. Tenant will be responsible for the conduct, acts and omissions of Tenant's agents, employees, customers, contractors, invitees, agents, successors or others using the Premises with Tenant's express or implied permission.

16.07 Amendments or Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective unless made a part of this Lease. All amendments to this Lease must be in writing and signed by all parties.

16.08 Notices. All notices and other communications required or permitted under this Lease must be in writing and will be deemed delivered, whether actually received or not, on the earlier of: (i) actual receipt if delivered in person or by messenger with evidence of delivery; or (ii) receipt of an electronic facsimile transmission ("Fax") with confirmation of delivery; or (iii) upon deposit in the United States Mail as required below. Notices may be transmitted by Fax to the Fax telephone numbers specified in Article One of this Lease, if any. Notices delivered by mail must be deposited in the U.S. Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient as set forth in Article One. Notices sent by any other means will be deemed delivered when actually received, with proof of delivery. After possession of the Premises by Tenant, Tenant's address for notice purposes will be the address of the Premises unless Tenant notifies Landlord in writing of a different address to be used for that purpose. Any party may change its address for notice by delivering written notice of its new address to all other parties in the manner set forth above. ~~Copies of all notices should also be delivered to the Brokers, but failure to notify the Brokers will not cause an otherwise properly delivered notice to be ineffective.~~ Also, copies of all notices must also be delivered to the following persons [if the blanks have been completed]:

Copies of notices to Landlord are to be delivered to:

CARL GRADY BEHRENS
Address: 95 WEST FLUSH
SANDO, TX. 76472
Telephone: 817-475-2528 Fax: _____
Email: _____

16.17 Additional Provisions. Landlord and Tenant agree to any provisions set forth on the attached Addenda (if any) and the following additional provisions (if any):
SEE ADDENDUM J, ADDITIONAL PROVISIONS

~~16.18 Consult an Attorney. This Lease is an enforceable, legally binding agreement. Read it carefully. The Brokers involved in the negotiation of this Lease cannot give you legal advice. Landlord and Tenant acknowledge that they have been advised by the Brokers to have this Lease reviewed by competent legal counsel of their choice before signing this Lease. By executing this Lease, Landlord and Tenant each agree to the provisions contained in this Lease.~~

This Lease has been executed as of the Effective Date (as defined in Section 1.01).

LANDLORD:

LANDLORD:

CARL GRADY BEHRENS

By [Signature]: Carl Grady Behrens
Name: Carl Grady Behrens
Title: _____
Date of Execution: April 1, 2015

By [Signature]: _____
Name: _____
Title: _____
Date of Execution: _____

TENANT:

TENANT:

PALO PINTO COUNTY MUNICIPAL WATER
DISTRICT NO. 1

By [Signature]: David R. Tuck
Name: DAVID R. TUCK
Title: PRESIDENT
Date of Execution: APRIL 1, 2015

By [Signature]: _____
Name: _____
Title: _____
Date of Execution: _____

PRINCIPAL BROKER:

COOPERATING BROKER:

N/A

N/A

By [Signature]: _____	By [Signature]: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
Broker's License No.: _____	Broker's License No.: _____
Tax ID No.: _____	Tax ID No.: _____

PERMISSION TO USE: This form is provided for the use of members of the North Texas Commercial Association of REALTORS®, Inc. ("NTCAR"), members of the North Texas Commercial Association of Real Estate Professionals, Inc. and other licensed users of an NTCAR electronic forms system. Permission is given to make limited copies of the current version of this form for use in a particular Texas real estate transaction. Please contact the NTCAR office to confirm that you are using the current version of this form. Mass production, or reproduction for resale, is not allowed without express permission. Any changes to this form must be made in a manner that is obvious. If any words are deleted, they must be left in the form with a line drawn through them. If changes are made that are not obvious, the person who made the change could be subject to a claim of fraud or misrepresentation for passing off an altered form as if it were the genuine NTCAR form.

LEGAL DESCRIPTION

Of a 3.348 acres tract out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at set 1/2" iron rod with cap (PRICE SURVEYING) for the northeast and beginning corner of this tract. Whence the southeast corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 00 deg. 36 min. 07 sec. E. 1145.20 feet.

Thence S. 15 deg. 36 min. 24 sec. E. 315.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southeast corner of this tract.

Thence S. 68 deg. 05 min. 22 sec. W. 290.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for a corner of this tract.

Thence S. 86 deg. 57 min. 48 sec. W. 210.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southwest corner of this tract.

Thence N. 00 deg. 09 min. 49 sec. W. 295.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the northwest corner of this tract.

Thence N. 72 deg. 04 min. 29 sec. E. 415.00 feet to the place of beginning.

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.

PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 FN150115



EXHIBIT A

Alisa Terrell Starbird
NORTH TEXAS COMMERCIAL ASSOCIATION OF REALTORS®
ADDENDUM "A" TO LEASE
RENEWAL OPTIONS

Address of the Premises: Acreage off of W. Rusk Street, Santo, TX 76472

1. **Option to Extend the Term.** Landlord grants to Tenant three option(s) (each an "Option") to extend the Term for an additional term of sixty months each (the "Extension"), on the same terms, conditions and covenants set forth in this Lease, except as provided below. Each Option may be exercised only by written notice delivered to the Landlord no earlier than Ninety (90) days before, and no later than Thirty (30) days before, the expiration of the Term or the preceding Extension of the Term, whichever is applicable. If Tenant fails to deliver to Landlord a written notice of the exercise of an Option within the prescribed time period, such Option and any succeeding Options will lapse, and there will be no further right to extend the Term. Each Option may only be exercised by Tenant on the express condition that, at the time of the exercise, Tenant is not in default under any of the provisions of this Lease. The Options are personal to Tenant and may not be exercised by an assignee or subtenant without Landlord's written consent.

2. **Calculation of Rent.** The Base Rent during the Extension(s) will be determined by one of the following methods *[check one]*:

☐ **A. Fair Market Rental.** The Base Rent during the Extension will be the Fair Market Rental determined as follows:

a. The "Fair Market Rental" of the Premises means the price that a ready and willing tenant would pay as of the commencement of the Extension as monthly rent to a ready and willing landlord of Premises comparable to the Premises if the property were exposed for lease on the open market for a reasonable period of time, and taking into account the term of the Extension, the amount of improvements made by Tenant at its expense, the creditworthiness of the Tenant, and all of the purposes for which the property may be used and not just the use proposed to be made of the Premises by Tenant. Upon proper written notice by Tenant to Landlord of Tenant's intention to elect to exercise the renewal Option, Landlord shall, within N/A days thereafter, notify Tenant in writing of Landlord's proposed Fair Market Rental amount, and Tenant shall thereupon notify Landlord of Tenant's acceptance or rejection of Landlord's proposed amount. Failure of Tenant to reject Landlord's Fair Market Rental amount within N/A days after receipt of Landlord's notice will be deemed Tenant's acceptance of Landlord's proposed Fair Market Rental amount.

b. If Landlord and Tenant have not been able to agree on the Fair Market Rental amount within 40 days following the exercise of the Option, the Fair Market Rental for the Extension will be determined by the following appraisal process. Landlord and Tenant shall endeavor in good faith to select a single Appraiser. The term "Appraiser" means a State Certified Real Estate Appraiser licensed by the State of Texas to value commercial property. If Landlord and Tenant are able to agree upon and select a single Appraiser, that Appraiser will determine the Fair Market Rental for the Extension.

If Landlord and Tenant are unable to agree upon a single Appraiser within N/A days after the end of the 40-day period, each will then appoint one Appraiser by written notice to the other, given within N/A days after the end of the 40-day period. Within five business days after the two Appraisers are appointed, the two Appraisers will appoint a third Appraiser. If either Landlord or Tenant fails to appoint its Appraiser within the prescribed time period, the single Appraiser appointed will determine the Fair Market Rental amount of the Premises. Each party will bear the cost of the appraiser appointed by it and the parties will share equally the cost of the third appraiser. The Fair Market Rental of the Premises will be the average of two of the three appraisals that are closest in amount, and the third appraisal will be disregarded.

ADDENDUM "A" TO LEASE - Page 1
©NTCAR 2014 - Form No. 2 (3/2014)

Alisa Terrell Starbird, P.O. Box 1128 Stephenville, TX 76401
Phone: 254.965.5800 Fax: 254.965.5801

Alisa Terrell Starbird

Behrens

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

c. In no event will the Base Rent be reduced for any Extension, regardless of the Fair Market Rental determined by any appraisal. If the Fair Market Rental is not determined before the commencement of the Extension, then Tenant shall continue to pay to Landlord the Base Rent applicable to the Premises immediately before the Extension until the Fair Market Rental amount is determined, and when it is determined, Tenant shall pay to Landlord the difference between the Base Rent actually paid by Tenant to Landlord and the new Base Rent.

☒ **B. Consumer Price Index Adjustment.** The monthly Base Rent during the Extension will be determined by multiplying the monthly installment of Base Rent during the last month of the Term by a fraction determined as follows:

a. The numerator will be the Latest Index that means either *[check one]*:

☒ (1) the Index published for the nearest calendar month preceding the first day of the Extension, or

☐ (2) the Index for the month of N/A preceding the first day of the Extension.

b. The denominator will be the Initial Index that means either *[check one]*:

☒ (1) the Index published for the nearest calendar month preceding the Commencement Date, or

☐ (2) the Index for the month of N/A preceding the Commencement Date.

[If no blanks are filled in above, the choice (1) including the phrase "the nearest calendar month preceding" will apply. If the Index is not yet published for the nearest calendar month preceding the applicable date, then "the nearest calendar month" means the first month preceding the applicable date for which the Index is published].

c. The Index means the Consumer Price Index (CPI) for All Urban Consumers (All Items) U.S. City Average (unless this box is checked ☒ in which case the CPI for the Dallas/Fort Worth Consolidated Metropolitan Statistical Area will be used) published by the U. S. Department of Labor, Bureau of Labor Statistics (Base Index of 1982-84 =100). If the Index is discontinued or revised, the new index or computation that replaces the Index will be used in order to obtain substantially the same result as would have been obtained if it had not been discontinued or revised. If such computation would reduce the Rent for the particular Extension, it will be disregarded, and the Rent during the immediately preceding period will apply instead.

☐ **C. Fixed Rental Adjustments.** The monthly installments of Base Rent during the Extension(s) will be increased beginning on the following dates to these amounts:

Date: _____	Amount: \$ <u>N/A</u>
Date: _____	Amount: \$ <u>N/A</u>
Date: _____	Amount: \$ _____
Date: _____	Amount: \$ _____

ADDENDUM "J" TO LEASE

ADDITIONAL PROVISIONS

1) Landlord and Tenant agree that: a) As of the Commencement Date, the Property is unimproved and is used for agricultural purposes; b) The Property is currently "qualified open-space land" pursuant to the Texas Tax Code; c) Tenant, at Tenant's sole cost and expense, shall undertake the preparation of the Property for operation of a reverse osmosis plant, the acquisition and installation of reverse osmosis equipment and the construction of related berms and lagoons, together with all activities related thereto; d) Upon the expiration or termination of this Lease, Tenant, at Tenant's sole cost and expense, shall remove all equipment within ninety (90) days from the date of termination and shall level and restore the surface of the Property to its original condition and normal contour, compacted for ordinary use for Landlord for agricultural purposes. If Tenant fails to remove the equipment and level and restore the Property, Landlord shall have the right to remove and dispose of the equipment and level, restore and compact the surface of the Property and collect all costs for such efforts from Tenant. This provision shall survive expiration or termination.

2) Landlord and Tenant agree that a Memorandum of Lease shall be recorded in the Official Public Records of Palo Pinto County, Texas.

3) In conjunction with this Lease, Landlord has simultaneously granted Tenant a Temporary Access Easement and a Temporary Water Pipelines Easement to Tenant. Unless terminated earlier pursuant to their respective terms, both the Temporary Roadway Easement and the Temporary Water Pipelines Easement shall have the same ending date as this Lease. When the Lease terminates or expires, the Easements shall also terminate or expire.

4) Prior to Tenant placing equipment on the Property or commencing any construction, Tenant shall construct around the perimeter of the Property a temporary safety fence which is designed to keep out trespassers and Landlord's livestock. Within one-hundred eighty (180) days from commencement of the Lease, Tenant shall construct a chain link security fence around the perimeter of the Property and install a locking gate. Tenant shall maintain this security fence and gate for the duration of the Lease in good working condition, and shall remove the fence and gate upon termination or expiration of the Lease.

5) As additional consideration for this Lease, for the duration of this Lease, Tenant shall provide Landlord with potable water up to an amount not to exceed 100,000 gallons annually to Landlord at Landlord's residential address of 95 W. Rusk Street, Santo, TX. This potable water shall be provided by Tenant through the Santo Special Utility District at no charge to Landlord. Landlord shall be subject to the same usage and watering restrictions for drought contingencies as other residential users within the Santo Special Utility District.

6) As additional consideration for this Lease, within ninety (90) days from the Commencement Date, Tenant shall install a cattle guard at the site of the existing entry to Landlord's property. Subsequently, Tenant shall, within ninety (90) days of receipt of a written request from Landlord, relocate the cattle guard to the commencement of the 1.856 acre easement for the Temporary Roadway Easement granted by Landlord to Tenant in conjunction with this Lease.

ADDENDUM J

Lease between Carl Grady Behrens and Palo Pinto County Municipal Water District No. 1

Page 1 of 3

- 7) Landlord's attorney is a Texas licensed real estate broker.
- 8) Pursuant to Paragraph 1.09 of this Lease, each year Tenant shall pay an Expense Reimbursement to Landlord equal to one hundred percent of all Real Estate Taxes levied against or applicable to the Property. In addition to this Expense Reimbursement, as additional Rent in each calendar year 2016 through and including 2020, Tenant shall pay to Landlord on or before December 1st of each such year an amount equal to an additional one hundred percent of all of the ad valorem taxes levied against or applicable to the Property for each such year.
- 9) The term "Real Estate Taxes" in Paragraph 1.09B shall include any additional tax levied against or applicable to the Property pursuant to a "change in use" or similar provision under the Texas Tax Code as determined by the Palo Pinto County Appraisal District.
- 10) If any of the real estate owned by Landlord in the vicinity of the Property is deemed to have a "change in use" from its qualified open-space agricultural use as existing on the Commencement Date of this Lease due to Tenant's rental of the Property, upon Landlord's written notice to Tenant, as additional Rent, Tenant shall, within thirty days of receipt of any such notice, pay to Landlord: a) an amount equal to any additional tax levied against or applicable to such real estate pursuant to a "change in use" or similar provision under the Texas Tax Code, including but not limited to Texas Tax Code Section 23.55; b) an amount equal to two hundred percent of the difference between the ad valorem taxes levied against such property for calendar year 2015 and the ad valorem taxes levied for each of the first five calendar years during the term of the Lease after such a "change in use" is deemed to have occurred according to the Palo Pinto County Appraisal District (PPCAD); c) an amount equal to one hundred percent of the difference between the ad valorem taxes levied against such property for calendar year 2015 and the ad valorem taxes for the sixth calendar year and each subsequent calendar year during the term of the Lease after such a "change in use" is deemed to have occurred according to PPCAD.
- 11) Tenant shall take all necessary measures to ensure that the Property as used and developed by the Tenant does not include standing water in which mosquitos can breed.
- 12) Tenant shall take all necessary measures to ensure that the sound pressure level on the bounding lines of the Property never exceeds 70 decibels (dBA) between 7 a.m. and 10 p.m. and 60 decibels (dBA) between 10:00 p.m. and 7 a.m. as measured on a sound level meter using the A-weighted network.
- 13) Notwithstanding any provision of this Lease to the contrary, the parties agree that the Permitted Use is the installation and operation of reverse osmosis water treatment equipment and construction of related berms and lagoons, together with all activities related thereto.
- 14) Notwithstanding the provisions of Addendum A, Paragraph B, the monthly Base Rent during any Extension of the Term shall not be increased by more than twenty percent (20%) of the monthly Base Rent paid during the last month of the Term or the last month of the preceding Extension of the Term, whichever is more recent. Landlord shall be responsible for communication of the amount of the monthly Base Rent adjustment to Tenant and shall provide Tenant with supporting data upon which the CPI adjustment is calculated, if applicable.
- 15) As additional consideration for this Lease, Tenant shall pay to Landlord simultaneous with the execution of this Lease, the sum of \$10,000 cash up front, payable in the form of a cashier's check.

ADDENDUM J

Lease between Carl Grady Behrens and Palo Pinto County Municipal Water District No. 1
Page 2 of 3

16) The parties have cooperated in the drafting and preparation of this Lease. No representations have been made by the other parties or their respective attorneys inducing the making of this Lease, other than as set forth herein, and Tenant and Landlord each respectively rely entirely upon their own judgment and advice of counsel in entering into this Lease. Hence, in any construction to be made of this Lease shall not be construed against any party hereto.

17) Tenant has the requisite power to enter into this Lease and perform its obligations hereunder. Tenant does hereby warrant, represent and guarantee that the person signing this Lease in his or her representative capacity is duly authorized to execute and deliver this Lease, and all of the related documents, to bind said Tenant without any further signature, and to consummate the settlement as evidenced by this Lease.

LANDLORD


CARL GRADY BEHRENS

TENANT

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO.1

By: 
DAVID TURK, PRESIDENT

LEGAL DESCRIPTION

Of a 3.348 acres tract out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at set 1/2" iron rod with cap (PRICE SURVEYING) for the northeast and beginning corner of this tract. Whence the southeast corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 00 deg. 36 min. 07 sec. E. 1145.20 feet.

Thence S. 15 deg. 36 min. 24 sec. E. 315.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southeast corner of this tract.

Thence S. 68 deg. 05 min. 22 sec. W. 290.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for a corner of this tract.

Thence S. 86 deg. 57 min. 48 sec. W. 210.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southwest corner of this tract.

Thence N. 00 deg. 09 min. 49 sec. W. 295.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the northwest corner of this tract.

Thence N. 72 deg. 04 min. 29 sec. E. 415.00 feet to the place of beginning.

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.
PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 FN150115



LEGAL DESCRIPTION

Of a 3.348 acres tract out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at set 1/2" iron rod with cap (PRICE SURVEYING) for the northeast and beginning corner of this tract. Whence the southeast corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 00 deg. 36 min. 07 sec. E. 1145.20 feet.

Thence S. 15 deg. 36 min. 24 sec. E. 315.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southeast corner of this tract.

Thence S. 68 deg. 05 min. 22 sec. W. 290.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for a corner of this tract.

Thence S. 86 deg. 57 min. 48 sec. W. 210.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southwest corner of this tract.

Thence N. 00 deg. 09 min. 49 sec. W. 295.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the northwest corner of this tract.

Thence N. 72 deg. 04 min. 29 sec. E. 415.00 feet to the place of beginning.

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.
PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 FN150115



AGREEMENT FOR TEMPORARY ACCESS EASEMENT

STATE OF TEXAS

COUNTY OF PALO PINTO

This Agreement for Temporary Access Easement (the "Agreement") is made and entered into effective April 1, 2015 (the "Effective Date") between Carl Grady Behrens, whose mailing address is 95 West Rusk, Santo, Texas 76472 ("Grantor") and Palo Pinto County Municipal Water District No. 1, whose mailing address is PO Box 387, Mineral Wells, Texas 76068-0387 ("Grantee").

RECITALS

A. Grantor is the owner of the surface of certain lands (the "Lands") described to-wit:

71.9 acres, more or less out of Section 39, Block A, T. & P. Ry. Co. Surveys, Abstract 741, being those tracts out of said Section 39 conveyed to Virginia Allen Behrens by Lloyd Dean Allen et al by deed recorded in Volume 291, Page 97, Deed Records of Palo Pinto, county, Texas SAVE and EXCEPT therefrom the following tracts:

Tract A: A tract of 2.190 acres described in a deed from Virginia Allen Bradford to Carl Grady Behrens and wife, Linda S. Behrens recorded in Volume 1380, Page 386, Deed Records of Palo Pinto County, Texas.

Tract B: That tract conveyed by Virginia Fay Bradford to Union Pacific Railway Company as described in a Correction Deed dated June 27, 2011, recorded in Volume 1859, Page 316, Official Public Records of Palo Pinto County, Texas.

B. Within the boundaries of the Lands, Grantor is the owner of the surface of certain lands described to-wit:

A 3.348 acre tract out of Section no. 39, T. & P.R.R. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto county, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto county, Texas, and being more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes (the "Plant Site").

C. Grantor and Grantee have entered into a Commercial Lease Agreement dated of even date herewith relating to the installation and operation by Grantee of a reverse osmosis water treatment plant and construction of related berms and lagoons on the Plant Site (the "Lease").

- D. Grantee wishes to receive from Grantor a temporary easement for access to and from the Plant Site over a certain portion of the Lands owned by Grantor described to wit:

A 1.856 acre easement, being 40.0 feet in width, out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas, being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto, County, Texas, and being more particularly described in Exhibit B, attached hereto and incorporated herein for all purposes (the "Easement").

- E. Grantor wishes to grant the Easement to Grantee and Grantee wishes to accept the Easement and use the Easement, all pursuant to the terms of this Agreement.

GRANT OF TEMPORARY EASEMENT AND AGREEMENT

Now therefore, for and in consideration of \$100.00 and other good and valuable consideration, including the mutual benefits to be derived by both parties, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

Grantor hereby GRANTS, BARGAINS, SELLS and CONVEYS to the PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1, as Grantee ("Palo Pinto"), its permitted successors and assigns, the right and privilege to ingress to and egress from the Plant Site on, over and across the Easement by means of a road for commercial vehicular traffic to be constructed by Grantee. Grantee shall have the right to fully use and enjoy the above-described premises only as to the rights herein granted.

This Easement is subject to the terms, covenants and conditions set forth herein.

1. This grant is for a temporary easement which is to be held by Grantee in conjunction with the Lease. Unless terminated earlier pursuant to the terms this Agreement, this Easement shall terminate simultaneous with the expiration or termination of the Lease.
2. Within thirty (30) days from the Effective Date, Grantee shall construct a road within the Easement for use by commercial vehicular traffic related to the Plant Site, including construction vehicles as well as service vehicles, and by Grantor and his agents. The Road shall be constructed of standard road base material adequate to meet the demands of the heavy equipment to be utilized by Grantee at the Plant Site.
3. Although the Easement is temporary, the parties agree that the Road, when constructed, will become a permanent feature of the Lands, and Grantee shall not remove materials from the Road or otherwise act to deconstruct the Road at any time.
4. Grantee shall maintain the Easement so that there shall not be any permanent mounds, ridges, sinks, or trenches along the Easement, and shall maintain the Road in such a condition that it shall at all times be passable by any two-wheel drive sedan.

5. Grantee shall promptly repair any settling, erosion or potholes on the Road.
6. Grantee shall use its best efforts to prevent soil erosion on the Lands adjacent to the Easement. Grantee will construct and maintain such spreader dams and other soil conservation devices on the Easement as may be reasonably required to prevent damage to the Lands from soil erosion resulting from operations of Grantee pursuant to this Agreement.
7. Any gate or opening used by Grantee for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times, except when being used for the passage of vehicular traffic or personnel.
8. Within thirty (30) days from the date of the Effective Date, Grantee shall complete all construction and clean-up activities.
9. During construction related to the Road, whenever Grantee removes rock from the Easement, Grantee may either remove such rocks from the Lands or deposit such rocks at a location that shall be designated by Grantor. Rock as herein defined shall not include sand or gravel, or rocks less than eight inches (8").
10. Should Grantee require the use of dynamite or other explosive materials, Grantor will be notified prior to such use, and additional damages and warranties will be required before Grantee will be allowed to use explosives on any part or portion of the Easement.
11. During construction, Grantee shall provide Grantor access across the Easement where the Easement crosses private roads.
12. At all times, Grantee shall keep the Easement and all surrounding Lands free and clear of any and all trash, litter, and debris, and Grantee agrees to store all building and other materials used during construction and repair of the Road in an orderly and organized manner only on the Easement. Grantee hereby further agrees to take all precautions necessary to prevent the storage of any materials on the Easement from constituting an attractive nuisance, as such may be defined by Texas law.
13. With respect to any excavation of soil by Grantee pursuant to the rights granted herein:
 - a) Grantee shall not deposit any excess soil on any Lands other than the Easement unless expressly approved, in writing, by Grantor;
 - b) Grantee shall be required to remove any excess soil remaining after the completion of the initial installation and construction of the Pipeline or any repair, replacement or removal thereof within sixty (60) days of the completion of such activity at its sole cost and expense;
 - c) Any excess soil placed on Lands other than the Easement without the express written consent of Grantor shall also be promptly removed at Grantee's sole cost and expense.

14. Grantee shall promptly and fully restore all private roads, drainage and irrigation ditches disturbed by the Grantee's operations to their conditions prior to such operations.
15. Grantor shall promptly and fully restore and replace any and all damage done to any fences of Grantor which are cut or otherwise damaged in exercising any of the rights granted hereby.
16. Grantee shall have the right prior to construction and from time to time thereafter to cut and keep clear all trees, brush and undergrowth, and remove any other obstructions that may injure, endanger, or interfere with the use and maintenance of the Easement, provided however, that all such cleared materials shall never block passage along the Easement and must be removed from the Easement within three (3) days from the date of any such clearing operation.
17. Grantee agrees that any and all timber, other than mesquite, which is cut and cleared from the Easement shall be mulched and deposited on the Lands at a place that shall be designated by Grantor. Grantee agrees that any and all mesquite cut and cleared from the Easement shall be piled on the Lands at a place that shall be designated by Grantor and Grantee shall cut all such mesquite into pieces of a size manageable for burning by Grantor.
18. The Easement shall not be fenced. On fences crossing the Easement, Grantee shall install H-braces of adequate sized posts on both sides of the Easement area before the cuts are made in the fences. Additionally, temporary gates will be placed on any fence crossing the Easement. All fences crossed by Grantee shall be replaced promptly and repaired by Grantee as nearly as practicable to the condition they were in prior to the crossing and construction.
19. At all times during construction, Grantee shall provide a crossing for livestock to access both sides of the Easement area.
20. Grantee shall not discharge any harmful or toxic fluid or chemicals on the Lands.
21. Grantee shall not carry or use firearms while upon the Lands, and no hunting or fishing is allowed by Grantee on the Lands.
22. No open fires or flames shall be allowed upon the Lands.
23. Grantee shall not bring alcoholic beverages or illegal drugs on the Lands.
24. If Grantee damages or destroys any fence, road, bridge, culvert, building, or other improvement, Grantee must, within a reasonable period of time, repair or replace the improvement to the extent that such improvement will, as nearly as practicable, be in like condition as before such damage or destruction. In lieu of requiring repair or replacement of any improvements, Grantor may, at his option, require that Grantee pay money damages, including without limitation, those damages incurred as a result of Grantee or its agents or employees entering or departing the Lands, or by reason of being present on the Lands.

Grantee agrees to cooperate with Grantor or his designated representatives in an onsite inspection to assess any damages resulting from Grantee's activities. Grantee agrees to notify Grantor five (5) business days prior to commencement of any repairs, replacements or additional construction on the Lands.

25. Grantee shall at all times comply with the provisions of all federal, state and local laws, codes and ordinances, and all rules and regulations promulgated thereunder, and shall indemnify and hold harmless Grantor from and against any and all claims, judgments, penalties, costs, expenses and damages whatsoever, arising from the activities of Grantee or arising from the violation of any law, whether such claims are asserted by any governmental agency or any other person.
26. Grantee covenants and agrees to obtain and maintain, so long as this Agreement remains in effect, insurance coverage for the indemnity and save harmless provisions of this Easement and to furnish Grantor a certificate prior to any operations on the Easement, which insurance coverage shall be as follows: commercial general liability insurance with coverage not less than \$1,000,000.00 for Each Occurrence and \$2,000,000.00 General Aggregate, with Grantor named as an additional insured up to the limits of liability required herein and to the extent of Grantee's liability hereunder. Failure to provide the certificate prior to the commencement of construction of the Pipeline will constitute a default and the rights granted hereunder shall, at Grantor's option, immediately terminate.
27. GRANTEE AGREES TO PROTECT, INDEMNIFY AND HOLD GRANTOR HARMLESS FROM ANY AND ALL LOSS, COSTS, DAMAGES, CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION FOR PERSONAL INJURY OR DEATH AND/OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS CAUSED BY, ARISING OUT OF, OR RESULTING FROM THE EXERCISE OF RIGHTS GRANTED TO GRANTEE OR ITS EXERCISE OF RIGHTS ASSUMED IN CONNECTION THEREWITH. GRANTEE FURTHER AGREES TO PAY ALL EXPENSES, COSTS, AND ATTORNEYS' FEES ASSOCIATED WITH SUCH LOSS, COSTS, DAMAGES, CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION, AS WELL AS THOSE INCURRED BY GRANTOR IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION. GRANTEE FURTHER AGREES TO INDEMNIFY AND SAVE HARMLESS GRANTOR AND HIS PRESENT AND FUTURE AGENTS FROM AND AGAINST ANY AND ALL LIABILITIES, PENALTIES, FINES, FORFEITURE, LOSS, COSTS, DAMAGES, CLAIMS, DEMANDS, LIABILITIES, CAUSES OF ACTION AND EXPENSES INCIDENTAL THERETO, INCLUDING COST OF DEFENSES, SETTLEMENT AND ATTORNEY'S FEES, WHICH ANY OR ALL OF THEM MAY HEREINAFTER SUFFER, INCUR, BE RESPONSIBLE FOR, PAY OUT AS A RESULT OF CONTAMINATION OF THE ENVIRONMENT, ANY VIOLATION OF STATUTES, ORDINANCES, RULES, ORDERS, OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR AGENCY, DIRECTLY CAUSED OR ARISING OUT OF THE USE OF THE EASEMENT BY GRANTEE OR ANY ACTS OR OMISSIONS OF GRANTEE, ITS EMPLOYEES, AGENTS, OR CONTRACTORS.

28. Grantee, where used in this instrument, shall include Grantee's agents, successors, assigns, servants, employees, representatives, contractors, independent contractors, subcontractors and its or their equipment and/or vehicles.
29. This is a grant of a nonexclusive Easement only, and does not grant any fee interest to the surface, subsurface, or any interest in the minerals on or under the Lands. The conveyance is made subject to any and all outstanding restrictions, reservations, covenants, conditions, leases, easements and other encumbrances filed of record or apparent on the ground. This Easement is subject to the right of Grantor, his successors, assigns, transferees, or lessees (which right is expressly reserved) to use, occupy and enjoy all of the Lands, including the Easement, for all purposes, in such manner and at such times as he, they or any of them shall desire to use same, including, but without limitation, the right of conducting mineral operations on any portion of the Lands and for the purpose of farming, grazing, hunting and trapping thereon; provided, however, that such use and occupation shall not interfere with the rights granted to Grantee herein. Grantor expressly retains all rights to grant, control and renew all restrictions, reservations, covenants, conditions, leases, easements and other encumbrances, of every kind and character, on, over or under the Lands.
30. Grantee expressly agrees that Grantee's continued possession and use of the Easement after expiration or termination of the Easement pursuant to either the Lease or this Agreement, without first obtaining a written renewal from Grantor, shall subject Grantee to a penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day of such violation. Grantee agrees to pay Grantor such penalty within ten (10) business days after receipt of written notice from Grantor.
31. It is agreed that upon default by Grantee of any of the covenants and conditions set forth in this Agreement, Grantor has the right, and such right is expressly reserved, to declare the Easement forfeited, without prejudice to any claim Grantor may have against Grantee; provided, however, Grantor will give Grantee written notice of his intention to terminate the Easement and the reasons for termination, and Grantee will have thirty (30) calendar days after receipt of notice to rectify the default or violation. Upon timely correction, as determined by Grantor in his sole discretion, the Easement will remain in full force and effect. Termination or abandonment of the Easement for any cause is automatic and all rights granted revert to Grantor without the necessity of any further action or suit on the part of Grantor. Upon termination or abandonment. Grantee agrees to file a Release of Easement in the Deed Records of Palo Pinto County, Texas, but if it fails to do so within ten (10) days following written demand from Grantor then Grantor shall have the right to file the Release of Easement. Abandonment will be deemed to have occurred when the Easement is not used for the purposes granted for a continuous period of five (5) calendar years.
32. Grantee will not use the Lands or permit the Lands to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Lands resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds ("Hazardous Materials"). Grantee is solely responsible for cleanup of any contamination resulting from

violation of this provision. IF THE PRESENCE OF HAZARDOUS MATERIALS ON THE LANDS IS CAUSED OR PERMITTED BY GRANTEE AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE LANDS OR IF CONTAMINATION OF THE LANDS BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS RELATED TO GRANTEE'S USE, THEN GRANTEE SHALL INDEMNIFY, DEFEND, AND HOLD GRANTOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES, OR LOSSES (INCLUDING DIMINUTION IN VALUE OF THE LANDS, DAMAGES FOR THE LOSS OF OR RESTRICTION ON USE OF THE LANDS OR OF ANY AMENITY OF THE LANDS, AND SUMS PAID IN SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANTS' FEES AND EXPERTS' FEES) WHICH ARISE DURING OR AFTER THE EASEMENT TERM AS A RESULT OF SUCH CONTAMINATION. THIS INDEMNIFICATION OF GRANTOR BY GRANTEE INCLUDES COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS AND ANY CLEANUP, REMEDIAL, REMOVAL, OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF THE PRESENCE OF HAZARDOUS MATERIAL.

33. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. Grantor and Grantee may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Grantor:
Carl Grady Behrens
95 West Rusk
Santo, Texas 76472
Phone: 817.475.2528

Grantee:
Palo Pinto County Municipal Water District 1
PO Box 387
Mineral Wells, Texas 76068-0387
Phone: 940.328.7712

34. The failure of Grantee or Grantor to insist in any one or more instances on a strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.
35. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures,

rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Venue for any suit filed shall be in Palo Pinto County, Texas.

36. When the singular number is used, it also includes the plural and the masculine gender includes the feminine and neuter gender.
37. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect and will not be affected, impaired or invalidated.
38. Grantee may not sell, assign, encumber or convey the Easement without the prior written consent of Grantor and any attempt by Grantee to sell, assign, encumber or convey the Easement without such consent will cause this Agreement to terminate. Grantor will not unreasonably withhold consent. Grantor's refusal to grant its consent due to a concern over the financial responsibility or operation expertise of Grantee's proposed assignee shall not be deemed unreasonable. Grantor agrees to notify Grantee in writing of its consent, or its refusal to grant consent, within ten (10) days of notice by Grantee of its intent to assign this Agreement.
39. This Agreement and each and all of its covenants, obligations, and conditions shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and permitted assigns of the parties.
40. This Agreement constitutes the complete Agreement of the parties and supersedes any prior understanding or agreement, written or oral, between them regarding the issues covered by this Agreement. This Agreement may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their permitted successors or assigns.
41. Time is of the essence with respect to all provisions within this Agreement. Any delay in performance by either party shall constitute a material breach of this Agreement.
42. All obligations of any party to this Agreement that are not fulfilled at the expiration or the termination of this Agreement will survive such expiration or termination as continuing obligations of the party.
43. Grantee shall promptly record this Agreement in the Real Property Records of Palo Pinto, County, Texas.


CARL GRADY BEHRENS

TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:

**PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT NO. 1, a municipal
corporation**

By: David R Turk
DAVID TURK, President, Board of Directors

STATE OF TEXAS)

COUNTY OF PALO PINTO)

This instrument was acknowledged before me on the 1st day of April, 2015, by **CARL GRADY BEHRENS**.

Given under my hand and seal of office this 1st day of April, 2015.



Sandra Pack
Notary Public, State of Texas
My commission expires:
1-8-2018

STATE OF TEXAS)

COUNTY OF PALO PINTO)

This instrument was acknowledged before me on the 1 day of April, 2015, by **DAVID TURK**, President of the Board of Directors of the Palo Pinto County Municipal Water District No. 1, a municipal corporation, on behalf of said corporation.

Given under my hand and seal of office this 1 day of April, 2015.

Karen Glover
Notary Public, State of Texas
My commission expires:
1-27-18



LEGAL DESCRIPTION

Of a 3.348 acres tract out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at set 1/2" iron rod with cap (PRICE SURVEYING) for the northeast and beginning corner of this tract. Whence the southeast corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 00 deg. 36 min. 07 sec. E. 1145.20 feet.

Thence S. 15 deg. 36 min. 24 sec. E. 315.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southeast corner of this tract.

Thence S. 68 deg. 05 min. 22 sec. W. 290.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for a corner of this tract.

Thence S. 86 deg. 57 min. 48 sec. W. 210.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the southwest corner of this tract.

Thence N. 00 deg. 09 min. 49 sec. W. 295.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) for the northwest corner of this tract.

Thence N. 72 deg. 04 min. 29 sec. E. 415.00 feet to the place of beginning.

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.

PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 FN150115



LEGAL DESCRIPTION

Of a 1.856 acres easement, being 40.0 feet in width, out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at the southwest corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records for the northwest and beginning corner of this easement. Whence the southeast corner of said 3.8332 acres tract, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 52 deg. 18 min. 35 sec. E. 2177.26 feet.

Thence N. 48 deg. 38 min. 09 sec. E. 40.08 feet along the south line of said 3.8332 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 37 deg. 41 min. 22 sec. E. 175.89 feet
- S. 39 deg. 52 min. 30 sec. E. 203.23 feet
- S. 43 deg. 24 min. 39 sec. E. 141.49 feet
- S. 37 deg. 23 min. 07 sec. E. 141.43 feet
- S. 03 deg. 30 min. 51 sec. E. 111.72 feet
- S. 21 deg. 13 min. 50 sec. E. 72.10 feet
- S. 71 deg. 19 min. 14 sec. E. 38.83 feet
- S. 88 deg. 18 min. 30 sec. E. 256.25 feet
- N. 85 deg. 26 min. 06 sec. E. 200.94 feet
- N. 63 deg. 49 min. 19 sec. E. 320.96 feet
- N. 35 deg. 07 min. 54 sec. E. 100.80 feet
- N. 01 deg. 46 min. 10 sec. W. 205.91 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) at the southwest corner of a certain 3.348 acres tract, also surveyed this day, for a corner of this easement

Thence N. 86 deg. 57 min. 48 sec. E. 40.01 feet along the south line of said 3.348 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 01 deg. 46 min. 10 sec. E. 220.14 feet
- S. 35 deg. 07 min. 54 sec. W. 124.38 feet
- S. 63 deg. 49 min. 19 sec. W. 338.82 feet
- S. 85 deg. 26 min. 06 sec. W. 210.76 feet
- N. 88 deg. 18 min. 30 sec. W. 264.41 feet
- N. 71 deg. 19 min. 14 sec. W. 63.49 feet
- N. 21 deg. 13 min. 50 sec. W. 97.02 feet
- N. 03 deg. 30 min. 51 sec. W. 105.77 feet
- N. 37 deg. 23 min. 07 sec. W. 127.14 feet
- N. 43 deg. 24 min. 39 sec. W. 140.62 feet
- N. 39 deg. 52 min. 30 sec. W. 205.22 feet
- N. 37 deg. 41 min. 22 sec. W. 174.08 feet to the place of beginning

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.
PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 14618B.dwg FN150208



ROAD TO TRID WTP SITE

LEGAL DESCRIPTION

Of a 1.856 acres easement, being 40.0 feet in width, out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at the southwest corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records for the northwest and beginning corner of this easement. Whence the southeast corner of said 3.8332 acres tract, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 52 deg. 18 min. 35 sec. E. 2177.26 feet.

Thence N. 48 deg. 38 min. 09 sec. E. 40.08 feet along the south line of said 3.8332 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 37 deg. 41 min. 22 sec. E. 175.89 feet
- S. 39 deg. 52 min. 30 sec. E. 203.23 feet
- S. 43 deg. 24 min. 39 sec. E. 141.49 feet
- S. 37 deg. 23 min. 07 sec. E. 141.43 feet
- S. 03 deg. 30 min. 51 sec. E. 111.72 feet
- S. 21 deg. 13 min. 50 sec. E. 72.10 feet
- S. 71 deg. 19 min. 14 sec. E. 38.83 feet
- S. 88 deg. 18 min. 30 sec. E. 256.25 feet
- N. 85 deg. 26 min. 06 sec. E. 200.94 feet
- N. 63 deg. 49 min. 19 sec. E. 320.96 feet
- N. 35 deg. 07 min. 54 sec. E. 100.80 feet
- N. 01 deg. 46 min. 10 sec. W. 205.91 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) at the southwest corner of a certain 3.348 acres tract, also surveyed this day, for a corner of this easement

Thence N. 86 deg. 57 min. 48 sec. E. 40.01 feet along the south line of said 3.348 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 01 deg. 46 min. 10 sec. E. 220.14 feet
- S. 35 deg. 07 min. 54 sec. W. 124.38 feet
- S. 63 deg. 49 min. 19 sec. W. 338.82 feet
- S. 85 deg. 26 min. 06 sec. W. 210.76 feet
- N. 88 deg. 18 min. 30 sec. W. 264.41 feet
- N. 71 deg. 19 min. 14 sec. W. 63.49 feet
- N. 21 deg. 13 min. 50 sec. W. 97.02 feet
- N. 03 deg. 30 min. 51 sec. W. 105.77 feet
- N. 37 deg. 23 min. 07 sec. W. 127.14 feet
- N. 43 deg. 24 min. 39 sec. W. 140.62 feet
- N. 39 deg. 52 min. 30 sec. W. 205.22 feet
- N. 37 deg. 41 min. 22 sec. W. 174.08 feet to the place of beginning

(Bearing Basis: Texas State Plane Coordinate System, NAD83, North Central Texas Zone)

SURVEYED ON THE GROUND: DECEMBER 10, 2014

Philip E. Colvin, Jr.

PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
PRICE SURVEYING, LP, FIRM #10034200
213 S OAK AVE, MINERAL WELLS, TX 76067
940-325-4841 JN14618 14618B.dwg FN150208



LEGAL DESCRIPTION

Of a 1.856 acres easement, being 40.0 feet in width, out of Section No. 39, T. & P. RR. Co. Survey, Block "A", W.O.B., Abstract No. 741, Palo Pinto County, Texas; being part of that certain Second Tract described in Volume 1891, Page 289 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at the southwest corner of a certain 3.8332 acres tract described in Volume 1925, Page 458 of the Official Public Records for the northwest and beginning corner of this easement. Whence the southeast corner of said 3.8332 acres tract, the same being the northwest corner of Block 16 of the Original Town of Brazos, bears N. 52 deg. 18 min. 35 sec. E. 2177.26 feet.

Thence N. 48 deg. 38 min. 09 sec. E. 40.08 feet along the south line of said 3.8332 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 37 deg. 41 min. 22 sec. E. 175.89 feet
- S. 39 deg. 52 min. 30 sec. E. 203.23 feet
- S. 43 deg. 24 min. 39 sec. E. 141.49 feet
- S. 37 deg. 23 min. 07 sec. E. 141.43 feet
- S. 03 deg. 30 min. 51 sec. E. 111.72 feet
- S. 21 deg. 13 min. 50 sec. E. 72.10 feet
- S. 71 deg. 19 min. 14 sec. E. 38.83 feet
- S. 88 deg. 18 min. 30 sec. E. 256.25 feet
- N. 85 deg. 26 min. 06 sec. E. 200.94 feet
- N. 63 deg. 49 min. 19 sec. E. 320.96 feet
- N. 35 deg. 07 min. 54 sec. E. 100.80 feet
- N. 01 deg. 46 min. 10 sec. W. 205.91 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) at the southwest corner of a certain 3.348 acres tract, also surveyed this day, for a corner of this easement

Thence N. 86 deg. 57 min. 48 sec. E. 40.01 feet along the south line of said 3.348 acres tract for a corner of this easement.

Thence the following courses and distances:

- S. 01 deg. 46 min. 10 sec. E. 220.14 feet
- S. 35 deg. 07 min. 54 sec. W. 124.38 feet
- S. 63 deg. 49 min. 19 sec. W. 338.82 feet
- S. 85 deg. 26 min. 06 sec. W. 210.76 feet
- N. 88 deg. 18 min. 30 sec. W. 264.41 feet

Course	Radius	Length	Delta	Angle	Chord	Chord Bear.
C1	2607.57'	797.42'	17°31'18"	2°11'50"	794.32'	S 57°09'42" W
C2	2662.57'	9.33'	0°12'03"	2°09'07"	9.33'	N 49°10'46" E
C3	2667.57'	781.40'	18°54'37"	2°08'51"	778.57'	N 57°44'08" E

Course	Bearing	Distance
L1	S 21°13'50" E	72.10'
L2	S 71°19'14" E	38.83'
L3	N 36°07'54" E	100.80'
L4	N 86°57'46" E	40.01'
L5	S 35°07'54" W	134.39'
L6	N 71°19'14" W	89.49'
L7	N 21°13'50" W	87.02'
L8	S 86°57'46" W	216.00'
L9	S 06°32'23" E	20.75'
L10	S 67°57'43" W	45.52'
L11	S 57°38'12" W	90.49'
L12	S 54°54'05" W	162.39'
L13	S 41°32'50" W	90.08'
L14	S 48°32'16" W	87.55'
L15	S 58°18'14" W	119.65'
L16	S 65°56'20" W	97.85'
L17	S 68°48'42" W	85.58'
L18	S 64°20'30" W	121.62'
L19	S 57°54'36" W	90.49'
L20	S 50°01'13" W	75.28'
L21	S 34°10'03" W	152.23'
L22	S 05°53'28" W	288.05'
L23	S 57°12'40" W	221.42'
L24	N 03°59'30" E	169.43'
L25	N 13°01'05" E	80.00'
L26	N 34°10'03" E	84.64'
L27	N 54°10'13" E	124.32'
L28	N 57°54'36" E	94.64'
L29	N 54°20'30" E	87.23'
L30	N 57°54'36" E	97.53'
L31	N 58°48'02" E	117.82'
L32	N 55°36'20" E	84.21'
L33	N 59°18'14" E	67.70'
L34	N 48°32'56" E	163.73'
L35	N 41°52'59" E	93.34'
L36	N 54°34'05" E	47.87'
L37	N 57°54'36" E	16.82'
L38	N 67°57'43" E	16.00'
L39	N 73°46'50" E	66.20'
L40	N 61°22'50" E	16.59'
L41	N 81°31'33" W	46.00'
L42	N 25°28'27" E	46.00'
L43	N 64°31'33" E	46.00'
L44	S 25°28'27" W	28.20'
L45	S 39°02'25" W	70.35'
L46	S 73°46'50" W	15.33'
L47	S 67°57'43" W	20.75'
L48	N 05°32'23" W	20.75'
L49		

PLAT OF SURVEY

OF A 1856 ACRES EASEMENT OUT OF SECTION NO. 39, T. & P. RR. CO. SURVEY, BLOCK "A", W.D.B., ABSTRACT NO. 741, PALO PINTO COUNTY, TEXAS

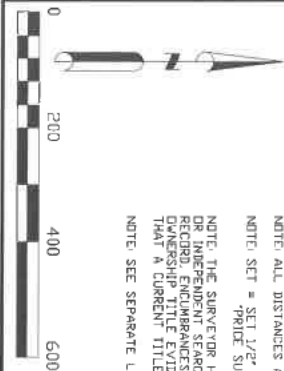
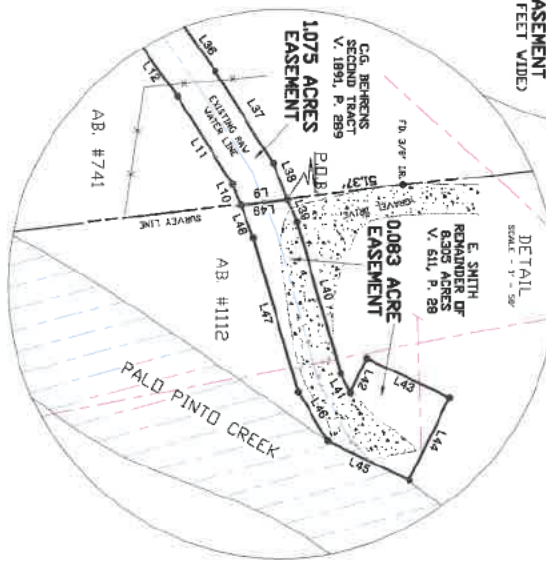
OF A 3348 ACRES TRACT OUT OF SECTION NO. 39, T. & P. RR. CO. SURVEY, BLOCK "A", W.D.B., ABSTRACT NO. 741, PALO PINTO COUNTY, TEXAS

OF A 1075 ACRES EASEMENT OUT OF SECTION NO. 39, T. & P. RR. CO. SURVEY, BLOCK "A", W.D.B., ABSTRACT NO. 741, PALO PINTO COUNTY, TEXAS

OF A 1075 ACRES EASEMENT OUT OF SECTION NO. 38, T. & P. RR. CO. SURVEY, BLOCK "A", W.D.B., ABSTRACT NO. 112, PALO PINTO COUNTY, TEXAS

SURVEYED ON THE GROUND DECEMBER 10, 2014

PHILIP E. COLVIN, JR., R.P.L.S. NO. 6258
 PRIDE SURVEYING, L.P., FIRM #10034200
 213 S OAK AVE., MINERAL WELLS, TX 76067
 940-325-4841 JN14618 14618B.dwg
 FNI50115-17 FNI50208



BEARING BASIS
 PLANE COORDINATE SYSTEM NAD83
 NORTH CENTRAL, TX ZONE, US SURVEY FOOT

NOTE: ALL DISTANCES ARE SURFACE DISTANCES

NOTE: SET = SET 1/2" 18 WITH CAP STAMPED

NOTE: THE SURVEYOR HAS MADE NO INVESTIGATION OF RECORDS OR EASEMENTS OF RECORD, AND THEREFORE ASSUMES OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT A CURRENT TITLE SEARCH MAY DISCLOSE

NOTE: SEE SEPARATE LEGAL DESCRIPTIONS

736 ENGINEER
 40 ft. 100 ft. 200 ft. 300 ft. 400 ft. 500 ft. 600 ft. 700 ft. 800 ft. 900 ft. 1000 ft.

TAB 8

Map Showing Project Details

APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION 12-4012

Map

The location of the requested additional diversion point on Palo Pinto Creek and the locations and direction of photographs are shown on USGS topographic mapping extracted from the TCEQ Texas Water Rights Viewer in Figure 1.

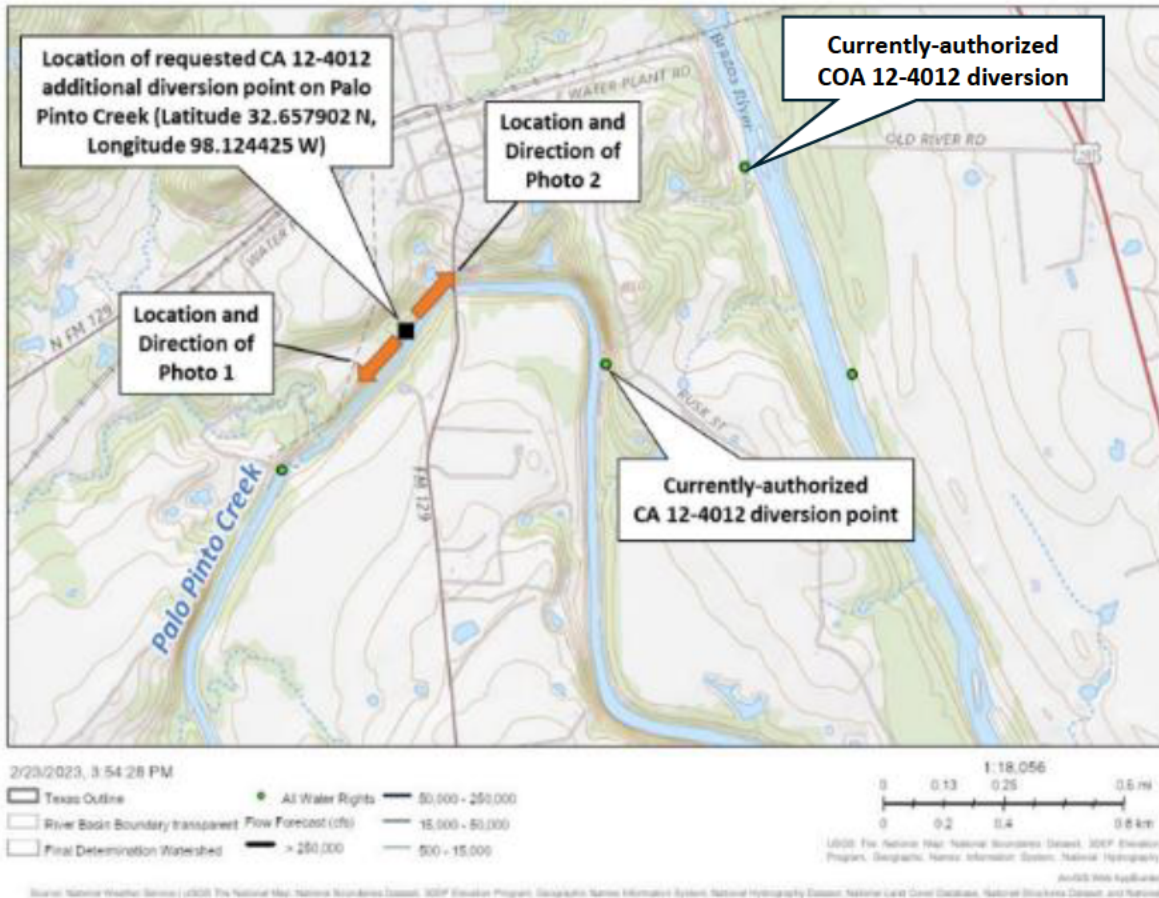


Figure 1. Location of Currently-Authorized and Requested Diversion Points

TAB 9

Photos of Diversion Point

APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION 12-4012

Photographs of Requested Diversion Points



Photograph 1 at Requested Diversion Point (Looking Upstream)



Photograph 2 at Requested Diversion Point (Looking Upstream)

TAB 10

Marshall Criteria Addendum

WORKSHEET 1.2 – THE MARSHALL CRITERIA

Comanche Bend Trust (“*Applicant*”) provides this Addendum to Worksheet 1.2 (“*Supplement*”) addressing each element of the Marshall Criteria to assist the Texas Commission on Environmental Quality (“*TCEQ*”) in determining that no notice is required for the Application for Amendment to Certificate of Adjudication (“*COA*”) 12-4012 (the “*Application*”). To summarize the goals of the Application, the Applicant seeks to amend COA 12-4012 to (i) add industrial and municipal purposes of use for the state water already authorized for diversion under COA 12-4012, and (ii) add an additional diversion point for such water supply. Such new diversion point is upstream of the currently authorized diversion points. The Application does not request to increase the amount of water diverted. *See* Summary of Request, Administrative Information Report, page 2.

a. Administrative Requirements and Fees.

The Application provides the relevant information to meet the administrative requirements for an amendment to a water use permit, pursuant to Texas Water Code (“*TWC*”) Chapter 11 and Title 30 Texas Administrative Code (“*TAC*”), Chapters 295 and 297. In accordance with 30 TAC §§295.131-295.132 and other TCEQ rules relating to fees for a water right amendment application, Applicant is submitting payment with the Application as provided in Tab 13. With the submission of the Application and this Supplement, the Palo Pinto County Municipal Water District No. 1 (“*District*”) requests a determination of any additional information or fees that may be required. Upon receipt of such determination, the District will forward such additional information and fees to the Commission, as may be requested, if any.

b. Beneficial Use.

A water use permit application must show the proposed appropriation is intended for a beneficial use, pursuant to TWC § 11.134(b)(3)(A). The “beneficial use” of water is defined by TWC § 11.002(4) and 30 TAC § 297.1(9) as the use of water “which is economically necessary for a purpose authorized by [Chapter 11 of TWC].” Here, the Application does not contemplate an increase in the amount of water for impoundment or diversion. Rather, the proposed amendments to COA 12-4012, if granted, contemplate using the water available for diversion under this water right for multiple statutorily authorized beneficial uses. Specifically, Applicant seeks to add municipal and industrial purposes of use, authorized beneficial uses pursuant to TWC § 11.023(a)(1) and (2), respectively, to COA 12-4012. To be clear, Applicant intends to maintain the right to divert the water supply authorized under COA 12-4012 for irrigation use. Thus, by amending this water right to authorize municipal, industrial, and irrigation purposes of use, the state water available for diversion would continue to be used for purposes of use that are deemed “beneficial uses” under TWC § 11.023(a)(1) and (2) respectively.

c. Public Welfare.

The proposed amendment sought by the Application will not negatively impact the public welfare. Amending COA 12-4012 allows the District to utilize this water, contracted to it by Applicant, for municipal and industrial purposes, in addition to the Applicants irrigation purpose,

as needed, and such amendment would not be detrimental to the public welfare as contemplated by TWC § 11.134(b)(3)(C). Rather, the proposed amendment will benefit the public welfare as it provides the Applicant and District with added reliability and flexibility to meet the needs for water for municipal and industrial purposes in Palo Pinto and Parker Counties. Additionally, TCEQ has previously determined that the appropriation was not detrimental to the public welfare when COA 12-4012 was issued, and the proposed amendment does not seek any changes that would negatively impact the public welfare. Further, the Application does not seek a new appropriation and thus will not impact the reliability of downstream water rights and the public welfare which may be dependent upon the water available to such downstream water rights.

d. Groundwater Effects.

The proposed amendment will not adversely impact groundwater resources or groundwater recharge, as the Application seeks to only use surface water already authorized under COA 12-4012. The diversion point Applicant seeks to add has already been authorized for use by TCEQ and Applicant does not seek to change the diversion amount already authorized under COA 12-4012. As such, approval of the Application will not negatively impact groundwater supplies.

e. State Water Plan.

Applicant and the District are located within Palo Pinto County, Texas, which is within the Region G Regional Water Planning Area. According to the 2021 Region G Regional Water Plan (the “**RWP**”) and the 2022 State Water Plan (the “**SWP**”), anticipate water supply shortages as well as increases in transfers of surface water rights from agricultural users to municipal users. Here, this Application addresses the District's water supply need consistent with the State and Region G Water Plans. The proposed inclusion of additional municipal and industrial purposes of use harmonizes with the State Plan's anticipated and planned for decrease in agricultural irrigation demand. 2022 State Water Plan, page 6.

f. Waste Avoidance.

Applicant will continue to use reasonable diligence to avoid waste and achieve water conservation. TWC § 11.002(8) defines “conservation” as practices that will “reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.” Such practices are expressed in the District's Water Conservation Plan, which will govern the water used under COA 12-4012 if the Application is approved. *See* the District's Water Conservation Plan, Tab 11.

g. Impacts on Water Rights or On-Stream Environment.

The proposed amendment will not impact other water right holders or the aquatic environment beyond and irrespective of the fact that the permit can be used to its full authorized amount. Adding purposes of use and an additional diversion point will not cause an adverse impact on other water rights holders or the on-stream environment of greater magnitude than if COA 12-4012 was fully exercised as currently authorized as proposed under TWC § 11.122(b). Additionally, the

requested modifications in the Application will also not affect other water-rights holders or the on-stream environment beyond or irrespective of the full use assumption contained in TWC § 11.122(b). Such an affect may occur with applications seeking to move the point of diversion “upstream above a senior right holder,” or seeking to change the purpose of use from a “nonconsumptive use to a consumptive one.” *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006). Here, the Application does not request either of these types of amendments or any other amendment that would harm other water right holders or the environment beyond or irrespective of the legislatively-mandated full-use assumption. Municipal and industrial purposes of use are both consumptive uses, as is the currently authorized irrigation purpose of use. The proposed diversion point to be added is also not upstream of a senior right holder and there is no other senior water right holder with a diversion point between the current and proposed diversion points. The Application does not seek to alter the conditions regarding quantity or rate of diversion. Further, the Application does not request additional dams, impoundments, or storage. Thus, there can be no negative impact on other water rights holders or the on-stream environment.

TAB 11

**Water Conservation Plan, Drought Contingency Plan and Documentation
of Adoption**

Water Conservation and Drought Contingency Plan

Palo Pinto County Municipal Water District No. 1

Palo Pinto County
May 1, 2024



Table of Contents

1.0 Introduction.....	3
2.0 Texas Commission on Environmental Quality Requirements	3
2.1 Water Conservation Plans	3
2.2 Drought Contingency Plan	5
3.0 Water Conservation Plan	6
3.1 Description of the District's Service Area	6
3.2 Description of Practices and/or Devices Used to Account for Determining the Amount of Water Diverted from the Source of Supply	10
3.3 Monitoring and Record Management Program	10
3.4 Metering, Leak Detection, and Repair Program	10
3.5 Contract Requirements for Successive Customers	10
3.6 Means of Implementation and Enforcement	11
3.7 Coordination with Regional Water Planning Groups	11
3.8 Additional Conservation Strategies	11
3.9 Conservation-Oriented Water Rate Structure	11
3.10 Review and Update of Water Conservation Plan	12
4.0 Drought Contingency Plan	12
4.1 Provisions to Inform the Public and Opportunity for Input	12
4.2 Coordination with Regional Water Planning Groups	13
4.3 Monitoring for Initiation and Termination of Drought Response Stages	13
4.4 Identification of Drought or Emergency Response Stages	13
4.5 Procedures to Follow for Initiation and Termination of Drought Response Stages	14
4.6 Specific, Quantified Targets for Water Use Reductions During Periods of Water Shortage and Drought	15
4.7 Specific Water Supply or Demand Management Measures to be Implemented during Each Stage of the Plan	16
4.8 Provision for Contract Requirements for Successive Customers	21
4.9 Procedures for Granting Variances to the Plan	21
4.10 Procedures for Enforcement of Mandatory Water Use Restrictions including Specification of Penalties	22



4.11	Notification of Executive Director of TCEQ of Implementation of Mandatory Provisions of the Drought Contingency Plan.....	23
4.12	Review and Update of the Drought Contingency Plan.....	23
Appendix A: RW Miler, LLC c/o LS Power Equity Advisors, LLC. Industrial/Mining Water Conservation Plan		
Appendix B: Resolution by District Board of Directors		
Appendix C: City of Mineral Wells Water Conservation and Drought Contingency Plan		
Appendix D: Letter Certifying City of Mineral Wells WCP/DCP		



1.0 Introduction

The Palo Pinto County Municipal Water District No. 1 (District) is a wholesale water provider and strives to provide a reliable water supply to its municipal and industrial customers. The objectives of the District's Water Conservation and Drought Contingency Plan are to establish short-term and long-term goals for conserving water and to identify procedures necessary to achieve water conservation goals and reductions in water use during drought conditions. The District has developed this Water Conservation and Drought Contingency Plan pursuant to the rules of the Texas Commission on Environmental Quality (TCEQ).

The District is a regional wholesale water provider currently serving three customers with raw water supplied from Lake Palo Pinto. These customers include the City of Mineral Wells (City), RW Miller Power, LLC c/o LS Power Equity Advisors, LLC. (RW Miller), and the Lake Palo Pinto Area Water Supply Corporation (Lake Palo Pinto Area WSC). The City provides treated water to its retail customers as well as seven wholesale water supply entities. All water provided by the District to the City is treated at the Hilltop Water Treatment Plant. RW Miller uses raw water for steam-electric power generation at their RW Miller Station located on the shoreline of Lake Palo Pinto. Lake Palo Pinto Area WSC is a small water supply corporation and diverts raw water through an intake located on Lake Palo Pinto which is treated at a water treatment plant owned and operated by the WSC. The Lake Palo Pinto Area WSC provides treated water to RW Miller for use at their RW Miller Station for sanitary and drinking water purposes.

2.0 Texas Commission on Environmental Quality Requirements

The TCEQ requires that wholesale water providers file a water conservation and drought contingency plan pursuant to 30 TAC §288.5 and 30 TAC §288.22, respectively. The TCEQ further requires that a water conservation plan be filed for industrial uses pursuant to 30 TAC §288.3. As a wholesale water supplier, the District does not directly control the water use of its customers and does not have a direct relationship with retail water customers. Therefore, the District's water conservation and drought contingency provisions for its municipal customers are generally consistent with plans adopted by these municipal customers.

2.1 Water Conservation Plans

The TCEQ has developed guidelines and requirements for development of water conservation plans for wholesale water providers (Title 30, TAC §288.5) and for industrial use (Title 30, TAC §288.3). Pursuant to TCEQ rules, a "water conservation plan" is defined as "a strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing and recycling



and reuse of water, and for preventing the pollution of water.”¹ The District’s water conservation plan (WCP) requirements are in accordance with TCEQ guidelines, as provided below.

- 30 TAC §288.5 (1A): Description of District’s Service Area — The WCP includes population and customer data, water use data, and water supply system data. The District does not provide wastewater services and this data is not included in the plan.
- 30 TAC §288.5 (1C): Specific, Quantified 5-Year and 10-Year Water Savings Targets — The WCP includes per capita target goals for municipal use and maximum acceptable unaccounted-for-water and goals, and basis for development of goals.
- 30 TAC §288.5 (1D): Description of Practices and/or Devices Used to Account for Determining the Amount of Water Diverted from the Source of Supply.
- 30 TAC §288.5 (1E): Monitoring and Record Management Program for the District.
- 30 TAC §288.5 (1F): Metering, Leak Detection, and Repair Program for the District.
- TAC §288.5 (1G): Contract Requirements for Successive Customers.
- 30 TAC §288.5 (1I): Means of Implementation and Enforcement of the Plan.
- 30 TAC §288.5 (1J): Coordination with Regional Water Planning Groups for Consistency with Approved Regional Water Plans.
- 30 TAC §288.5 (2): Additional Conservation Strategies — The WCP documents additional water conservation strategies pursued by the District customer’s including reuse and recycling programs.
- 30 TAC §288.5 (3): Review and Update of Water Conservation Plan (on at least a 5-year basis).
- A reservoir operations plan (30 TAC §288.5 (1H)) is not applicable to the District.

¹ Title 30, Texas Administrative Code, 288.1.



- Pursuant to 30 TAC §288.3, in addition to the provisions of this water conservation plan, an industrial/mining water conservation plan provided by RW Miller is included as part of the District's plan and is included in Appendix A.

2.2 Drought Contingency Plan

The TCEQ has developed rules for development of drought contingency plans for wholesale water providers in Title 30, TAC §288.22. A "drought contingency plan" is defined by TCEQ as "a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies."² The District's drought contingency plan (DCP) has been prepared in accordance with TCEQ guidelines, as provided below.

- 30 TAC §288.22 (a1): Provisions to Inform the Public and Wholesale Customers Regarding Preparation of the Plan.
- 30 TAC §288.22 (a2): Coordination with Regional Water Planning Groups.
- 30 TAC §288.22 (a3): Monitoring for Initiation and Termination of Drought Response Stages.
- 30 TAC §288.22 (a4): Identification of Drought or Emergency Response Stages (at least three).
- 30 TAC §288.22 (a5): Procedures to Follow for the Initiation or Termination of Drought Response Stages.
- 30 TAC §288.22 (a6): Specific, Quantified Targets for Water Use Reductions During Periods of Water Shortage and Drought.
- 30 TAC §288.22 (a7A&B): Specific Water Supply or Water Demand Management Measures to be Implemented During Each Stage of the Plan.
- 30 TAC §288.22 (a8): Provision for Contract Requirements for Successive Customers.
- 30 TAC §288.22 (a9): Procedures for Granting Variances to the Plan.
- 30 TAC §288.22 (a10): Procedures for Enforcement of Mandatory Water Use Restrictions including Specification of Penalties.

² Title 30, Texas Administrative Code, 288.1.



- 30 TAC §288.22 (b): Notification of Executive Director of Implementation of Mandatory Provisions of the Drought Contingency Plan.
- 30 TAC §288.22 (c): Review and Update of the Drought Contingency Plan.

3.0 Water Conservation Plan

3.1 Description of the District's Service Area

The District was created in 1963 by the Legislature (Act 1961, 57th Leg., P. 945, Ch. 416, as amended), pursuant to Section 59 of Article XVI of the Constitution of the State of Texas and by Article 8280-258, Revised Civil Statutes of Texas, 1925, as amended. The District operates as a conservation and reclamation district and is authorized to acquire or construct within or without the boundaries of the District in Palo Pinto County or Eastland County, a dam or dams including all works, plants, and other facilities necessary or useful for the purpose of impounding, processing, and transporting water to cities and others for all useful purposes.

The District owns Lake Palo Pinto, which is used to supply water to its three customers. The original dam was constructed in 1964. In 1965, the dam and spillway were modified resulting in the current conservation pool elevation of 867 ft-msl. In June 2007, the TWDB completed a volumetric survey of the lake and determined the capacity of Lake Palo Pinto at 867 ft-msl to be 27,215 acft.³ The District has water rights to store 44,100 ac-ft in Lake Palo Pinto and 24 ac-ft in the Channel Dam, and to divert up to 12,500 acft/yr from these reservoirs for municipal use and 6,000 ac-ft/yr from these reservoirs for industrial use as per Certificate of Adjudication 12-4031.

3.1.1 POPULATION AND CUSTOMER DATA

The District's primary municipal customer is the City of Mineral Wells, which is estimated to have a population of 15,577⁴ in 2024. The current estimated population of the City's seven wholesale customers and the Lake Palo Pinto Area WSC (taken from the 2026 Brazos G Regional Water Plan data) is approximately 37,727.

3.1.2 WATER USE DATA

In 2023, the District supplied 4,253 acft of raw water from Lake Palo Pinto for municipal and industrial uses. The majority of the raw water provided by the District is for municipal use by the City of Mineral Wells. The City of Mineral Wells operates one

³ Volumetric and Sedimentation Survey of Lake Palo Pinto, June 2007 Survey, TWDB Report, June 2008.

⁴ The 2024 population was obtained from TWDB and Texas State Data Center population estimates used in the development of the 2026 Brazos G Regional Water Plan. This population does not include the City of Mineral Wells wholesale customers.



water treatment plant, Hilltop Water Treatment Plant (WTP). In addition to providing treated water to the residents of Mineral Wells, the City of Mineral Wells provides treated water to four water supply corporations, two special utility districts, and the City of Graford as shown in Figure 3-1. Table 3-1 shows a summary of the previous 5-year raw water use for all District customers. In 2023, total water use was 4,253 acft with the City and its customers using 3,670 acft (86%), RW Miller using 463 acft (11%) and Lake Palo Pinto Area WSC using 120 acft (3%).

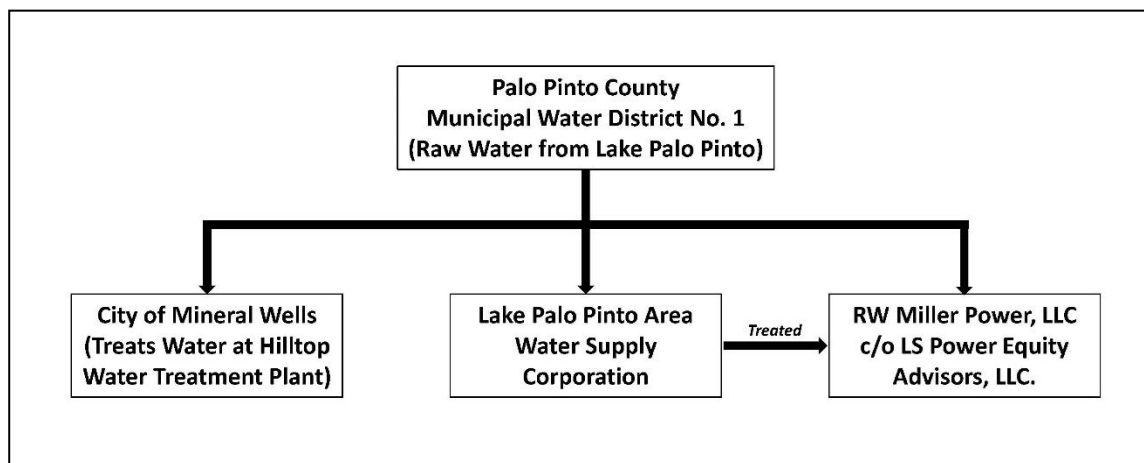


Figure 3-1. Palo Pinto County Municipal Water District No. 1 Customers

Table 3-1. Summary of Raw Water Use by District Customers for Previous 5 Years

Year	Raw Water Use (acft)			
	Total (acft)	RW Miller (acft)	City & Customers (acft)	Lake Palo Pinto Area WSC
2019	4,015	389	3,516	111
2020	4,315	199	4,190	129
2021	3,564	279	3,718	131
2022	4,078	357	3,786	144
2023	4,253	463	3,670	120

3.1.3 WATER SUPPLY SYSTEM DATA

Figure 3-2 shows the service areas of municipal entities receiving water from Lake Palo Pinto in Palo Pinto, Parker, and Hood Counties. All of these municipal entities are provided treated water through either the City of Mineral Wells or the Lake Palo Pinto Area WSC systems. The District does not maintain or operate water treatment or water distribution facilities.

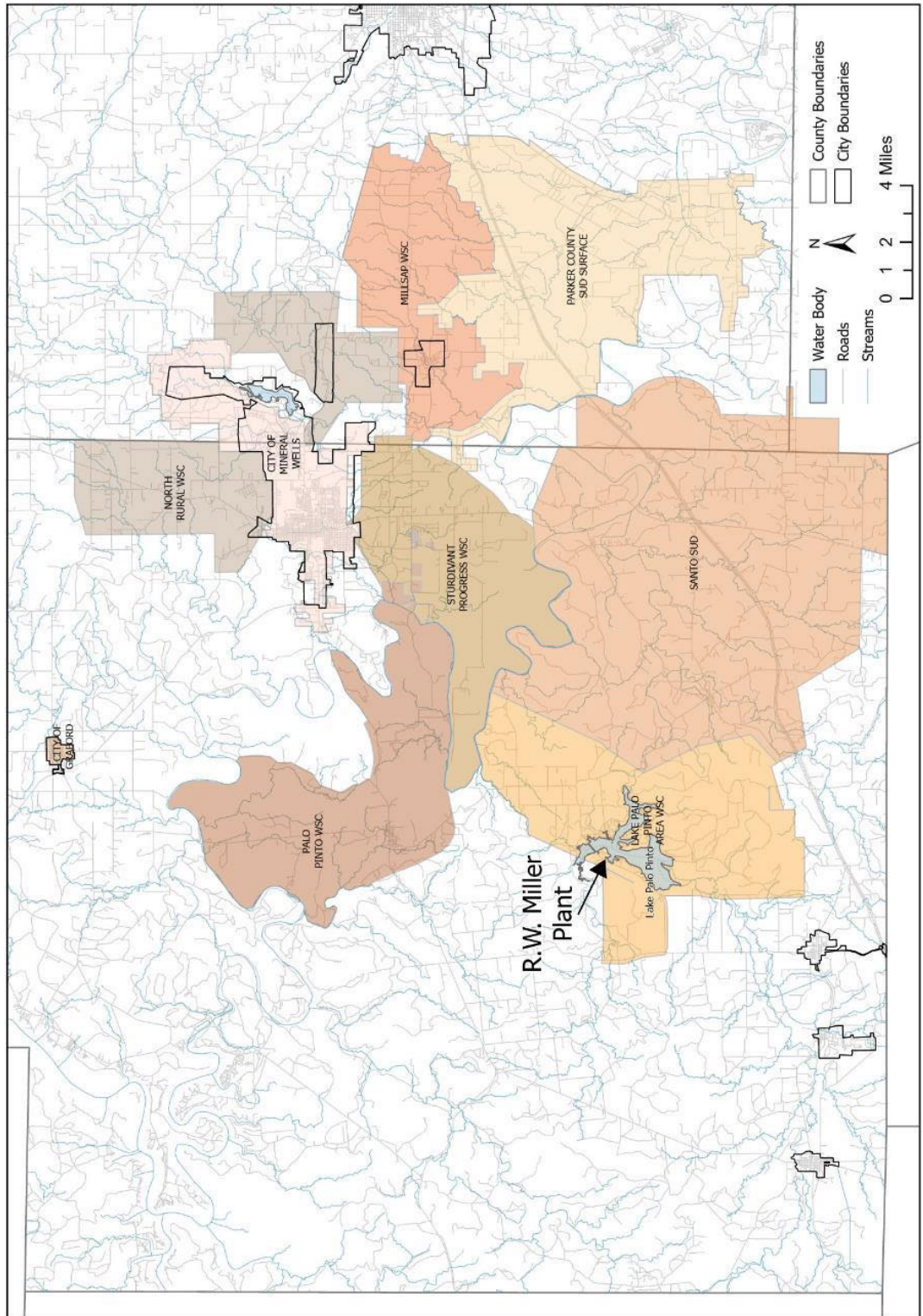


Figure 3-2. Palo Pinto County Municipal Water District No. 1 Service Area



The District also provides raw water to RW Miller for steam-electric power generation at their RW Miller Station. RW Miller's RW Miller Station consists of (3) steam boiler units: Unit 1 – 75 MW, Unit 2 - 120 MW, and Unit 3 - 208 MW. There are also (2) gas turbines Unit 4 - 104 MW and Unit 5 - 104 MW. The plant steam boiler units went online in 1968, 1972, and 1975 and the gas turbines were added in 1994. Cooling water for the steam boilers comes from Lake Palo Pinto through an intake structure and is pumped by the circulating water pumps through the units in a once-through cooling system. Water is also pumped from Lake Palo Pinto to an on-site water treatment plant by the service water pumps. Cooling water is not required for the gas turbines, although water injection is used for NOx control on these units. Water is also used through the heat exchangers to dissipate heat and to cool motors. All water not consumed by process operations or evaporated during the heat exchanger process is returned to Lake Palo Pinto as return flow. The minimum elevation that RW Miller can withdraw water from Lake Palo Pinto is approximately 850 ft-msl (about 15% of capacity) and their use would be significantly curtailed at this level.

3.1.4 WASTEWATER DATA

The District does not operate wastewater facilities.

3.1.5 SPECIFIC, QUANTIFIED 5-YEAR AND 10-YEAR WATER SAVINGS TARGETS

The District is a wholesale water provider and does not directly control the water use of its customers nor does it have a direct relationship with retail customers who are the ultimate users of the water. As strictly a wholesale water provider, the District encourages its customers to develop and implement 5-year and 10-year water savings targets based on their water conservation plans.

The specific, quantified 5-year and 10-year water savings targets for municipal users⁵ who use on average more than 140 gallons per person per day are as follows:

- A. 0.25% per capita reduction per day for the first 5-year target.
- B. Additional 0.25% per capita reduction per day for the 10-year target.

RW Miller has identified water conservation goals and implemented water conservation practices (see Appendix A). The District encourages RW Miller to pursue the goals they have identified. RW Miller's contract with the District requires RW Miller to have master meters at the RW Miller Station tested each 12 months for accuracy and if not accurate to within 2% then RW Miller is responsible to either repair or replace the meter.

⁵ City of Mineral Wells, "Water Conservation and Drought Contingency Plan for the City of Mineral Wells, Texas," Amended April 2024.



3.2 Description of Practices and/or Devices Used to Account for Determining the Amount of Water Diverted from the Source of Supply

All diversions of water by the District's municipal customers will be metered or otherwise measured with an accuracy of 2% and reported to the District each January unless drought contingency triggers have been reached and water use is required to be reported at more frequent intervals. RW Miller measures and accounts for the amount of water diverted by using master meters which must be maintained to an accuracy of 2% and pump curves.

3.3 Monitoring and Record Management Program

As a wholesale water provider, the District has a monitoring and record management program to assure that its customers are charged appropriately for their water use. The program includes the following:

- District customers are required by January 31st of each year to document their previous year's water usage in a monthly water use summary or report. Additionally, RW Miller is required to report their monthly power generation in GW-h for Generating Units No. 1, 2 and 3.
- The District has the authority to schedule random readings of customer meters and all customers are required to furnish water use records upon request of the District. The District has the right to access customer meters upon 48 hours prior notice.
- The District requires its customers to furnish, install, test, operate, read, and maintain meters. The District requires customers to test master meters for accuracy each 12-month period. If accuracy is found to be in excess of the required 2% limit, then the District requires customers to adjust the meter to register correctly and accurately or to replace the meter. The District has the right to request customers to test master meters more frequently than once per year.

3.4 Metering, Leak Detection, and Repair Program

The District encourages its customers to maintain a leak detection and repair program and to maintain careful inspection of raw water main pipes, distribution facilities, and to construct adequate system infrastructure sufficient to meet TCEQ requirements. The District requires all master meters of its customers to be calibrated once a year and to be accurate within 2%.

3.5 Contract Requirements for Successive Customers

The District includes a requirement in every water supply contract entered into or renewed that each successive wholesale customer develop and implement a water



conservation plan meeting the requirements of Title 30, Texas Administrative Code, 288.2. This requirement extends to each successive wholesale customer in the resale of water. Any political-subdivision and/or wholesale customer contracting for water from the District must have (1) an approved Texas Water Development Board Conservation and Drought Contingency Plan in effect or (2) must officially adopt applicable provisions of District's Water Conservation and Drought Contingency Plan. Upon each threshold condition, wholesale customers will be notified to implement their plan.

3.6 Means of Implementation and Enforcement

This Water Conservation Plan is required to be followed by all District wholesale customers. Appendix B contains a copy of the resolution by the District Board of Directors adopting this Water Conservation Plan. The President of the District is authorized to implement and enforce this plan, to the extent provided herein with in the laws of the State of Texas.

3.7 Coordination with Regional Water Planning Groups

The District's service area is located within the Brazos G and Region C Regional Water Planning Areas, and the District will provide a copy of this water conservation plan to the Brazos G and Region C Planning Groups.

3.8 Additional Conservation Strategies

The District encourages its water customers to conserve water and implement additional conservation strategies to meet targets and goals identified in their water conservation plans. The District supports their customers' implementation of water conservation strategies including:

- a. Funding education and information programs,
- b. Promoting retrofit programs to improve water-use efficiency in existing buildings,
- c. Promoting water recycling and reuse,
- d. Promoting water conserving landscaping, and
- e. Other water conservation practices identified by their customers.

3.9 Conservation-Oriented Water Rate Structure

The District requires its customers to have either non-declining block rates or increasing block rates to encourage water conservation.



3.10 Review and Update of Water Conservation Plan

The District will review and update its Water Conservation Plan, as appropriate, at least every 5 years from May 1, 2024. The update will include an assessment of previous 5-year and 10-year targets and any other new or updated information.

4.0 Drought Contingency Plan

The TCEQ requires that wholesale water providers file a drought contingency plan pursuant to 30 TAC 288.22. The District adopts the following Drought Contingency Plan to conserve the District's water supply and to protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety, and to minimize adverse impacts of water supply shortages or other water supply emergency conditions. The topics addressed in the District's Drought Contingency Plan (DCP) are in accordance with TCEQ guidelines.

The operations defined in this DCP are intended to supersede normal operations when DCP stages are triggered. Normal operations for the District to meet its demands outside of drought times are defined as:

- Water supply releases from Lake Palo Pinto down Palo Pinto Creek to the Brazos River pump station,
- Diversion of intervening flow on Palo Pinto Creek when available, and
- Supplementing Palo Pinto Creek supplies with blending from the Brazos River at the discretion of the District president or his/her designee.

4.1 Provisions to Inform the Public and Opportunity for Input

The District provided the opportunity for public and wholesale customer input during the original development of this drought contingency plan by the following means:

- Holding a public meeting on May 19, 2009, to actively inform the public and solicit input for preparation of the drought contingency plan.
- Providing the draft copy of the plan to the District's customers and making a draft copy of the plan available to anyone requesting a copy.
- Holding a public meeting on June 2, 2009, to solicit and receive public input prior to adoption of the drought contingency plan.
- Coordination with wholesale customers regarding plan updates and modifications.



For this updated version of the DCP/WCP, the District solicited public input at a duly noticed District board meeting held on April 19, 2024. The District agenda allowed for public comment to be received by the board to solicit input for preparation of revisions to the drought contingency plan.

The provisions of the DCP shall apply to all customers utilizing water provided by the District.

4.2 Coordination with Regional Water Planning Groups

The District's service area is located within the Brazos G and Region C Regional Water Planning Areas, and the District will provide a copy of the DCP to the Brazos G and Region C Planning Groups.

4.3 Monitoring for Initiation and Termination of Drought Response Stages

The District President, or his/her designee(s), shall monitor water supply and/or demand conditions on a weekly basis and shall, in consultation with the City Manager of the City of Mineral Wells or his/her designee, determine when conditions warrant initiation or termination of each stage of the DCP. Customer notification of the initiation or termination of drought response stages will be made by mail or telephone. The news media will also be informed.

The District will periodically provide wholesale water customers information about the DCP, including information about the conditions for initiating or terminating trigger stages and the drought response measures to be implemented in each stage. This information will be provided by means of providing a copy of the DCP to its customers.

The District President, or his/her designee(s), is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The District President, or his/her designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in the DCP. The District President, or his/her designee, will coordinate the on-going implementation of the plan with the City Manager of Mineral Wells.

4.4 Identification of Drought or Emergency Response Stages

The District President, or his/her designee(s), shall monitor water supply and/or demand conditions and, in accordance with the criteria for the four trigger stages set forth below, shall determine that mild, moderate, severe, or critical water shortage conditions exist or that an emergency condition exists and shall implement action according to this plan.

The triggering criteria described below are based on a statistical analysis of the vulnerability of the water source during a repeat of the drought-of-record. Official



weather forecasts are to be considered in the initiation and termination of triggering conditions.

4.5 Procedures to Follow for Initiation and Termination of Drought Response Stages

4.5.1 STAGE 1 – MILD WATER SHORTAGE CONDITIONS

Initiation – The District will recognize that a mild water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than elevation 864 ft-msl (74% of storage capacity).

Requirements for Termination – Stage 1 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 10 consecutive days. The District will notify its customers and the news media of the termination of Stage 1 in the same manner as the notification of initiation of Stage 1 of the Plan.

4.5.2 STAGE 2 – MODERATE WATER SHORTAGE CONDITIONS

Initiation – The District will recognize that a moderate water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than elevation 861 ft-msl (54% of storage capacity).

Requirements for Termination – Stage 2 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 10 consecutive days. The District will notify its customers and the news media of the termination of Stage 2 in the same manner as the notification of initiation of Stage 2 of the Plan.

4.5.3 STAGE 3 – SEVERE WATER SHORTAGE CONDITIONS

Initiation – The District will recognize that a severe water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than elevation 858 ft-msl (38% of storage capacity).
2. Mechanical failure of equipment.

Requirements for Termination – Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 10 consecutive days. The District will notify its customers and the news media



of the termination of Stage 3 in the same manner as the notification of initiation of Stage 3 of the Plan.

4.5.4 STAGE 4 – CRITICAL WATER SHORTAGE CONDITIONS

Initiation – The District will recognize that an emergency water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than elevation 854 ft-msl (23% of storage capacity)

Requirements for Termination – Stage 4 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 10 consecutive days. The District will notify its customers and the news media of the termination of Stage 4 in the same manner as the notification of initiation of Stage 4 of the Plan.

4.5.5 EMERGENCY WATER SHORTAGE CONDITIONS

Initiation – The District will recognize that an emergency water shortage condition exists when:

1. Water system is contaminated either accidentally or intentionally. Emergency condition is reached immediately upon detection.
2. Water system failure from acts of God (tornadoes, hurricanes) or man. Emergency condition is reached immediately upon detection.
3. Notification to customers will be enacted at once and periodic updates will be conveyed through the news media on progress of emergency water conditions.

Requirements for Termination – After the emergency situation has been resolved, the District will notify its customers and the news media of the termination of Emergency Water Shortage Conditions.

4.6 Specific, Quantified Targets for Water Use Reductions During Periods of Water Shortage and Drought

4.6.1 STAGE 1 – MILD WATER SHORTAGE CONDITIONS

Goal: Achieve a voluntary 10% reduction in municipal water use.

4.6.2 STAGE 2 – MODERATE WATER SHORTAGE CONDITIONS

Goal: Achieve a voluntary 20% reduction in municipal water use.



4.6.3 STAGE 3 – SEVERE WATER SHORTAGE CONDITIONS

Goal: Achieve a 25% reduction in municipal water use.

4.6.4 STAGE 4 – CRITICAL WATER SHORTAGE CONDITIONS

Goal: Achieve a 30% reduction in municipal water use.

4.7 Specific Water Supply or Demand Management Measures to be Implemented during Each Stage of the Plan

4.7.1 STAGE 1 – MILD WATER SHORTAGE CONDITIONS

1. Supply Management Measures:
 - a. Monitor Lake Palo Pinto levels.
 - b. Monitor water releases from Lake Palo Pinto to minimize operational spills at the District's Channel Dam on Palo Pinto Creek.
2. Demand Management Measures:
 - a. The District President, or his/her designee(s), will contact wholesale water customers to discuss water supply and/or demand conditions and will request that wholesale water customers initiate voluntary measures to reduce water use, and to implement Stage 1 of the customer's drought contingency plan.
 - b. The District President, or his/her designee(s), will coordinate with the City Manager of Mineral Wells and designate an information person.
 - c. Advise public of condition and publicize availability of information from the information center and encourage voluntary reduction of water use.
 - d. Monitor system and work with City staff to make adjustments as required to meet changing conditions.
 - e. The District President, or his/her designee(s), will provide a periodic report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.



4.7.2 STAGE 2 – MODERATE WATER SHORTAGE CONDITIONS

1. Supply Management Measures:

- a. Monitor Lake Palo Pinto levels.
- b. Monitor water releases from Lake Palo Pinto to minimize operational spills at the District's Channel Dam on Palo Pinto Creek
- c. Implement blending operations with Brazos River supplies, if available and if not already enacted.

2. Demand Management Measures:

The District President, or his/her designee(s), on identifying moderate water shortage conditions, shall initiate Stage 2 curtailment. Listed action is compulsory on users and is intended to prohibit non-essential water use. ("Non-essential Water Use" will be defined consistent with the City of Mineral Wells plan.)

- a. The District President, or his/her designee(s), will monitor system function. A rate surcharge may be implemented by the District on excessive water users.
- b. The District President, or his/her designee(s), will initiate weekly contact with wholesale water customers to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.
- c. The District President, or his/her designee(s), will instruct wholesale water customers to initiate mandatory measures to reduce non-essential water use and implement Stage 2 of the customer's drought contingency plan,
- d. The District President, or his/her designee(s), will initiate preparations for the implementation of pro rata curtailment of water diversions, and/or deliveries by preparing monthly water usage allocation baseline for each wholesale customer according to the procedures specified in Section 4.7.6 of the Plan.
- e. The District President, or his/her designee(s), will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and



customer information on water conservation measures and practices.

4.7.3 STAGE 3 – SEVERE WATER SHORTAGE CONDITIONS

1. Supply Management Measures:

- a. Monitor Lake Palo Pinto levels.
- b. Monitor water releases from Lake Palo Pinto to minimize operational spills at the District's Channel Dam on Palo Pinto Creek.

2. Demand Management Measures:

The District President, or his/her designee(s), shall initiate Stage 3 curtailment upon existence of severe conditions as determined. The District President, or his/her designee(s), in coordination with the City Manager of Mineral Wells will restrict the use of water for certain municipal water use activities consistent with the requirements of the City's plan.

- a. The District President, or his/her designee(s), will contact wholesale water customers to discuss water supply and/or demand conditions and will instruct that wholesale water customers initiate additional mandatory measures to reduce non-essential water use and implement Stage 3 of customer's drought contingency plan.
- b. The District President, or his/her designee(s), will initiate pro rata curtailment of water diversion and/or deliveries for each municipal wholesale customer.
- c. The District President, or his/her designee(s), will provide a weekly report to news media with information regarding current water supply and, /or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

4.7.4 STAGE 4 – CRITICAL WATER SHORTAGE CONDITIONS

1. Supply Management Measures:

- a. Monitor Lake Palo Pinto levels.



- b. Monitor water releases from Lake Palo Pinto to minimize operational spills at the District's Channel Dam on Palo Pinto Creek.
- c. Begin implementation of Brazos River reverse osmosis emergency drought supply.

2. Demand Management Measures:

The District President, or his/her designee(s), shall initiate Stage 4 curtailment upon existence of critical conditions as determined. The District President, or his/her designee(s), in coordination with the City Manager of Mineral Wells will restrict the use of water for certain municipal water use activities consistent with the requirements of the City's plan.

- a. The District President, or his/her designee(s), will contact wholesale water customers to discuss water supply and/or demand conditions and will instruct that wholesale water customers initiate additional mandatory measures to reduce non-essential water use and implement Stage 4 of customer's drought contingency plan.
- b. The District President, or his/her designee(s), will initiate pro rata curtailment of water diversion and/or deliveries for each municipal wholesale customer.
- c. The District President, or his/her designee(s), will provide a weekly report to news media with information regarding current water supply and, /or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

4.7.5 EMERGENCY WATER SHORTAGE CONDITIONS

Whenever emergency water shortage conditions exist as defined above in Section 4.5.5, the District President, or his/her designee(s), shall:

- 1. Assess the severity of the problem and identify the actions needed and time required to solve the problem.
- 2. Inform the City Manager of Mineral Wells and other responsible officials of each wholesale water customer by telephone or in person and suggest actions, as appropriate, to alleviate problems and notification to the public to reduce water use until service is restored.



3. If appropriate, notify city, county, and/or state emergency response officials for assistance.
4. Undertake necessary actions, including repairs and/or clean up as needed.
5. Prepare a post-event assessment report on the incident and critique of emergency response procedures and actions.

4.7.6 PRO-RATA WATER ALLOCATION FOR STAGE 4 OR EMERGENCY CONDITIONS

In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the District's care becomes in short supply, the District may fairly and equitably apportion and ration the available water supply among its customers.

If Stage 4 – Critical Water Shortage Conditions criteria specified in Section 4.5 have been met, the District President, or his/her designee(s), is hereby authorized to initiate allocation of water supplies on a pro rata basis in accordance with Texas Water Code Section 11.039 and according to the following water allocation policies and procedures:

- A. A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the Board based on the District President's, or his/her designee(s), assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the Board, as conditions warrant. Once pro rata allocation is in effect, water diversions by or deliveries to each wholesale customer shall be limited to the allocation established for each month.
- B. A monthly water usage allocation shall be established by the District President, or his/her designee(s), for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the 5-year period. If the wholesale water customer's billing history is less than 5-years, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exist.
- C. The District President, or his/her designee(s), shall provide notice, by certified mail, to each wholesale customer informing them of their monthly water usage allocations and shall notify the news media and the executive director of the TCEQ upon initiation of pro rata allocation.



- D. Upon request of the customer or at the initiative of the District President, or his/her designee(s), the allocation may be reduced or increased, if, (1) the designated period does not accurately reflect the wholesale customer's normal water usage; (2) the customer agrees to transfer part of its allocation to another wholesale customer; or (3) other objective evidence demonstrates that the designated allocation is inaccurate or not appropriate under present conditions. A customer may appeal an allocation established hereunder to the District Board.

4.7.7 UTILIZATION OF ALTERNATIVE WATER SOURCES

In the event the District determines that the supply available from Lake Palo Pinto may not be adequate to meet the needs of the District's customers, the District, after consultation with the City Manager of the City of Minerals Wells, will pursue the activation of a supplemental water supply source. The District has secured water rights and contracts for diversion of water from the Brazos River to supplement supplies from Lake Palo Pinto. The District has two options for supplementing supplies from the Brazos River. One is blending raw water from the Brazos River with supplies from Lake Palo Pinto at the Brazos Pump Station. The second is reverse osmosis treatment of the Brazos River water before discharging into the Clear Well at the Brazos Pump Station.

4.8 Provision for Contract Requirements for Successive Customers

The District will include a requirement in every water supply contract entered into or renewed after official adoption of the drought contingency plan, and including contract extension, that each successive wholesale customer develop and implement a drought contingency plan meeting the requirements of Title 30, TAC §288.22. This requirement will extend to each successive wholesale customer in the resale of water. The District will include a provision in every wholesale water contract entered into or renewed, including contract extensions, that in the case of a shortage of water resulting from drought, the water to be distributed will be divided in accordance with Texas Water Code, §11.039, as described in Section 4.7.5.

4.9 Procedures for Granting Variances to the Plan

The District President, or his/her designee(s) may, in writing, grant a variance to the pro rata water allocation policies provided by this Drought Contingency Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the public health, welfare, or safety and if one or more of the following conditions are met.

1. Compliance with this Drought Contingency Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect,



2. Alternate methods can be implemented which will achieve the same level of reduction in water use.

Customers requesting a variance from the provisions of this Drought Contingency Plan shall file a petition for variance with the District President within 5 days after pro rata allocation has been invoked. All petitions for variance shall be reviewed by the District President, or his/her designee(s), and shall include the following:

1. Name and address of the petitioner(s).
2. Detailed statement with supporting data and information as to how the pro rata allocation of water under the policies and procedures established above in Section 4.7 adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with the Ordinance.
3. Description of the relief requested.
4. Period of time for which the variance is sought.
5. Alternative measures the petitioner is taking or purpose to take to meet the intent of the DCP and the compliance date.
6. Other pertinent information.

Any variance granted by the District President shall be subject to the following conditions, unless waived or modified by the Board:

1. Variances granted shall include a timetable for compliance.
2. Variances granted shall expire when the Plan is no longer in effect unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance. Initial decisions regarding a petition for variance may be appealed to the Board of the Directors of the District.

4.10 Procedures for Enforcement of Mandatory Water Use Restrictions including Specification of Penalties

The District may, without liability, curtail partially or wholly the amount of raw water delivered to its primary customers, during times of drought, or under other conditions when it is necessary to curtail deliveries for the District to maintain the operational stability of its raw water supply.



During any period when pro rata allocation of available water supply is in effect, the District may require wholesale customers to pay the following surcharge on excess water diversions and/or deliveries.

1. 1.5 times the normal water charge per thousand-gallon for water diversions and/or deliveries in excess of the monthly allocation up through 5% above the monthly allocation.
2. 2.0 times the normal water charge per thousand-gallon for water diversions and/or deliveries in excess of the monthly allocation from 5% through 10% above the monthly allocation.
3. 2.5 times the normal water charge per thousand-gallon for water diversions and/or deliveries in excess of the monthly allocation from 10% through 15% above the monthly allocation.
4. 3.0 times the normal water charge per thousand-gallon for water diversions and/or deliveries more than 15% above the monthly allocation.
5. The above surcharge shall be cumulative.

4.11 Notification of Executive Director of TCEQ of Implementation of Mandatory Provisions of the Drought Contingency Plan

The District shall notify the Executive Director of TCEQ within 5 business days of the implementation of any mandatory provisions of the drought contingency plan.

4.12 Review and Update of the Drought Contingency Plan

Per TCEQ rules, the District will review and update, as appropriate, the drought contingency plan, at least every 5 years, based on new or updated information, such as adoption or revision of the Brazos G and/or Region C Regional Water Plan.

Appendix A: RW Miler, LLC c/o LS Power Equity Advisors, LLC. Industrial/Mining Water Conservation Plan



Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4600, FAX (512) 239-2214

Industrial Water Conservation Plan

This form is provided to assist entities in developing a water conservation plan for industrial water use. If you need assistance in completing this form or in developing your plan, please contact the Conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4600.

Additional resources such as best management practices (BMPs) are available on the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

Contact Information

Name: RW Miller LLC.
Address: 2217 FM 3137, Palo Pinto, Texas 76484
Telephone Number: 940-600-4789 Fax: _____
Form Completed By: Chester Dvorak
Title: Interim Operations Manager
Signature: *Chester Dvorak* Date: 03/22/2024

A water conservation plan for industrial use must include the following requirements (as detailed in 30 TAC Section 288.3). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

I. BACKGROUND DATA

A. Water Use

1. Annual diversion appropriated or requested (in acre-feet):

1,024

2. Maximum diversion rate (cfs):

1 cfs=1.983 acre-feet/day. $1024/365=2.8054$ acre feet/day. $2.8054/1.983=1.4147$ cfs

Water Sources

3. Please indicate the maximum or average annual amounts of water currently used and anticipated to be used (in acre-feet) for industrial purposes:

<u>Source</u>	<u>Water Right No.(s)</u>	<u>Current Use</u>	<u>Anticipated Use</u>
---------------	---------------------------	--------------------	------------------------

Surface Water	Lake Palo Pinto	468.8	1,024
Groundwater			
Purchased	PPWSC	0.32	
Total		469.12	1,024

4. How was the surface water data and/or groundwater data provided in B(1) obtained?

Master meter N/A; Customer meter N/A; Estimated N/A; Other X

5. Was purchased water raw or treated?

If both, % raw X; % treated ; and Supplier(s)

B. Industrial Information

1. Major product(s) or service(s) produced by applicant:

Electricity

2. North American Industry Classification System (NAICS):

221112

II. WATER USE AND CONSERVATION PRACTICES

A. Water Use in Industrial Processes

<i>Production Use</i>	<i>% Groundwater</i>	<i>% Surface Water</i>	<i>% Saline Water</i>	<i>% Treated Water</i>	<i>Water Use (in acre-ft)</i>
Cooling, condensing, & refrigeration		100			468.8
Processing, washing, transport					
Boiler feed					
Incorporated into product					
Other					

<i>Facility Use</i>	<i>% Groundwater</i>	<i>% Surface Water</i>	<i>% Saline Water</i>	<i>% Treated Water</i>	<i>Water Use (in acre-ft)</i>
Cooling tower(s)	_____	_____	_____	_____	_____
Pond(s)	_____	_____	_____	_____	_____
Once through	_____	99.674	_____	_____	468.8
Sanitary & drinking water	_____	100	_____	_____	0.32
Irrigation & dust control	_____	_____	_____	_____	_____

- Was fresh water recirculated at this facility? ☐ Yes ☒ No
- Provide a detailed description of how the water will be utilized in the industrial process.

Once through cooling for Steam Turbine, condensers, and heat exchangers. Also used for the production of service water for the fire protection systems and boiler make-up water.

- Estimate the quantity of water consumed in production processes and is therefore unavailable for reuse, discharge, or other means of disposal.

0.3256 % or 152,760,708 gallons

- Monthly water consumption for previous year (in acre-feet).

<i>Month</i>	<i>Diversion Amount</i>	<i>% of Water Returned (If Any)</i>	<i>Monthly Consumption</i>
January	2,894	99.9356	1.8622
February	3,565	99.6869	11.1572
March	3,411	99.7394	8.889
April	7,133	99.8306	12.079
May	10,115	99.8248	17.72
June	21,265	99.7287	57.688
July	30,483	99.7165	86.412
August	21,510	99.3799	133.381
September	26,291	99.6404	94.531

October	11,233	99.7753	25.236
November	4,276	99.576	18.127
December	1,825	99.9055	1.723
Totals	143,999	99.6744	468.8054

5. Projected monthly water consumption for next year (in acre-feet).

<i>Month</i>	<i>Diversion Amount</i>	<i>% of Water Returned (If Any)</i>	<i>Monthly Consumption</i>
January	5,244	99.92%	4
February	6,270	99.76%	15
March	6,287	99.71%	18
April	7,597	99.76%	18
May	8,465	99.79%	18
June	15,222	99.8%	31
July	25,474	99.77%	58
August	26,116	99.71%	77
September	21,894	99.79%	46
October	13,764	99.8%	28
November	5,824	99.76%	14
December	6,512	99.83%	11
Totals	148,669	99.77%	338

B. Specific and Quantified Conservation Goal

Water conservation goals for the industrial sector are generally established either for (1) the amount of water recycled, (2) the amount of water reused, or (3) the amount of water not lost or consumed, and therefore is available for return flow.

1. Water conservation goal (water use efficiency measure)

Type of goal(s):

N/A % reused water

X % of water not consumed and therefore returned

N/A Other (specify)

2. Provide specific, quantified 5-year and 10-year targets for water savings and the basis for development of such goals for this water use/facility.

Quantified 5-year and 10-year targets for water savings:

- a. 5-year goal: 3 acre feet
 - b. 10-year goal: 1.53 acre feet
3. Describe the device(s) and/or method(s) used to measure and account for the amount of water diverted from the supply source, and verify the accuracy is within plus or minus 5%.

Pump capacity curves are utilized for determining the amount of flow through the once through circulation system. A calculation is used to determine the evaporation of water through the once through circulation system. A metered measurement is utilized for the consumption of water diverted for service water use.

4. Provide a description of the leak-detection and repair, and water-loss accounting measures used.

Utilize the difference in the return water flow to Outfall 001.

5. Describe the application of state-of-the-art equipment and/or process modifications used to improve water use efficiency.

Conduct equipment inspections for leaks. When leaks are detected, a repair is scheduled as soon as possible to minimize the amount of water lost.

6. Describe any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan:

The facility utilizes the water to cool equipment and then returns the water back to the lake. Service water is produced from a portion of the water and treated for use in the production of steam for the boilers. The steam is then used to turn one of two turbines that produce electricity. The service water is stored in a large tank. Personnel continuously monitor tank levels to prevent the loss of the water for the generation of steam.

III. Water Conservation Plans submitted with a Water Right Application for New or Additional State Water

Water Conservation Plans submitted with a water right application for New or Additional State Water must include data and information which:

1. support the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
2. evaluates conservation as an alternative to the proposed appropriation; and
3. evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

Additionally, it shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

Appendix B: Resolution by District Board of Directors

THE STATE OF TEXAS

§

COUNTY OF PALO PINTO

§

PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1

§

RESOLUTION

WHEREAS, Be it enacted by the Legislature of the State of Texas: *Section 1.* By virtue of Article XVI, Section 59 of the Texas Constitution, there is hereby created a conservation and reclamation district to be known as "Palo Pinto County Municipal Water District No. 1," (herein-after called "District") which shall be a governmental agency and a body politic and corporate.

WHEREAS it is the duty of the Board to manage the affairs of the District;

WHEREAS, attached is a true and correct copy of an updated, revised, and amended Water Conservation and Drought Contingency Plan ("Plan") for the Palo Pinto County Municipal Water District No. 1 (the "Water District"); and

WHEREAS, the District provided sufficient written notice of the date, hour, place, and subject of the public meeting where the District's Plan, dated May 1, 2024, was considered. The proposed adoption of this Resolution was posted at a designated place convenient to the public for the time required by law preceding the meeting, that such place of posting was readily accessible at all times to the general public; and

WHEREAS, the District's General Manager is hereby directed and authorized on behalf of the Board to file a copy of the attached Plan with the TCEQ, the TWDB, and the Brazos G and Region C Regional Water Planning Groups upon approval; and

WHEREAS, The District's General Manager is hereby directed and authorized on behalf of the Board to implement, administer, and enforce the District's Plan attached to this Resolution.

WHEREAS the Board is the governing body of the District, and the Board has concluded that the District should adopt the updated, revised, and amended Plan.

Dr. David Turk (✓) In Favor	() Against	() Abstain	() Absent
Eugene Waddy (✓) In Favor	() Against	() Abstain	() Absent
Don Crawford (✓) In Favor	() Against	() Abstain	() Absent
Rich Kidwell (✓) In Favor	() Against	() Abstain	() Absent
Kelly Rawlings (✓) In Favor	() Against	() Abstain	() Absent

THEREFORE, BE IT RESOLVED that the updated, revised, and amended 2024 Water Conservation and Drought Contingency Plan for the Palo Pinto County Municipal Water District No. 1 is hereby approved and adopted at a public meeting held this 19th Day of April 2024.



 Eugene Waddy, Secretary

I, Dr. David Turk, the President of the Board, do hereby certify that the foregoing is a correct copy of a resolution adopted as set forth.



 Dr. David Turk, President

Appendix C: City of Mineral Wells Water Conservation and Drought Contingency Plan

WATER CONSERVATION
AND
DROUGHT CONTINGENCY PLAN
FOR THE
CITY OF MINERAL WELLS, TEXAS

Original Adoption Date and Amendments

**December 1999
(Adopted: January 18, 2000)**

Amendments

Adopted: December 5, 2000

Adopted: April 19, 2005

Adopted: June 16, 2009

Adopted: May 4, 2010

Adopted: May 6, 2014

Adopted: March 1, 2016

Adopted: January 17, 2017

Adopted: July 19, 2022

**Adopted: April 16, 2024
(Effective May 1, 2024)**

TABLE OF CONTENTS

	<u>Page</u>
1.0 INTRODUCTION	1.1
2.0 SYSTEM EVALUATION	2.1
2.1 Existing Water Supplies	2.1
2.2 Historical and Projected Water Use	2.1
2.3 Five-Year and Ten-Year Targets for Water Savings	2.1
2.4 Wastewater Information	2.4
2.5 Financial Information	2.4
3.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REQUIREMENTS	3.1
3.1 Water Conservation Plan	3.1
3.2 Drought Contingency Plan	3.2
4.0 WATER CONSERVATION PLAN	4.1
4.1 Education and Information	4.1
4.2 Plumbing Codes	4.1
4.3 Water Conservation Retrofit Program	4.2
4.4 Conservation Oriented Water Rate Structure	4.2
4.5 Universal Metering and Meter Repair and Replacement	4.2
4.6 Water Conservation Landscaping	4.2
4.7 Water Audits and Leak Detection	4.2
4.8 Means of Implementation and Enforcement	4.3
4.9 Recycling and Reuse	4.3
4.10 Contracts with Other Political Subdivisions	4.4
4.11 Coordinate with Regional Water Planning Groups	4.4
4.12 Additional Conservation Strategies	4.4
4.13 Review and Update of Water Conservation Plan	4.4
Water Service Area – Chart and Map	4.5
5.0 DROUGHT CONTINGENCY PLAN/MEASURES	5.1
5.1 Declaration of Policy, Purpose, and Intent	5.1
5.2 Public Involvement	5.1
5.3 Wholesale Water Customer Education	5.1
5.4 Coordination with Regional Water Planning Groups	5.1
5.5 Authorization	5.1
5.6 Application	5.1
5.7 Triggering Criteria for Initiation and Termination of Drought Response Stages	5.1
5.7 A. Full Pool	5.2
5.7 B. Stage I – Mild Water Shortage	5.2
5.7 C. Stage II – Moderate Water Shortage	5.2
5.7 D. Stage III – Severe Water Shortage	5.3
5.7 E. Stage IV – Critical Water Shortage/Conditions	5.3
5.7 F. Emergency Water Shortage/Conditions	5.3
5.8 Specified, Quantified Targets for Water Use Reduction During Periods of Water Shortage and Drought	5.4
5.8 A. Stage I – Mild Water Shortage	5.4
5.8 B. Stage II – Moderate Water Shortage	5.4
5.8 C. Stage III – Severe Water Shortage	5.4
5.8 D. Stage IV – Critical Water Shortage/Conditions	5.4

	<u>Page</u>
5.9 Drought Response Stages	5.4
5.9 A. Full Pool	5.4
5.9 B. Stage I – Mild Water Shortage	5.4
5.9 C. Stage II – Moderate Water Shortage	5.5
5.9 D. Stage III – Severe Water Shortage	5.6
5.9 E. Stage IV – Critical Water Shortage/Conditions	5.6
5.9 F. Emergency Water Shortage/Conditions	5.7
5.10 Pro Rata Water Allocation	5.7
5.11 Provision for Contract Requirements for Successive Customers	5.8
5.12 Enforcement	5.8
5.13 Variances	5.8
5.14 Severability	5.9
5.15 Information and Education	5.9
5.16 Initiation Procedures	5.9
5.17 Modification, Deletion, and Amendment	5.9
5.18 Means of Implementation	5.10
5.19 Notification of TCEQ Executive Director of Implementation of Mandatory Provisions of the Drought Contingency Plan	5.10
5.20 Review and Update of Drought Contingency Plan	5.10

APPENDIX A	CITY OF MINERAL WELLS WATER RATE STRUCTURE
APPENDIX B	WATER UTILITY PROFILE WORKSHEET
APPENDIX C	LISTING OF WATER CONSERVATION LITERATURE
APPENDIX D	PUBLIC INFORMATION SUGGESTIONS

LIST OF TABLES

<u>Table</u>		<u>Page</u>
2.2	City of Mineral Wells 2023 Water Use by Category	2.2
2.3	City of Mineral Wells Projected Population and Water Use	2.3

1.0 INTRODUCTION

The adoption of a water conservation plan is required by the Texas Commission on Environmental Quality (TCEQ) and the requirements set forth in Senate Bill (1) One, 75th Texas Legislature and for any project to be funded by the Texas Water Development Board pursuant to the statutes adopted by the 69th Legislature during the 1985 regular special called sessions. Sections 15.001 8 (A) and (B) VTCA state that “Conservation means:

- A. The development of water resources; and
- B. those practices, techniques, and technologies that will reduce the consumption of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.”

The purpose of the Water Conservation and Drought Contingency Plan is to establish short-term and long-term goals for conserving water and to determine the procedures and steps necessary to achieve these goals.

To achieve the goals of the City of Mineral Wells Water Conservation Plan, the City proposes to:

- 1. Perform an official utility evaluation of factors, which affect water use;
 - a. Release only water needed for treatment.
 - b. Find ways to conserve treated water in the treatment process.
 - c. Backwash water sent back to pre-sedimentation reservoir.
 - d. Decant lagoon water back to pre-sedimentation reservoir.
- 2. Determine attainable goals for a water conservation program and ways in which to measure those goals;
 - a. The City’s daily average per capita water use for calendar year 2023 was 85.65 gallons.
 - b. The City’s goal will be to reduce this usage by 0.25% over the next five years.
 - c. To achieve this goal the City has increased its accuracy when conducting water audits and has adopted ordinances to assist in the decrease of leaks caused by contractors/construction.
- 3. Outline implementation guidelines for additional water conservation programs;
 - a. Inform the customer about conservation through pamphlets and brochures.
 - b. Monitor irrigation at businesses and ask for adjustments when needed.
 - c. Water main projects to eliminate old leaking mains; and
- 4. Ultimately, to conserve water.

To achieve goals of the Drought Contingency Plan, the City will:

- 1. Establish procedures to be implemented at certain stages of a drought; and
- 2. Identify voluntary and mandatory actions to reduce the demand placed on the water supply system during a water shortage emergency.

2.0 SYSTEM EVALUATION

2.1 EXISTING WATER SUPPLIES

The City of Mineral Wells, located in the north-central section of the State, is approximately 50 miles west of Fort Worth and has a service area of roughly 15 square miles. According to the TCEQ Annual Inspection Report, the City's population is 15,612.

The City obtains its water from Lake Palo Pinto which is owned by the Palo Pinto County Municipal Water District No.1 (PPCMWD). The reservoir has a permitted capacity of 44,100 acre-feet; however, a 2007 volumetric survey indicates its capacity as of that date to be approximately 27,200 acre feet. The City of Mineral Wells owns Lake Mineral Wells, which has a permitted capacity of 7,065 acre-feet, but is not used as a raw water source. In October 2015, TWDB conducted a volumetric survey which indicated Lake Mineral Wells has a total reservoir capacity of 5,461 acre-feet and encompasses 477 acres at conservation pool elevation (863.4 feet above mean sea level, NGVD29). In addition, PPCMWD, has leased 2,000 acre-feet from the City of Manvel and 3,000 acre-feet from the City of Abilene for five years, for the implementation of blending river water for conservation and drought usage.

The City operates one water treatment plant: Hilltop Water Treatment Plant. The water purchased from PPCMWD is pumped to the Hilltop WTP.

The City's water distribution system consists of approximately 527.24 miles of mains, ranging in size from 4 to 36-inches in diameter. The system has a total storage capacity of 6.55 million gallons in both ground and elevated storage facilities. There are currently (2024) 6,467 connections to the system: 5,503 residential, 661 commercial, 68 irrigation meters, 26 residential multi-family, 199 institutional, and 10 wholesale. All connections to the system are metered.

2.2 HISTORICAL AND PROJECTED WATER USE

The City's average annual water production for the past five years has been 1,160,688,200 gallons per year (96,724,016 gallons per month). The historical peak daily use is 5,945,000 gallons.

In addition to supplying treated water to residents and businesses within the City of Mineral Wells, the City sells treated water to six water supply corporations (WSCs), and one municipality. These include Parker County Special Utility District, Palo Pinto WSC, Sturdivant-Progress WSC, North Rural WSC, Millsap WSC, Santo Special Utility District, and the City of Graford. The six WSCs and the City of Graford have approximately 6,783 connections and serve approximately 19,588 persons.

The 2023 monthly water use, by category, is given in Table 2.2. Table 2.3 gives Mineral Wells' projected population, average daily use and peak daily use, based on TWDB projections.

2.3 FIVE-YEAR AND TEN-YEAR TARGETS FOR WATER SAVINGS

Quantified Five-Year and Ten-Year Targets for Water Savings for the City of Mineral Wells

- A. 0.25% per capita reduction per year for the first five-year target.
- B. Additional 0.25% per capita reduction per year for the ten-year target.

TABLE 2.2

City of Mineral Wells 2023 Water use (Gallons)
By Category

MONTH	RESIDENTIAL	COMMERCIAL	WATER DISTRICTS	INSTITUTIONAL	YARD METERS	RESIDENTIAL MULTI-FAMILY	BULK METERS	TOTAL
Jan-23	24,368,300	8,796,100	31,417,500	2,446,100	414,000	2,671,800	167,400	70,281,200
Feb-23	18,737,100	5,917,900	23,780,500	2,333,000	269,900	2,399,900	140,900	53,579,200
Mar-23	17,811,900	6,550,200	22,509,900	2,638,000	333,800	2,120,200	182,700	52,146,700
Apr-23	18,479,200	6,500,500	32,604,700	1,882,000	440,500	2,061,600	174,600	62,143,100
May-23	22,277,700	7,695,700	28,681,100	1,965,100	239,100	2,474,800	73,800	63,407,300
Jun-23	17,869,900	6,241,100	33,268,000	2,023,800	203,300	2,419,300	38,800	62,064,200
Jul-23	21,126,300	6,428,200	43,861,800	1,723,500	402,300	2,063,000	174,000	75,779,100
Aug-23	28,528,600	9,732,900	42,924,300	2,292,900	358,300	3,012,400	9,400	86,858,800
Sep-23	22,519,300	7,315,300	29,931,400	2,222,400	129,400	2,623,000	8,800	64,749,600
Oct-23	22,325,000	7,369,000	31,476,000	2,803,000	135,100	2,940,700	7,100	67,055,900
Nov-23	17,878,300	6,267,700	24,178,000	1,741,000	71,900	2,923,000	1,400	53,061,300
Dec-23	16,953,900	6,203,700	25,565,000	1,743,900	30,000	2,608,100	1,800	53,106,400
TOTAL	248,875,500	85,018,300	370,198,200	25,814,700	3,027,600	30,317,800	980,700	764,232,800

TABLE 2.3

City of Mineral Wells Projected Population and Water Use (Based on TWDB Projections)

<u>Year</u>	<u>Population Potential</u>	<u>Daily Average (mgd)</u>
2030	18,727	3.279
2040	19,763	3.450
2050	20,794	3.629
2060	21,836	3.812
2070	21,836	3.812
2080	21,836	3.812

Wholesaler Customers Projected Population and Water Use (Based on TWDB Projections)

<u>Year</u>	<u>Population Potential</u>	<u>Daily Average (mgd)</u>
2030	17,361	1.691
2040	20,988	2.017
2050	25,684	2.447
2060	31,823	3.013
2070	40,512	3.807
2080	51,833	4.847

2.4 WASTEWATER INFORMATION

The City of Mineral Wells owns and operates two wastewater treatment facilities, which have a combined permitted daily capacity of 3.61 mgd: Willow Creek Wastewater Treatment Plant and Pollard Creek Wastewater Treatment Plant. The average volume of wastewater treated at the plants is 1.250 mgd. The peak daily wastewater volume is 7.3 mgd.

Approximately 94% of the City's water customers are on the City's wastewater treatment system. The remaining 6% are served by private on-site sewage facilities. Sales to customers with on-site sewage facilities comprise approximately 5% of the City's total water sales.

The estimated percent of wastewater flow from various sources are as follows:

Residential	<u>88 %</u>
Commercial	<u>12 %</u>

2.5 FINANCIAL INFORMATION

The City of Mineral Wells has a conservation-oriented rate structure for water and wastewater services. The rates are given in Appendix C.

Operating revenues derived from rates for the year ending September 30, 2022 amounted to \$14,787,770. Non-rate sources provide an additional \$200,315 for an annual revenue total of \$14,988,085.

Operating expenses for the year ending September 30, 2022 were \$14,988,085.

3.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY REQUIREMENTS

The TCEQ requires a municipal water provider to file a Water Conservation and Drought Contingency Plan pursuant to 30 TAC 288.2 and 30 TAC 288.20, respectively.

3.1 WATER CONSERVATION PLAN

Pursuant to TCEQ rules, a Water Conservation Plan is defined as “a strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing and recycling and reuse of water, and for preventing the pollution of water.” The topics addressed in the City of Mineral Wells Water Conservation Plan are in accordance with TCEQ guidelines, as provided below.

- 30 TAC 288.2 (1A) A utility profile – This plan includes population and customer data, water use data, and water supply data. An updated profile is being provided.
- 30 TAC 288.2 (1C) Specific, quantified five-year and ten-year water saving targets – This plan includes per capita target goals for municipal use and maximum acceptable unaccounted for water and goal, and basis for development of goals.
- 30 TAC 288.2 (1D) Metering device(s), within 5%, plus or minus, accuracy – This plan includes calibration and accuracy of metering devices.
- 30 TAC 288.2 (1E) This plan has a program for universal metering, meter testing, and meter replacement.
- 30 TAC 288.2 (1F) Unaccounted for water use – This plan includes leak detection, water audits, and system evaluation.
- 30 TAC 288.2 (1G) Continuing public education and information – This plan includes a program such as information on water bill and hand out brochures.
- 30 TAC 288.2 (1H) Non-promotional water rate structure – This plan includes a non-declining block rate, which encourages water conservation.
- 30 TAC 288.2 (1I) Reservoir systems operations plan – The City of Mineral Wells obtains its water from Lake Palo Pinto, which is owned by the Palo Pinto County Municipal Water District No. 1, which both evaluates and monitor levels and pumpage and coordinates with each other on the operation of the reservoir.
- 30 TAC 288.2 (1J) Means of implementation and enforcement of the plan – This plan has been adopted by ordinance.
- 30 TAC 288.2 (1K) Coordination with regional water planning groups for consistency with approved regional water plans.
- 30 TAC 288.2 (2A) This plan includes a program for leak detection, repair and water losses accounting.
- 30 TAC 288.2 (2B) This plan includes record management on water pumped, delivered, sales, and losses, which allows for the desegregation of water sales and uses into the following user classes: residential; commercial; public and institutional; and industrial.
- 30 TAC 288.2 (2C) This plan requires wholesale water supply customers to have an approved conservation and drought plan and must officially adopt applicable provisions of the City of Mineral Wells Water Conservation and Drought Contingency Plan.
- 30 TAC 288.2 (3) Additional water conservation strategies – This plan documents additional water conservation strategies pursued by the City of Mineral Wells, including reuse and recycling programs. Adoption of plumbing codes. A program for the replacement or retrofit of water conserving plumbing fixtures. A program for landscape water management on approved subdivision plan and building permits.
- 30 TAC 288.2 (3B.) A water conservation plan prepared in accordance with 31 TAC 363.15 – This plan substantially meets the requirement.
- 30 TAC 288.2 (3C) Review and update of water conservation plan (on at least a five-year basis).

3.2 DROUGHT CONTINGENCY PLAN

The TCEQ has developed rules for development of Drought Contingency Plans for municipal uses by public water suppliers in Title 30, Texas Administrative Code 288.20. A Drought Contingency Plan is defined by TCEQ as “a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortage and other water supply emergencies.” The topics addressed in the City of Mineral Wells Drought Contingency Plan are in accordance with the TCEQ guidelines, as provided below.

- 30 TAC 288.20 (1A) Provisions to inform the public and wholesale customers regarding preparation of the plan.
- 30 TAC 288.20 (1B) Program of continuing public education and information regarding the Drought Contingency Plan.
- 30 TAC 288.20 (1C) Coordination with regional water planning groups.
- 30 TAC 288.20 (1D) Monitoring for initiation and termination of drought response stages.
- 30 TAC 288.20 (1Ei) Reduction in available water – This plan has set triggering criteria on amount of water that is available.
- 30 TAC 288.20 (1Eii) Water production or distribution system limitations – This plan includes demand operating capacities.
- 30 TAC 288.20 (1Eiii & IV) Supply source contamination or system outage due to the failure or damage of major water system components – This plan includes failure due to pumping, demand limitations, and contamination.
- 30 TAC 288.20 (1F) Specific, quantified targets for water use reductions during periods of water shortage and drought.
- 30 TAC 288.20 (1Gi & ii) Specific water supply or demand management measures to be implemented during each stage of the plan including curtailment and the use of a secondary water supply.
- 30 TAC 288.20 (1H) Procedures for the initiation and termination of each drought response stage, including procedures for notification of the public.
- 30 TAC 288.20 (1I) Procedures for granting variances to the plan.
- 30 TAC 288.20 (1J) Procedures for enforcement of mandatory water use restrictions including specification of penalties.
- 30 TAC 288.20 (3b) Notification of Executive Director of implementation of mandatory provisions of the Drought Contingency Plan.
- 30 TAC 288.20 (3C) Review and update of the Drought Contingency Plan.

4.0 WATER CONSERVATION PLAN

The applicable methods of water conservation for the City of Mineral Wells as listed in Section 363.85 (b) of the Texas Water Development Board Rules relating to “Financial Programs” are as follows:

- A. Education and information programs;
- B. Conservation-oriented water rate structure;
- C. Universal metering and meter repair and replacement;
- D. Leak detection and repair;
- E. Plumbing codes or ordinances for water-conserving devices in new construction;
- F. Retrofit programs to improve water-use efficiency in existing buildings;
- G. Water recycling and reuse;
- H. Water conserving landscaping;
- I. Enforcement; and
- J. Annual field trips from schools, Chamber of Commerce, etc.

4.1 EDUCATION AND INFORMATION

The City of Mineral Wells will inform City users of various recommended methods for implementing a reduction in water consumption. Generally, a majority of water consumption in a city is consumed by residential customers. Therefore, the target area for educational information is to be the majority user; however, attempts will be made to target contract customers as well.

- A. A fact sheet explaining the Conservation Plan will be developed and distributed.
- B. Each new customer will be provided with water conservation brochures.

The long-term program will consist of five activities:

- A. New brochures emphasizing new or innovative means for conserving water will be made available at City Hall.
- B. A statement will be printed on the water bill advising water customers that the brochures are available at City Hall.
- C. A newspaper article targeting one particular household water using utility or item (dishwasher, shower, toilet, and laundry) will be published with methods for conserving water.
- D. A brochure will be mailed which correlates weather predictions to outside household use, car washing, lawn watering, and time of day.

New customers will be advised of the City of Mineral Wells’ Conservation Program.

The City will make resource materials available from the Texas Water Development Board and other agencies or organizations, which develop desirable pertinent information or data.

4.2 PLUMBING CODES

The City of Mineral Wells has adopted the 2012 Edition of the International Plumbing Code in its entirety and the International Residential Code of 2012.

4.3 WATER CONSERVATION RETROFIT PROGRAM

Title V of the Texas Health and Safety Code, Subsection E, Chapter 421 requires businesses to stock and sell only plumbing fixtures, which conform to water saving performance standards. This will ensure plumbing fixtures installed during new construction and remodeling will be of the conservation-oriented type.

4.4 CONSERVATION ORIENTED WATER RATE STRUCTURE

The City has a non-declining block rate, which encourages water conservation. See Appendix A for the current fiscal year's water rate structure.

4.5 UNIVERSAL METERING AND METER REPAIR AND REPLACEMENT

The water treatment plant's Raw and Finished water master meters are calibrated once a year by an outside source to be within (plus or minus) 5% accuracy. Universal metering will be continued after adoption of this plan. Production (master) meters larger than one inch (1") will be tested, and subsequently retested each year. A testing program will be initiated for all meters 1" and smaller. Replacement will begin in areas with poor classification rated by meter readers. All meters 1" and smaller will be tested or replaced every ten years.

4.6 WATER CONSERVATION LANDSCAPING

Educational material will include information relating to low water use landscaping. The City reviews and approves subdivision plans. Sub-dividers and builders are provided with literature pertaining to low water demand landscaping items at the time building permits are acquired. Area nurseries will also be provided with mentioned literature.

4.7 WATER AUDITS AND LEAK DETECTION

Unaccounted water losses over the last five years amount to 7.88% of annual water production. Losses of this size are not uncommon in municipal water systems. The City's unaccounted for water losses are primarily due to distribution main breaks, small leaks that go unnoticed, inaccurate meters, and connections which bypass the City's meters. The City recently repaired the finished meter at the Hilltop Water Treatment Plant. The City has requested that all WSCs test their meters and repair or replace any that are found to be inaccurate. In addition to water audits, the City will continue to do the following:

- A. Evaluate the City's distribution system.
- B. Target replacement of water mains that are known to rupture.

The City of Mineral Wells will continue to monitor monthly consumption. Classification of meter condition as proposed in this plan will provide a reliable and effective leak detection program. The City is aware that assistance in leak detection surveys can be obtained from the Texas Water Development Board staff. The agency has portable leak detection equipment available for loan to cities and can provide personnel for demonstration of equipment and assist in planning survey programs.

Meter classification and aggressive enactment of a current detection program will enable the City staff to determine the need for seeking further assistance from use of electronic equipment. The current leak detection program consists of the following observations and activities:

- A. Beginning with fiscal year 2020, the City had a major overhaul of the meter reading department. During this period many standards were changed. Updates are as follows:
 - 1. Installation of 1,306 new meters.
 - 2. 99% of meters that were not located and had been averaged have been located.
 - 3. New meters are smart meters with Leak Detection Capabilities.
- B. New isolation valves have been installed to help isolate leaks faster.
- C. New SCADA has been installed, to help with monitoring storage tank levels and catch major leaks fast.

- D. All city employees are aware of the value of water, and anything suspicious is reported immediately.
- E. Continual checking and servicing of production, pumping, and storage facilities.
- F. Quick response by the City's Facility Maintenance Department and staff to reported problems.

In order to be within the allowable limits, the City's goal is to reduce the annual water loss by 0.25% per year for the next five (5) years.

4.8 MEANS OF IMPLEMENTATION AND ENFORCEMENT

The City Manager, through his staff, will implement this plan in accordance with City Council adoption of the plan, adoption of Plumbing Codes and revisions thereof as set out in this plan. Enforcement will be provided by:

- A. No person shall knowingly or intentionally allow the use of water from the City of Mineral Wells for residential, commercial, industrial, agricultural, governmental, or any other purpose in a matter contrary to any provision of this plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the City Manager or his/her designee, in accordance with provisions of this plan.
- B. Any person who violates this plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than \$0.00 and not more than \$500.00. Each day that one or more of the provisions in this plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at \$25.00 and any other costs incurred by the City of Mineral Wells in discontinuing service. In addition, not be repeated while the plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.
- C. Any person, including a person classified as a water customer of the City of Mineral Wells, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on the property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, and such parent may be excused if he/she proves that he/she had previously directed the child not to use water as it was used in violation of this plan and that the parent could not have reasonably known of the violation.
- D. Any employee of the City of Mineral Wells, police officer, or other City of Mineral Wells employee designated by the City Manager may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charges, and shall direct him/her to appear in the City of Mineral Wells Municipal Court on the date shown on the citation for which the date shall not be less than three days nor more than five days from the date the citation was issued. The alleged violator shall be served a copy of the citation. Service of the citation shall be completed upon delivery of the citation to the alleged violator, to an agent or employee of the violator, or to a person over fourteen years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in the City of Mineral Wells Municipal Court to enter a plea of guilty or not guilty for the violation of this plan. If the alleged violator fails to appear in the City of Mineral Wells Municipal Court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in the City of Mineral Wells Municipal Court before all other cases.

4.9 RECYCLING AND REUSE

The City uses effluent at both wastewater plants for in-plant use, for example, chemical injections and wash down of clarifiers. The City will investigate other reuse and recycling programs where legally possible and economically feasible. The City has a TAC 210 Reuse Permit. The City has expanded its reuse program to provide water to contracted users. Currently the City is averaging 3,000,000 gallons per month in plant reuse and 215,000 gallons to contracted users.

4.10 CONTRACTS WITH OTHER POLITICAL SUBDIVISIONS

Any political subdivision and/or wholesale customer contracting for water from the City of Mineral Wells must have (1) an approved Texas Water Development Board Conservation and Drought Contingency Plan in effect or (2) must officially adopt applicable provisions of the City of Mineral Wells Water Conservation and Drought Contingency Plan. Upon each threshold condition, the wholesale customer will be notified to implement its plan.

4.11 COORDINATE WITH REGIONAL WATER PLANNING GROUPS

The water service area of the City of Mineral Wells is located within the Brazos (G) and Region (C) Regional Water Planning areas, and the City of Mineral Wells has provided a copy of this Water Conservation Plan to the Brazos (G) and Region (C) Planning Groups.

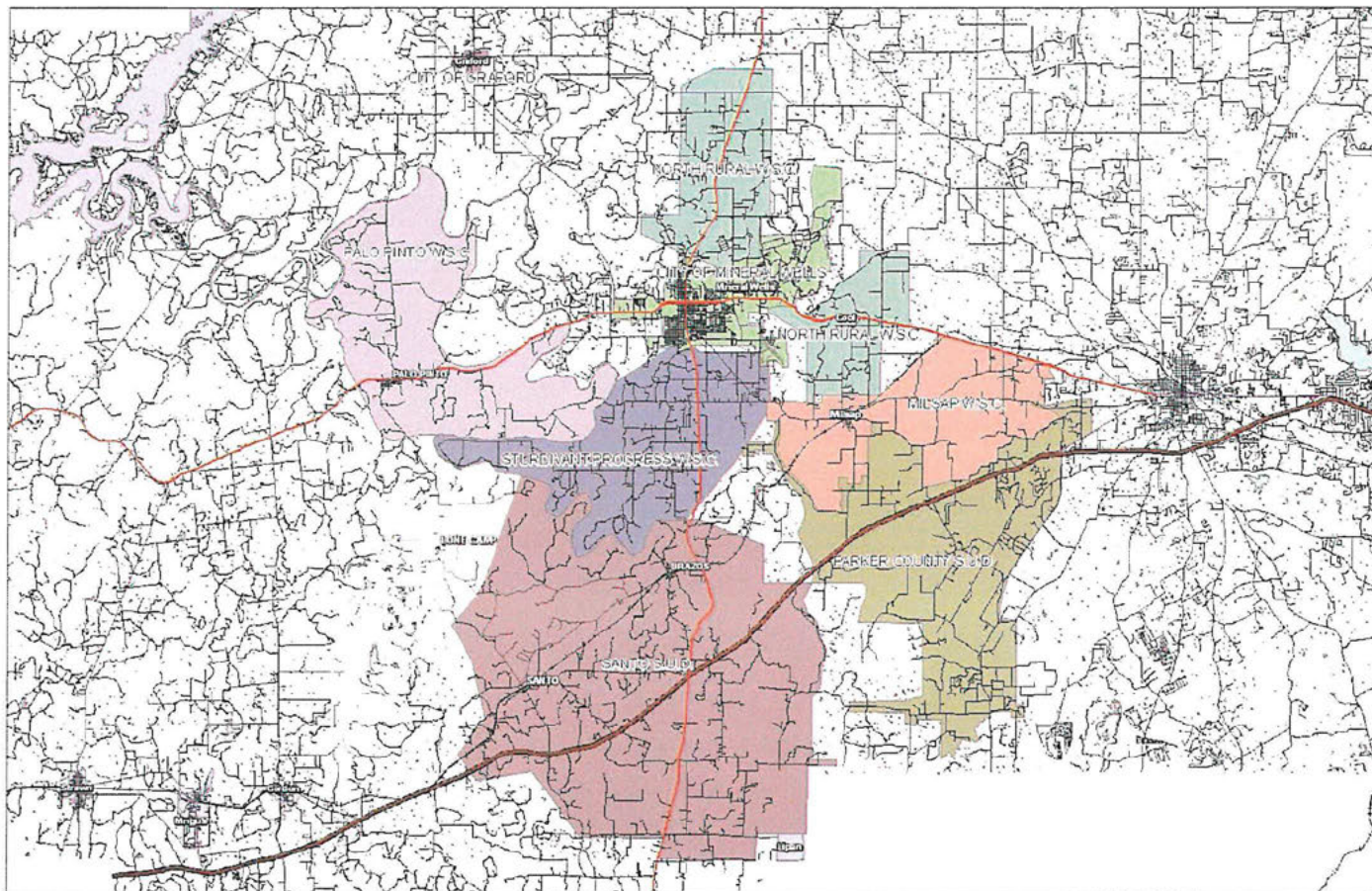
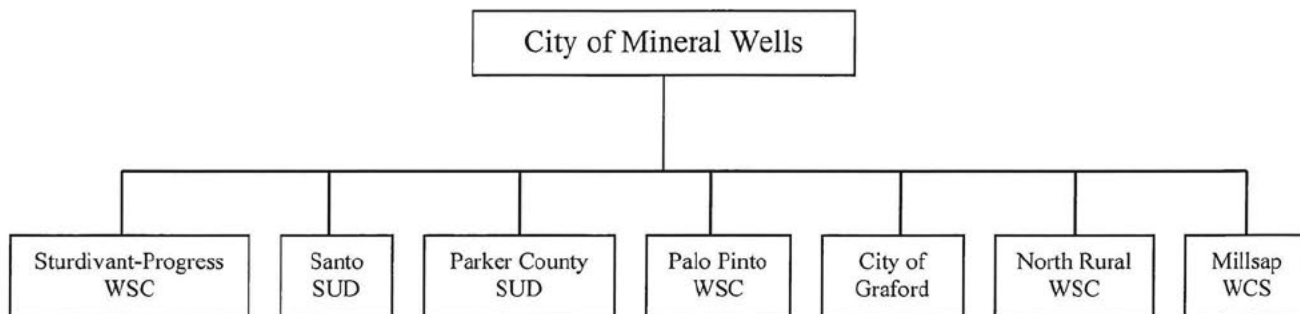
4.12 ADDITIONAL CONSERVATION STRATEGIES

The City of Mineral Wells encourages its customers to conserve water and implement additional conservation strategies to meet targets and goals identified in the Water Conservation Plan. The City of Mineral Wells supports the implementation of water conservation strategies, including:

- a. Education and information programs.
- b. Promoting retrofit programs to improve water use efficiency in existing buildings.
- c. Promoting water recycling and reuse.
- d. Promoting water conserving landscaping; and
- e. Other water conservation practices identified by the customer.

4.13 REVIEW AND UPDATE OF WATER CONSERVATION PLAN

The City of Mineral Wells will review and update its Water Conservation Plan, as appropriate, at least every five years from April 1, 2024. The update will include an assessment of previous five-year and ten-year targets and any other new or updated information.



5.0 DROUGHT CONTINGENCY PLAN/MEASURES

5.1 DECLARATION OF POLICY, PURPOSE, AND INTENT

The TCEQ requires that municipal public water suppliers file a Drought Contingency Plan pursuant to 30 TAC 288.20. In order to conserve the available water supply and/or to protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply storage or other water supply emergency conditions, the City of Mineral Wells adopts the following Drought Contingency Plan in accordance with the TCEQ guidelines (the Plan).

5.2 PUBLIC INVOLVEMENT

Continuing public education regarding the Drought Contingency Plan by means of media and water bills. The City of Mineral Wells, by means of the news media, provided an opportunity on November 28, 2000, for the public and wholesale water customers to offer input into the preparation of this Plan. This Plan was adopted at the December 5, 2000 City Council meeting, which was advertised accordingly, 72 hours prior to the meeting. The provisions of this Drought Contingency Plan shall apply to all customers utilizing water provided by the City of Mineral Wells.

5.3 WHOLESALE WATER CUSTOMER EDUCATION

The City of Mineral Wells will provide wholesale water customers with information about this Plan, including information about the conditions under which each stage of this Plan is to be initiated or terminated and the drought response measures to be implemented for each stage. This information will be provided by means of providing a copy of this Plan.

5.4 COORDINATION WITH REGIONAL WATER PLANNING GROUPS

The water service area of the City of Mineral Wells is located within the Brazos (G) and Region (C) Regional Water Planning areas, and the City of Mineral Wells has provided a copy of the Drought Contingency Plan to the Brazos (G) and Region (C) Planning Groups.

5.5 AUTHORIZATION

The City Manager, or his/her designee(s), is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager, or his/her designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

5.6 APPLICATION

The provisions of this Plan shall apply to all customers utilizing water provided by the City of Mineral Wells. The terms "person" and "customer" as used in this Plan include individuals, corporations, partnerships, associations, and all other legal entities. This plan will not be applicable to customers that have private water wells for irrigation.

5.7 TRIGGERING CRITERIA FOR INITIATION AND TERMINATION OF DROUGHT RESPONSE STAGES

The City Manager, or his/her designee(s), shall monitor water supply and/or demand conditions on a weekly basis and shall determine when conditions warrant initiation or termination of each stage of this Plan. Customer notification of the initiation or termination of drought response stages will be made public to the City's website. The news media will also be informed. The triggering criteria described below are based on a statistical analysis of the vulnerability of the water source under drought conditions. Weather conditions are to be considered in drought classification determination. Predicted long, cold or dry periods are to be considered in impact analysis.

5.7 A. Full Pool

The City of Mineral Wells will recognize that no water shortage condition exists when:

1. Water stored in Lake Palo Pinto is more than 20,270 acre-feet or 864 ft. MSL (74.5% of storage capacity).

5.7 B. Stage I – Mild Water Shortage

The City of Mineral Wells will recognize that a mild water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than 20,270 acre-feet or 864 ft. MSL (74.5% of storage capacity) and more than 14,759 acre feet or 861 ft. MSL (54% of storage capacity).
2. When total daily water demand equals or exceeds 85% of the safe operating capacity of the system for three consecutive days or 90% of system capacity on a single day.
3. Any mechanical failure of pumping equipment which will require more than 24 hours to repair when no water shortage conditions exist.
4. Water availability is adequate but lake levels and/or reservoir capacities are low enough that some concern exist for future water supplies if the drought or emergency condition continues.

Requirements for Termination – Stage I of this Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of ten (10) consecutive days. The City of Mineral Wells will notify its customers via website and the news media of the termination of Stage I.

5.7 C. Stage II – Moderate Water Shortage

The City of Mineral Wells will recognize that a moderate water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than 14,759 acre-feet or 861 ft. MSL (54% of storage capacity) and more than 10,317 acre feet or 858 ft. MSL (38% of storage capacity).
2. Average daily water consumption reaches 95% of the safe operating capacity of the system for three consecutive days.
3. Average daily water consumption will not enable storage levels to be maintained.
4. System demand exceeds available high service pump capacity.
5. Any mechanical failure of pumping equipment, which will require more than twelve (12) hours to repair if a mild drought is in progress.
6. Water availability from the lake is below normal and may continue to decline and cause moderate concern for both current and future supplies or water supplies have been reduced due to failure of a portion of the water supply system.

Requirements for Termination – Stage II of this Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of ten (10) consecutive days. Upon termination of Stage II, Stage I becomes operative. The City of Mineral Wells will notify its customers and the news media of the termination of Stage II in the same manner as the notification of initiation of Stage I of this Plan.

5.7 D. Stage III – Severe Water Shortage

The City of Mineral Wells will recognize that a severe water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than 10,317 acre-feet or 858 ft. MSL (38% of storage capacity) and more than 6,279 acre-feet or 854 MSL (23% of storage capacity).
2. Average daily water consumption reaches 100% of production capacity for a 24-hour period.
3. Any mechanical failure of pumping equipment, which will require more than twelve (12) hours to repair if a moderate drought is in progress.
4. Water availability from the lake is well below normal, may continue to decline, and additional reductions in current of future water supplies are evident or water supplies have been reduced due to failure of a portion of the water supply system.

Requirements for Termination – Stage III of this Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of ten (10) consecutive days. Upon termination of Stage III, Stage II becomes operative. The City of Mineral Wells will notify its customers and the news media of the termination of Stage III in the same manner as the notification of initiation of Stage II of this Plan.

5.7 E. Stage IV – Critical Water Shortage/Conditions

The City of Mineral Wells will recognize that a critical water shortage condition exists when:

1. Water stored in Lake Palo Pinto is equal to or less than 6,279 acre feet or 854 MSL (23% of storage capacity)
2. Average daily water consumption reaches 110% of production capacity for a 24-hour period.
3. Any mechanical failure of pumping equipment, which will require more than twelve (12) hours to repair if a severe drought is in progress.
4. Water availability from the lake is well below normal, may continue to decline, and additional reductions in current of future water supplies are evident or water supplies have been reduced due to failure of a portion of the water supply system.

Requirements for Termination – Stage IV of this Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of ten (10) consecutive days. Upon termination of Stage IV, Stage III becomes operative. The City of Mineral Wells will notify its customers and the news media of the termination of Stage IV in the same manner as the notification of initiation of Stage III of this Plan.

5.7 F. Emergency Water Shortage/Conditions

The City of Mineral Wells will recognize that an emergency water shortage condition exists when:

1. Water system is contaminated either accidentally or intentionally. Emergency condition is reached immediately upon detection.
2. Water system failure from acts of God (tornadoes, hurricanes) or man. Emergency condition is reached immediately upon detection.
3. Any interruption of water service through main water supply lines for more than twelve (12) hours. Emergency condition is reached immediately upon detection.

4. There has been a failure in a major water supply source or system, such as the failure of a dam, storage reservoir, pump system, transmission pipelines, water treatment facility, major power failure, or natural disaster that causes a severe and prolonged limit on the ability of the water supply system to meet the water supply demands.
5. The source water supply has been contaminated.

Notification to the customers will be enacted at once to the City's website and periodic updates will be conveyed through the news media on progress of emergency water conditions.

Requirements for Termination – After the emergency situation has been resolved, the City of Mineral Wells will notify its customers and the news media of the termination of Stage IV.

5.8 SPECIFIED, QUANTIFIED TARGETS FOR WATER USE REDUCTION DURING PERIODS OF WATER SHORTAGE AND DROUGHT

5.8 A. Stage I – Mild Water Shortage

Goal: Achieve a 10% reduction in total use.

5.8 B. Stage II – Moderate Water Shortage

Goal: Achieve a 20% reduction in total use.

5.8 C. Stage III – Severe Water Shortage

Goal: Achieve a 25% reduction in total use.

5.8 D. Stage IV – Critical Water Shortage/Conditions

Goal: Achieve a 30% reduction in total use.

5.9 DROUGHT RESPONSE STAGES

5.9 A. Full Pool

1. Goal:
 - a. Educate public on efficient ways to conserve water.
2. Supply Management Measures:
 - a. Monitor Lake Palo Pinto Levels.
 - b. Option to blend Brazos River water.

5.9 B. Stage I – Mild Water Shortage

1. Goal:
 - a. Achieve a 10% reduction in total water use.
2. Supply Management Measures:
 - a. Monitor Lake Palo Pinto levels.
 - b. Release water only needed for treatment and TCEQ permit compliance.
 - c. Implement blending Brazos River water.
3. Demand Management Measures:

The City Manager, or his/her designee(s), on identifying mild water shortage conditions, shall initiate Stage I curtailment. Listed action is compulsory on users and is intended to restrict water use.

- a. Unattended landscape watering will be permitted two days per week:
 - o Addresses West of Highway 281 will be Monday and Friday.
 - o Addresses East of Highway 281 will be Tuesday and Saturday.
- b. No unattended landscape watering on any day between the hours of 9:00 a.m. and 6:00 p.m.
- c. Hand watering of landscape, shrubs, gardens, and grass is permitted at any time.
- d. Soaker hoses and drip irrigation systems are permitted at any time.
- e. Draining, refilling and, maintaining swimming pool levels are permitted.
- f. Construction projects shall use reuse water.
- g. The City Manager, or his/her designee(s), will monitor system function and if necessary adjust hours for outside water use, depending upon system performance.
- h. Develop information center and designate an information person.
- i. The information center and publicity elements shall keep the public advised of curtailment status.
- j. Commercial users will be visited to ensure conservation has been initiated.
- k. The City Manager, or his/her designee(s), will initiate weekly contact with wholesale water customers to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.
- l. The City Manager, or his/her designee(s), will instruct wholesale water customers to initiate mandatory measures to reduce water use and implement Stage I of the customer's drought contingency plan.
- m. The City Manager, or his/her designee(s), will provide an update to the City's website for customers and to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and customer information on water conservation measures and practices.

5.9 C. Stage II – Moderate Water Shortage

- 1. Goal:
 - a. Achieve a 20% reduction in total water use.
- 2. Supply Management Measures:
 - a. Monitor Lake Palo Pinto levels.
 - b. Release water only needed for treatment and TCEQ permit compliance.
- 3. Demand Management Measures:

The City Manager, or his/her designee(s), shall initiate stage II curtailment upon existence of moderate conditions as determined.

- a. Unattended landscape watering will be permitted one day a week
 - o Addresses West of Highway 281 will be Monday.
 - o Addresses East of Highway 281 will be Tuesday.
- b. No unattended landscape watering on any day between the hours of 9:00 a.m. and 6:00 p.m.
- c. Hand watering of landscape, shrubs, gardens, and grass is permitted before 9:00 a.m. and after 6:00 p.m.
- d. Soaker hoses and drip irrigation systems are permitted at any time.
- e. Draining and refilling swimming pools will not be allowed.
- f. Maintaining swimming pool levels will be allowed.
- g. The City Manager, or his/her designee(s), will contact wholesale water customers to discuss water supply and/or demand conditions and will instruct that wholesale water customers initiate additional mandatory measures to reduce water use and implement Stage II of customer's drought contingency plan.
- h. The City Manager, or his/her designee(s), will initiate preparations for implementation of pro rata curtailment of water diversion and/or delivery by preparing a monthly water usage allocation baseline for each wholesale customer according to the procedures specified in Section 5.10 of this Plan.

- i. The City Manager, or his/her designee(s), will provide an update to the City's website for customers and to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

5.9 D. Stage III – Severe Water Shortage

1. Goal:
 - a. Achieve a 25% reduction in total water use.
2. Supply Management Measures:
 - a. Monitor Lake Palo Pinto levels.
 - b. Release water only needed for treatment and TCEQ permit compliance.
3. Demand Management Measures:
 - a. Only outside water use permitted will be through soaker hoses, drip irrigation, and animal use.
 - b. Commercial uses not listed will be controlled to the extent directed by the City Manager.

Businesses requiring water as a basic function of the business, such as nurseries, commercial car washes, laundromats, high-pressure water cleaning services, etc., will obtain written permission from the City Manager for intended water use.

The System Priority for water service shall be made on the following basis:

- | | | |
|----------------|---------------|-----------------|
| 1. Hospitals | 3. Schools | 5. Commercial |
| 2. Residential | 4. Industrial | 6. Recreational |
- c. The City Manager, or his/her designee(s), will initiate pro rata curtailment of water diversion and/or deliveries for each wholesale customer according to the procedures specified in Section 5.10 of this Plan.
 - d. The City Manager, or his/her designee(s), will contact wholesale water customers to discuss water supply and/or demand conditions and will instruct that wholesale water customers initiate additional mandatory measures to reduce water use and implement Stage III of customer's drought contingency plan.
 - e. The City Manager, or his/her designee(s), will provide an update to the City's website for customers and to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

5.9 E. Stage IV – Critical Water Shortage/Conditions

1. Goal:
 - a. Achieve a 30% reduction in total water use.
2. Supply Management Measures:
 - a. Monitor Lake Palo Pinto levels.
 - b. Release water only needed for treatment and TCEQ permit compliance.
 - c. Implementation of RO Facilities.
3. Demand Management Measures
 - a. Soaker hoses or drip irrigation will be permitted on Tuesday and Friday.
 - b. No other outdoor water use; animal use is exempt.
 - c. All conditions of Stage III apply.

5.9 F. Emergency Water Shortage/Conditions

Whenever emergency water shortage conditions exist as defined in Section 5.7 F. of this Plan, the City Manager, or his/her designee(s), shall:

1. Assess the severity of the problem and identify the actions needed and time required to solve the problem.
2. Inform the utility director or other responsible official of each wholesale water customer by telephone or in person and suggest actions, as appropriate, to alleviate problems and notification to the public to reduce water use until service is restored.
3. If appropriate, notify city, county, and/or state emergency response officials for assistance.
4. Undertake necessary actions, including repairs and/or clean up as needed.
5. Prepare a post-event assessment report on the incident and critique of emergency response procedures and actions.

5.10 PRO RATA WATER ALLOCATION

In the event that the triggering criteria specified in Section 5.7 of this Plan for Stage III – Severe Water Shortage Conditions have been met, the City Manager, or his/her designee(s), is hereby authorized to initiate allocation of water supplies on a pro rata basis in accordance with Texas Water Code Section 11.039 and according to the following water allocation policies and procedures:

1. A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the City Council based on the City Manager's, or his/her designee(s), assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the City Council, as conditions warrant. Once pro rata allocation is in effect, water diversions by or deliveries to each wholesale customer shall be limited to the allocation established for each month.
2. A monthly water usage allocation shall be established by the City Manager, or his/her designee(s), for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the five-year period as shown in the example given below. If the wholesale water customer's billing history is less than five years, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exist.
3. The City Manager, or his/her designee(s), shall provide notice, by certified mail, to each wholesale customer informing them of their monthly water usage allocations and shall notify the news media and the Executive Director of the Texas Commission on Environmental Quality upon initiation of pro rata allocation.
4. Upon request of the customer or at the initiative of the City Manager, or his/her designee(s), the allocation may be reduced or increased, if, (1) the designated period does not accurately reflect the wholesale customer's normal water usage; (2) the customer agrees to transfer part of its allocation to another wholesale customer; or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Council of the City of Mineral Wells.

Example Calculation of Monthly Allocation for a Hypothetical Wholesale Water Customer

	2018	2019	2020	2021	SUM	AVG.	Allocation Percentage	Monthly Allocation
Jan	23,104,600	27,661,800	29,339,500	23,307,500	103,413,400	25,853,350	75%	19,390,013
Feb	20,621,300	21,725,600	24,513,100	25,933,200	92,793,200	23,198,300	75%	17,398,725
Mar	23,415,600	26,322,100	24,869,200	25,585,700	100,192,600	25,048,150	75%	18,786,113
Apr	24,762,900	22,472,200	23,909,700	27,803,500	98,948,300	24,737,075	75%	18,552,806
May	32,132,900	31,658,200	21,094,500	35,797,900	120,683,500	30,170,875	75%	22,628,156
Jun	27,106,000	43,699,000	24,991,000	41,236,600	137,032,600	34,258,150	75%	25,693,613
Jul	33,059,400	46,095,500	36,322,000	43,370,800	158,847,700	39,711,925	75%	29,783,944
Aug	31,260,300	35,804,100	38,544,000	50,466,100	156,074,500	39,018,625	75%	29,263,969
Sep	35,075,800	28,134,600	36,466,400	34,965,100	134,641,900	33,660,475	75%	25,245,356
Oct	36,631,700	26,775,600	33,472,400	37,863,900	134,743,600	33,685,900	75%	25,264,425
Nov	27,235,300	24,703,400	28,051,400	27,560,100	107,550,200	26,887,550	75%	20,165,663
Dec	26,407,800	22,885,800	25,858,400	28,313,300	103,465,300	25,866,325	75%	19,399,744
Total	340,813,600	357,937,900	347,431,600	402,203,700	1,448,386,800	362,096,700		271,572,525

* UNITS IN MILLION GALLONS

5.11 PROVISION FOR CONTRACT REQUIREMENTS FOR SUCCESSIVE CUSTOMER

The City of Mineral Wells will include a provision in every wholesale water contract entered into or renewed after adoption of this plan, including contract extensions, that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code Section 11.039.

5.12 ENFORCEMENT

During any period when pro rata allocation of available water supplied is in effect, wholesale customers shall pay the following surcharge on excess water diversions and/or deliveries.

1. 1.5 times the normal water charge per thousand gallons for water diversions and/or deliveries in excess of the monthly allocation up through 5% above the monthly allocation.
2. 2.0 times the normal water charge per thousand gallons for water diversions and/or deliveries in excess of the monthly allocation from 5% through 10% above the monthly allocation.
3. 2.5 times the normal water charge per thousand gallons for water diversions and/or deliveries in excess of the monthly allocation from 10% through 15% above the monthly allocation.
4. 3.0 times the normal water charge per thousand gallons for water diversions and/or deliveries more than 15% above the monthly allocation.
5. The above surcharge shall be cumulative.

5.13 VARIANCES

The City Manager, or his/her designee(s), may, in writing, grant a variance to the pro rata water allocation policies provided by this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the public health, welfare, or safety and if one or more of the following conditions are met.

1. Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which this Plan is in effect.
2. Alternate methods can be implemented which will achieve the same level of reduction in water use.

Customers requesting a variance from the provisions of this Plan shall file a petition for variance with the City Manager within five days after pro rata allocation has been invoked. All petitions for variance shall be reviewed by the City Manager, or his/her designee(s), and shall include the following:

- a. Name and address of the petitioner(s).
- b. Detailed statement with supporting data and information as to how the pro rata allocation of water under the policies and procedures established in the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with the Ordinance.
- c. Description of the relief requested.
- d. Period of time for which the variance is sought.
- e. Alternative measures the petitioner is taking or purpose to take to meet the intent of this Plan and the compliance date.
- f. Other pertinent information.

A variance granted by the City Manager shall be subject to the following conditions, unless waived or modified by the City Council:

1. Variances granted shall include a timetable for compliance.
2. Variances granted shall expire when this Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

5.14 SEVERABILITY

It is hereby declared to be the intention of the City of Mineral Wells that the sections, paragraphs, sentences, clauses, and phrases of this Plan are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, since the same would not have been enacted by the City of Mineral Wells without the incorporation into this Plan of any such unconstitutional phrase, clause, sentences, paragraph, or section.

5.15 INFORMATION AND EDUCATION

The public will be made aware of conservation and drought conditions by notifications on the City's website. During periods of drought conditions, Stage I conditions will establish an information center, an information person, and utilize the most effective methods developed for information dissemination daily.

The observation of information distribution will be reviewed when this Plan is updated every five years, to ensure that the City efficiently reaches its customers with the most current status of the conservation and drought conditions.

5.16 INITIATION PROCEDURES

Initiation procedures may be employed at any period as described in this Plan. Each condition will meet with corresponding action by the City Manager and the City Manager will affect curtailment, give notice, publicize, and follow with implementation of curtailment.

5.17 MODIFICATION, DELETION, AND AMENDMENT

The City Manager can add, delete, and amend rules, regulations and implementation as needed/desired, and shall advise the City Council of such amendments at its regular or called meeting.

5.18 MEANS OF IMPLEMENTATION

Adoption of this Plan, Drought Contingency Ordinance, and Plumbing Code Ordinance will enable the City to implement and carry out enforcement of enacted ordinances to make this Plan effective and workable.

5.19 NOTIFICATION OF TCEQ EXECUTIVE DIRECTOR OF IMPLEMENTATION OF MANDATORY PROVISION OF THE DROUGHT CONTINGENCY PLAN

The City of Mineral Wells shall notify the Executive Director of TCEQ within five business days of the implementation of any mandatory provisions of its Drought Contingency Plan.

5.20 REVIEW AND UPDATE OF THE DROUGHT CONTINGENCY PLAN

Per TCEQ rules, the City of Mineral Wells will review and update as appropriate, the Drought Contingency Plan, at least every five years, based on new or updated information, such as adoption or revision of the Brazos G and/or Region C Regional Water Plan.

APPENDIX A

CITY OF MINERAL WELLS WATER RATE STRUCTURE

ORDINANCE NO. 2023-17

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 90, UTILITIES, SECTIONS 90-54 AND 90-55, OF THE MINERAL WELLS CODE OF ORDINANCES BY REVISING WATER RATES AND RATES FOR SEWER SERVICE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Mineral Wells, Texas (the “City”) currently assesses rates for water and sewer service provided by the City in Section 90-54 and 90-55 of the Mineral Wells Code of Ordinances; and

WHEREAS, the City Council of the City of Mineral Wells has adopted a budget for the fiscal year beginning October 1, 2023 and ending September 30, 2024, and wishes to revise the rates for water and sewer services in accordance with said budget.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINERAL WELLS, TEXAS:

1. That Section 90-54 (1) of the Code of Ordinances of the City of Mineral Wells, Texas be hereby amended to read as follows:

“The following monthly water rates or charges for water furnished by the city shall prevail and shall be charged against and collected from all persons, firms, corporations, both public and private, using city water:

- (1) For all users,¹ including special utility districts, wholesale water supply corporations and the City of Graford, there shall be a minimum monthly bill based upon the size of water meter provided. The minimum monthly bill shall be:

<i><u>Meter Size</u></i> <i><u>(Inches)</u></i>	<i><u>Minimum</u></i> <i><u>Monthly Bill</u></i>
¾ or smaller.....	\$ 65.96
1.....	108.42
1 ½.....	213.64
2.....	356.68
3.....	751.73
4.....	1,306.26
6.....	2,859.96
8.....	4,990.67

All water use each month shall be charged and billed at rates listed in the table below.

The monthly volume charge for single-family residences, duplexes, apartment units, churches, mobile homes or manufactured homes, and private non-profit organizations, but not including public agencies, which residences or buildings are individually metered for water shall be the Residential Rate.

The monthly volume charge for water metered for irrigation purposes shall be the Irrigation Rate.

The monthly volume charge for all other users, including commercial, industrial, governmental (Municipal), Special Utility Districts, wholesale Water Supply Corporations, and the City of Graford shall be the General Service Rate.

<u>Volume Charge per 1,000 Gallons</u>	<u>Residential</u>	<u>Irrigation</u>	<u>General Service</u>
0 - 2,000 Gallons	\$12.90	\$18.78	\$19.17
2,001 – 7,000 Gallons	\$14.84	\$21.58	\$19.17
7,001 – 15,000 Gallons	\$17.08	\$24.83	\$19.17
15,001 – 30,000 Gallons	\$19.62	\$28.53	\$19.17
All Over 30,001 Gallons	\$22.57	\$32.81	\$19.17

2. That Section 90-55 (b), (c), and (f) of the Code of Ordinances of the City of Mineral Wells, Texas be and it is hereby amended to read as follows:

“(b) The monthly sewer charge for single-family residences, duplexes, apartment units, churches, mobile homes or manufactured homes, and private non-profit organizations, but not including public agencies, which residences or buildings are individually metered for water shall be:

Minimum Bill \$ 14.00
 Volume charge for every 1,000 gallons of water used \$ 7.81
 Maximum Residential Bill \$107.72

The volume charge shall be based on the average monthly water usage for that water account as billed in the immediately preceding months of December, January and February. The volume charges shall be adjusted annually in April of each year. In extreme and unusual circumstances, the volume charge may be based on the water usage billed for any three full consecutive months during the most recent twelve months for that water account.

When average monthly usage is not available for the preceding months of December, January and February, the sewer bill shall be based on a predetermined monthly residential average use of 4,800 gallons per month, the charge being \$51.49. After the first three full months of service and at the customer's request, the water account may be billed on the average monthly water usage billed for those three months of service.”

“(c) The monthly sewer charge for all other customers connected to the public sanitary sewer system shall be as follows:

Minimum Bill \$ 14.00
 Volume charge for every 1,000 gallons of water used \$ 7.81
 Maximum Residential Bill \$ No limit”

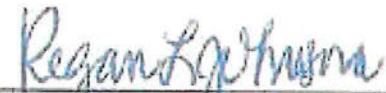
“(f) The city shall bill individual customers connected to the public sanitary sewer system who are not customers of the city water system a monthly fee of \$51.49. Mobile home or manufactured home parks connected to the public sanitary sewer system who are not customers of the city water system shall be billed a monthly fee of \$51.49 per unit. If no reasonable manner of

measuring a customer's water use exists, the sewage rate to an individual sewer user, where payment is not guaranteed by a private sewage collection entity, shall be \$51.49 per month for single-family residences."

1. That this ordinance shall be effective from and after its passage, and the rates, fees, and charges set forth herein shall be reflected on all water and sewer bills rendered after November 1, 2023.

PASSED AND APPROVED this the 12th day of September 2023.

CITY OF MINERAL WELLS

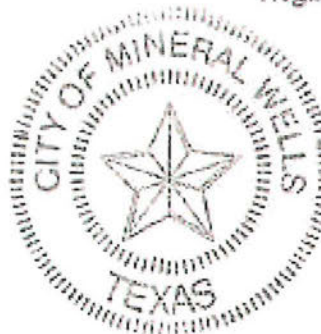


Regan Johnson, Mayor

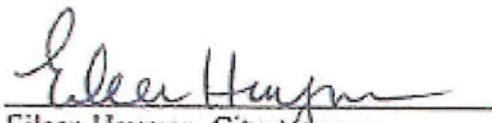
ATTEST:



Sharon McFadden, City Clerk



APPROVED AS TO FORM:



Eileen Hayman, City Attorney

APPENDIX B

WATER UTILITY PROFILE WORKSHEET

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

CONTACT INFORMATION

Name of Utility: CITY OF MINERAL WELLS

Public Water Supply Identification Number (PWS ID): TX1820001

Certificate of Convenience and Necessity (CCN) Number: 11213

Surface Water Right ID Number: _____

Wastewater ID Number: 20481

Contact: First Name: Scott Last Name: McKennon

Title: Public Works Director

Address: P. O. Box 460 City: Mineral Wells State: TX

Zip Code: 76068 Zip+4: _____ Email: _____

Telephone Number: 9403287774 Date: 4/22/2024

Is this person the designated Conservation Coordinator? ☒ Yes ☐ No

Regional Water Planning Group: G

Groundwater Conservation District: _____

Our records indicate that you:

- ☐ Received financial assistance of \$500,000 or more from TWDB
- ☒ Have 3,300 or more retail connections
- ☒ Have a surface water right with TCEQ

A. Population and Service Area Data

1. Current service area size in square miles: 15

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

2. Historical service area population for the previous five years, starting with the most current year.

Year	Historical Population Served By Retail Water Service	Historical Population Served By Wholesale Water Service	Historical Population Served By Wastewater Water Service
2023	15,173	0	15,173
2022	14,820	0	14,820
2021	14,820	0	14,820
2020	15,213	0	15,213
2019	16,269	0	16,269

3. Projected service area population for the following decades.

Year	Projected Population Served By Retail Water Service	Projected Population Served By Wholesale Water Service	Projected Population Served By Wastewater Water Service
2030	18,727	20,329	18,727
2040	19,763	25,136	19,763
2050	20,794	31,012	20,794
2060	21,794	39,331	21,794
2070	21,836	48,200	21,836

4. Described source(s)/method(s) for estimating current and projected populations.

Projections for the City and Wholesalers comes from 2026 TWDB Water User Group Data Projections. 2026 TWDB Water User Group Projections don't account for Millsap WSC and City of Graford. After contacting Millsap and collecting data from their files, the past 5 years of population showed their growth rate being 6.1%. That growth rate percentage was applied to their current population and added to the wholesaler's population. After contacting the City of Graford I was only able to get 2019-2022 data. Using their data, the City of Graford had a growth rate of 4.49%. Their projections were added to the wholesaler's population also.

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

B. System Input

System input data for the previous five years.

Total System Input = Self-supplied + Imported – Exported

Year	Water Produced in Gallons	Purchased/Imported Water in Gallons	Exported Water in Gallons	Total System Input	Total GPCD
2023	1,088,173,434	0	372,058,492	716,114,942	129
2022	1,369,668,889	0	433,990,653	935,678,236	173
2021	1,265,251,111	0	376,579,136	888,671,975	164
2020	1,239,370,854	0	404,224,824	835,146,030	150
2019	1,118,980,905	0	349,177,487	769,803,418	130
Historic Average	1,216,289,039	0	387,206,118	829,082,920	149

C. Water Supply System

1. Designed daily capacity of system in gallons 8,000,000
2. Storage Capacity
 - 2a. Elevated storage in gallons: 550,000
 - 2b. Ground storage in gallons: 6,500,000

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

D. Projected Demands

1. The estimated water supply requirements for the next ten years using population trends, historical water use, economic growth, etc.

Year	Population	Water Demand (gallons)
2025	35,605	1,203,043,474
2026	36,124	1,206,953,691
2027	36,647	1,211,189,760
2028	37,172	1,215,099,977
2029	37,700	1,219,010,194
2030	38,229	1,223,246,262
2031	38,761	1,227,156,480
2032	39,297	1,231,066,697
2033	39,835	1,235,302,765
2034	40,375	1,239,212,982

2. Description of source data and how projected water demands were determined.

Using TWDB Projections the City of Mineral Wells has an average growth rate of about 1.26%. So, the rate of growth from 2025-2034 reflects the population to be 17,196 at 2034. Using TWDB Projections for wholesalers plus adding Millsap WSC and Graford population data from drinking water watch, the wholesalers will be 23,179 at 2034. Water Demand came from using TWDB 2026 Projections for the City of Mineral Wells. In 2023 the city's acre ft was 3667, TWDB projects us to be at 3865 by 2040, that is a growth rate of .3371%. That growth rate was applied for the Water Demand for the years 2025-2034.

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

E. High Volume Customers

1. The annual water use for the five highest volume
RETAIL customers.

Customer	Water Use Category	Annual Water Use	Treated or Raw
The Washhouse	Commercial	6,151,100	Treated
Pioneer Crossing	Commercial	5,062,400	Treated
JRKM, Inc	Commercial	5,050,200	Treated
Spanish Trace	Commercial	4,309,600	Treated
Cedar View Apartments	Commercial	3,636,500	Treated

2. The annual water use for the five highest volume
WHOLESALE customers.

Customer	Water Use Category	Annual Water Use	Treated or Raw
North Rural WSC	Commercial	93,192,600	Treated
Santo SUD	Commercial	80,867,200	Treated
Sturdivant Progress WSC	Commercial	63,408,400	Treated
Parker County SUD	Commercial	55,205,000	Treated
Milsap WSC	Commercial	27,132,900	Treated

F. Utility Data Comment Section

Additional comments about utility data.

The data for highest retail volume is from consumption reports from water billing. The data for Wholesale volume is from consumption reports from water billing.

Attached file(s):

File Name	File Description
Co-op Consumption Report 2023.pdf	Co-op Consumption

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

Section II: System Data

A. Retail Water Supplier Connections

1. List of active retail connections by major water use category.

Water Use Category Type	Total Retail Connections (Active + Inactive)	Percent of Total Connections
Residential - Single Family	5,743	81.86 %
Residential - Multi-Family	36	0.51 %
Industrial	4	0.06 %
Commercial	808	11.52 %
Institutional	239	3.41 %
Agricultural	186	2.65 %
Total	7,016	100.00 %

2. Net number of new retail connections by water use category for the previous five years.

	Net Number of New Retail Connections						
Year	Residential - Single Family	Residential - Multi-Family	Industrial	Commercial	Institutional	Agricultural	Total
2023	0	4	0	0	0	0	4
2022	69	1	11	12	2	4	99
2021	0	8	4	32	42	210	296
2020	603	0	0	129	1	0	733
2019	28	0	0	2	0	0	30

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

B. Accounting Data

The previous five years' gallons of RETAIL water provided in each major water use category.

Year	Residential - Single Family	Residential - Multi-Family	Industrial	Commercial	Institutional	Agricultural	Total
2023	248,875,500	30,317,800	980,700	85,018,300	25,814,700	3,027,600	394,034,600
2022	305,692,500	27,958,900	993,778	99,338,200	37,969,200	13,272,400	485,224,978
2021	291,255,900	19,078,800	91,900	80,727,000	42,379,868	12,995,978	446,529,446
2020	310,765,800	26,663,300	0	101,382,910	40,509,200	0	479,321,210
2019	289,570,600	23,410,100	0	82,417,400	33,575,000	0	428,973,100

C. Residential Water Use

The previous five years residential GPCD for single family and multi-family units.

Year	Total Residential GPCD
2023	53
2022	65
2021	60
2020	66
2019	58
Historic Average	60

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

D. Annual and Seasonal Water Use

1. The previous five years' gallons of treated water provided to RETAIL customers.

Month	Total Gallons of Treated Water				
	2023	2022	2021	2020	2019
January	38,863,700	32,918,500	28,613,100	27,374,031	33,704,200
February	29,798,700	35,626,000	29,496,600	27,888,700	28,331,500
March	29,636,800	30,360,400	43,166,900	33,812,310	27,224,300
April	29,538,400	32,622,678	32,651,000	30,315,800	36,544,962
May	34,726,200	44,989,400	30,162,384	37,320,100	27,425,600
June	28,796,200	38,139,500	33,823,087	53,439,600	29,254,400
July	31,917,300	55,295,200	21,650,600	41,297,800	42,485,700
August	43,934,500	64,931,700	54,859,484	53,372,700	49,293,700
September	34,818,200	38,548,000	40,314,200	60,435,400	59,240,490
October	35,579,900	40,912,300	36,725,700	42,745,400	42,966,300
November	28,883,300	40,801,600	39,000,500	41,314,700	32,196,300
December	27,541,400	30,079,700	39,659,500	30,342,200	35,295,900
Total	394,034,600	485,224,978	430,123,055	479,658,741	443,963,352

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

2. The previous five years' gallons of raw water provided to RETAIL customers.

Month	Total Gallons of Raw Water				
	2023	2022	2021	2020	2019
January	0	0	0	0	0
February	0	0	0	0	0
March	0	0	0	0	0
April	0	0	0	0	0
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	0	0	0	0
September	0	0	0	0	0
October	0	0	0	0	0
November	0	0	0	0	0
December	0	0	0	0	0
Total	0	0	0	0	0

3. Summary of seasonal and annual water use.

	Summer RETAIL (Treated + Raw)	Total RETAIL (Treated + Raw)
2023	104,648,000	394,034,600
2022	158,366,400	485,224,978
2021	110,333,171	430,123,055
2020	148,110,100	479,658,741
2019	121,033,800	443,963,352
Average in Gallons	128,498,294.20	446,600,945.20

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

E. Water Loss

Water Loss data for the previous five years.

Year	Total Water Loss in Gallons	Water Loss in GPCD	Water Loss as a Percentage
2023	271,528,342	49	25.02 %
2022	252,221,015	47	25.95 %
2021	195,178,570	36	21.96 %
2020	93,818,639	17	11.23 %
2019	88,314,699	15	11.47 %
Average	180,212,253	33	19.13 %

F. Peak Day Use

Average Daily Water Use and Peak Day Water Use for the previous five years.

Year	Average Daily Use (gal)	Peak Day Use (gal)	Ratio (peak/avg)
2023	1,079,546	1137478	1.0537
2022	1,329,383	1721373	1.2949
2021	1,178,419	1199273	1.0177
2020	1,314,133	1609892	1.2251
2019	1,216,337	1315584	1.0816

G. Summary of Historic Water Use

Water Use Category	Historic Average	Percent of Connections	Percent of Water Use
Residential - Single Family	289,232,060	81.86 %	64.73 %
Residential - Multi-Family	25,485,780	0.51 %	5.70 %
Industrial	413,275	0.06 %	0.09 %
Commercial	89,776,762	11.52 %	20.09 %
Institutional	36,049,593	3.41 %	8.07 %
Agricultural	5,859,195	2.65 %	1.31 %

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

H. System Data Comment Section

Data was pulled from TWDB Water Loss audit and Conservation Report. In annual and seasonal water use Retail only was input. Wholesale was not included; in previous years it looks like Wholesale was put in with Retail.

Section III: Wastewater System Data

A. Wastewater System Data

1. Design capacity of wastewater treatment plant(s) in gallons per day: 3,610,000

2. List of active wastewater connections by major water use category.

Water Use Category	Metered	Unmetered	Total Connections	Percent of Total Connections
Municipal		5,415	5,415	81.40 %
Industrial		4	4	0.06 %
Commercial		808	808	12.15 %
Institutional		239	239	3.59 %
Agricultural		186	186	2.80 %
Total		6,652	6,652	100.00 %

3. Percentage of water serviced by the wastewater system: 94.82 %

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

4. Number of gallons of wastewater that was treated by the utility for the previous five years.

Month	Total Gallons of Treated Water				
	2023	2022	2021	2020	2019
January	34,125,000	32,153,000	34,435,000	42,664,000	41,160,000
February	39,469,000	33,728,000	30,142,000	43,272,000	30,645,000
March	38,918,000	32,634,000	36,731,000	91,929,000	43,820,000
April	32,529,000	31,682,000	42,350,000	45,862,000	46,981,000
May	52,889,000	36,618,000	65,556,000	38,498,000	88,721,000
June	35,007,000	28,127,000	52,757,000	31,013,000	51,992,000
July	28,799,000	28,857,000	34,644,000	27,798,000	29,540,000
August	26,509,000	29,034,000	39,206,000	28,168,000	32,476,000
September	27,591,000	32,677,000	30,879,000	40,847,000	28,617,000
October	42,781,000	32,879,000	37,504,000	30,802,000	31,292,000
November	33,089,000	37,123,000	32,927,000	28,794,000	31,205,000
December	34,301,000	39,242,000	31,056,000	32,388,000	32,273,000
Total	426,007,000	394,754,000	468,187,000	482,035,000	488,722,000

5. Could treated wastewater be substituted for potable water?

☐ Yes ☒ No

B. Reuse Data

1. Data by type of recycling and reuse activities implemented during the current reporting period.

Type of Reuse	Total Annual Volume (in gallons)
On-site Irrigation	
Plant wash down	9,872,968
Chlorination/de-chlorination	23,036,925
Industrial	2,641,016
Landscape irrigation (park,golf courses)	0
Agricultural	
Discharge to surface water	
Evaporation Pond	
Other	
Total	35,550,909

UTILITY PROFILE FOR RETAIL WATER SUPPLIER

C. Wastewater System Data Comment

Additional comments and files to support or explain wastewater system data listed below.

Some residents have septic and are not on City sewer.

APPENDIX C

LISTING OF WATER CONSERVATION LITERATURE

**TEXAS WATER DEVELOPMENT BOARD
WATER CONSERVATION LITERATURE
AND
CITY OF MINERAL WELLS HANDOUTS**

<u>TITLE</u>	<u>PUBLISHED BY</u>	<u>DESCRIPTION</u>	<u>LENGTH</u>
Be Water Wise at Home	TCOT	Infographic	1 page
Rainwater Harvesting with Rain Barrels	TCOT	Infographic	1 page
Conserve Water Outdoors	TWDB	Pamphlet	6 pages
Conserve Water Indoors	TWDB	Pamphlet	6 pages
Household Water Use and Ways to Save	TWDB	Pamphlet	6 pages
Water Conservation for Industries, Business, and Institutions	TWDB	Pamphlet	6 pages
Guide to Yard Care	TCOT	Booklet	17 pages
Toilet Tank Leak Detector Tablets*	TWDB	2 Tablets	--
Rainwater Harvesting	TCOT	Booklet	27 pages
A Watering Guide for Texas Landscape	TWDB	Booklet	10 pages
The Water Cycle for Kids And Students	TWDB	Interactive Diagram	10 pages
Water Conservation Communications Guide	AWWA	Booklet	12 pages

<u>TITLE</u>	<u>PUBLISHED BY</u>	<u>DESCRIPTION</u>	<u>LENGTH</u>
Guidance and Methodology for Reporting on Water Conservation and Water use	TCEQ/TWDB	Guidebook	62 pages
Planning for Sustainability A Handbook for Water and Wastewater Utilities	EPA	Handbook	72 pages
Rainwater Harvesting Activities for Youth Education	TWDB/TAEX	Guidebook	24 pages
Agriculture Water Conservation in Texas	TWDB	Brochure/Poster	3 pages
Agricultural Water Conservation Irrigation Water Use Management	TWDB	Booklet	12 pages
Agricultural Water Conservation Best Management Practices	TWDB	Booklet	8 pages
Field Guide to Water Education	TCEQ/TCOT	Guidebook	72 pages
Western Water and Working Lands Framework for Conservation Action	NRCS	Guidebook	47 pages

Abbreviations:

AWWA	American Water Works Association
EPA	Environmental Protection Agency
SCS	USDA – Soil Conservation Service
TAEX	Texas Agricultural Extension Service
TWDB	Texas Water Development Board
TCOT	Take Care of Texas
NRCS	Natural Resources Conservation Service

APPENDIX D

PUBLIC INFORMATION SUGGESTIONS

Be Water Wise at Home



Turn off the water while you brush your teeth and save up to 2 gallons a minute. That's over 220 gallons a week for a family of four. Plug the sink instead of running the water to rinse your razor and save up to 200 gallons a month.



A faucet leaking at a rate of one drop per second can waste up to 3,000 gallons of water a year.



Reducing a 10-minute shower using a standard showerhead to 5 minutes will save 12.5 gallons of water in each occasion.



Install more efficient fixtures. A water-efficient showerhead can save the average family 2,900 gallons of water and \$70 in energy and water costs a year.



13,000 gallons

Water-efficient toilets can save up to 13,000 gallons of water a year. If your toilet flapper doesn't close properly after flushing, repair it.

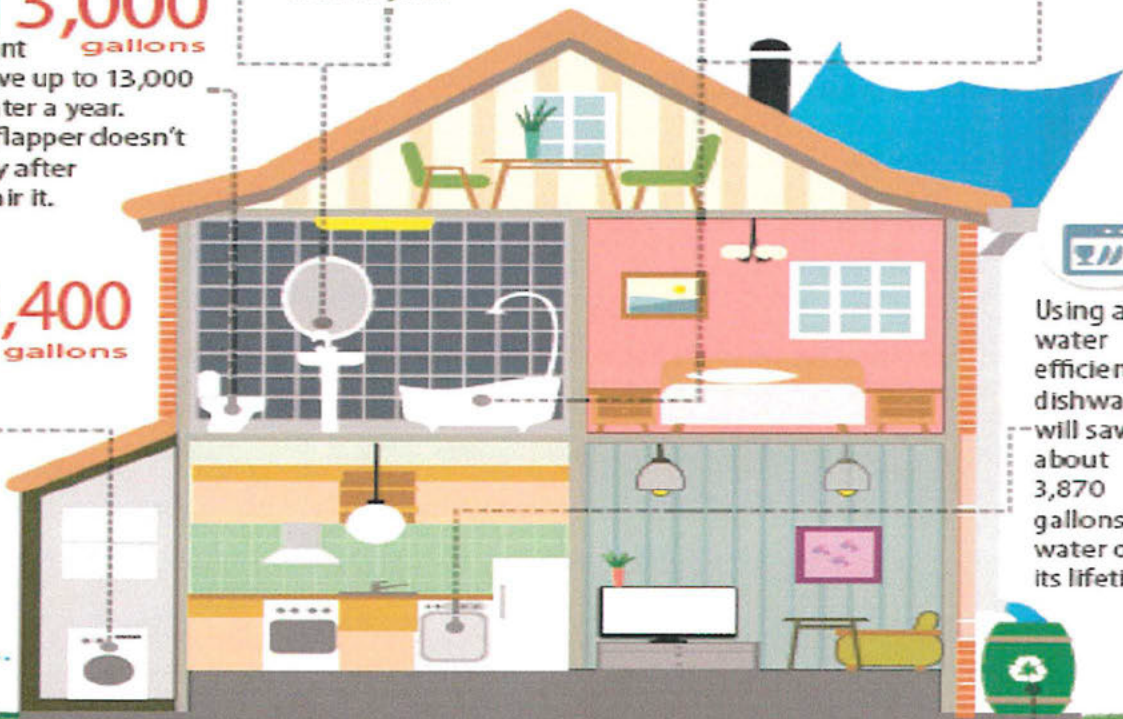


3,400 gallons

Save up to 3,400 gallons of water a year by washing laundry only when the machine is full.



Using a water efficient dishwasher will save about 3,870 gallons of water over its lifetime.



Water wisely

Avoid watering your lawn or garden in the middle of the day. Watering before dawn and after dusk allows for water to be absorbed instead of evaporating in midday heat.



10%
= 32
billion

Store and use rainwater. By collecting rainwater from just 10 percent of the residential roof area in Texas, we could conserve more than 32 billion gallons of water annually.



How is our customer service?
www.tceq.texas.gov/customersurvey

The TCEQ is an equal opportunity employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status.

M-68 (revised 5/20) | TakeCareOfTexas.org/publications | Printed on recycled paper using vegetable-based ink

Appendix D: Letter Certifying City of Mineral Wells WCP/DCP



April 10, 2024

City of Mineral Wells,

RE: Palo Pinto County Municipal Water District No. 1 and City of Mineral Wells Water Conservation and Drought Contingency Plans

HDR, the Palo Pinto County Municipal Water District (District), and the City of Mineral Wells (City) met on April 9, 2024, to discuss consistency between out respective water conservation (WCP) and drought contingency (DCP) plans. One goal of this consistency effort was to provide clarity to triggers and actions of the DCP between the District and the City.

HDR reviewed the DRAFT DCP/WCP document prepared by the City. HDR provided comments on areas where better consistency could be achieved. HDR presented on behalf of the District its DCP/WCP for the City's consideration. All parties concluded that a four stage DCP is the appropriate structure of the DCP, and this structure is accurately represented in both plans. Differences were noted in the WCP, but these differences are consistent with the different roles of the District has a wholesale provider and the City as a retail provider. These plans have been prepared using the guidance provided by the Texas Commission on Environmental Quality.

Please let me know if you have any additional questions regarding the DCP/WCP consistency.

Sincerely,

HDR Engineering, Inc.

A handwritten signature in blue ink, reading 'Cory Shockley'.

Cory Shockley, PE
Vice President

TAB 12

Brazos Water Master Approval of Diversion Point

Chloe Daniels

From: [REDACTED]
Sent: Wednesday, March 5, 2025 9:02 AM
To: Chloe Daniels; David Klein; Zachary Stein
Subject: FW: Palo Pinto County Municipal Water District No. 1 / City of Manvel
Attachments: Brazos WM - Manvel Water 20230712.pdf

Howard B. Huffman
General Manager
PPCMWD No 1
(940) 328-7712
[REDACTED]

CONFIDENTIALITY NOTICE:

This e-mail, including any files transmitted with it, is property of the Palo Pinto County Municipal Water District No. 1 and is covered by the Electronic Communication Privacy Act, 18 U.S.C. SECTIONS 2510-2521. It is confidential and is intended solely for the use of the individual, or entity, to whom the e-mail is addressed. If you are not the named recipient or otherwise have reason to believe that you have received this message in error, please notify the sender at the listed number and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

From: Molly Mohler <molly.mohler@tceq.texas.gov>
Sent: Monday, July 17, 2023 7:12 PM
To: [REDACTED]; Scott McKennon [REDACTED]
Cc: [REDACTED] Kim Nygren <Kim.Nygren@tceq.texas.gov>; Kathy Alexander <kathy.alexander@tceq.texas.gov>; Jose Davila <Jose.Davila@tceq.texas.gov>; [REDACTED]
Subject: Fwd: Palo Pinto County Municipal Water District No. 1 / City of Manvel

Mr. Huffman,

Per our conversation today, the Brazos Watermaster Program agrees that this diversion point (32.657902, -98.124425) is acceptable for Palo Pinto MWD #1 to divert Brazos River Authority contract water. When calling for contract water please contact BRA's Water Services to request water, they must release water from their upstream reservoir, Lake Possum Kingdom. The meter cert has been completed for the Blended pump and will be sent over to BRA first thing in the morning. When requesting water from BRA ensure that you include the travel time it takes to get to your location.

Regards,
Molly

Molly Mohler
Brazos Watermaster
Main Line (254) 761-3006

Begin forwarded message:

From: [REDACTED]
Date: July 12, 2023 at 3:21:30 PM CDT
To: Molly Mohler <molly.mohler@tceq.texas.gov>, Scott McKennon [REDACTED],
Cory Shockley [REDACTED] >
Subject: Palo Pinto County Municipal Water District No. 1 / City of Manvel

Ms. Mohler

I thought I would provide the attached to help provide some context to the conversation currently taking place about the Districts take point on Palo Pinto Creek.

I am available at any time to discuss and hopefully bring a resolution to this as soon as possible for the health of our system.

Howard B. Huffman
General Manager
PPCMWD No 1
O (940) 328-7712
C (940) 445-7155
[REDACTED]

TAB 13

Fees

TAB 14

Public Involvement Plan



Texas Commission on Environmental Quality

Public Involvement Plan Form for Permit and Registration Applications

The Public Involvement Plan is intended to provide applicants and the agency with information about how public outreach will be accomplished for certain types of applications in certain geographical areas of the state. It is intended to apply to new activities; major changes at existing plants, facilities, and processes; and to activities which are likely to have significant interest from the public. This preliminary screening is designed to identify applications that will benefit from an initial assessment of the need for enhanced public outreach.

All applicable sections of this form should be completed and submitted with the permit or registration application. For instructions on how to complete this form, see TCEQ-20960-inst.

Section 1. Preliminary Screening

- ☐ New Permit or Registration Application
☒ New Activity - modification, registration, amendment, facility, etc. (see instructions)

If neither of the above boxes are checked, completion of the form is not required and does not need to be submitted.

Section 2. Secondary Screening

- ☐ Requires public notice,
☐ Considered to have significant public interest, and
☐ Located within any of the following geographical locations:

- Austin
- Dallas
- Fort Worth
- Houston
- San Antonio
- West Texas
- Texas Panhandle
- Along the Texas/Mexico Border
- Other geographical locations should be decided on a case-by-case basis

**If all the above boxes are not checked, a Public Involvement Plan is not necessary.
Stop after Section 2 and submit the form.**

- ☒ Public Involvement Plan not applicable to this application. Provide **brief** explanation.

The amendment requested does not require a high amount of public involvement.

Section 3. Application Information

Type of Application (check all that apply):

Air ☐ Initial ☐ Federal ☐ Amendment ☐ Standard Permit ☐ Title V
Waste ☐ Municipal Solid Waste ☐ Industrial and Hazardous Waste ☐ Scrap Tire
☐ Radioactive Material Licensing ☐ Underground Injection Control

Water Quality

☐ Texas Pollutant Discharge Elimination System (TPDES)
☐ Texas Land Application Permit (TLAP)
☐ State Only Concentrated Animal Feeding Operation (CAFO)
☐ Water Treatment Plant Residuals Disposal Permit
☐ Class B Biosolids Land Application Permit
☐ Domestic Septage Land Application Registration

Water Rights New Permit

☐ New Appropriation of Water
☐ New or existing reservoir

Amendment to an Existing Water Right

☐ Add a New Appropriation of Water
☐ Add a New or Existing Reservoir
☐ Major Amendment that could affect other water rights or the environment

Section 4. Plain Language Summary

Provide a brief description of planned activities.

Section 5. Community and Demographic Information

Community information can be found using EPA's EJ Screen, U.S. Census Bureau information, or generally available demographic tools.

Information gathered in this section can assist with the determination of whether alternative language notice is necessary. Please provide the following information.

(City)

(County)

(Census Tract)

Please indicate which of these three is the level used for gathering the following information.

☐

City

☐

County

☐

Census Tract

(a) Percent of people over 25 years of age who at least graduated from high school

(b) Per capita income for population near the specified location

(c) Percent of minority population and percent of population by race within the specified location

(d) Percent of Linguistically Isolated Households by language within the specified location

(e) Languages commonly spoken in area by percentage

(f) Community and/or Stakeholder Groups

(g) Historic public interest or involvement

Section 6. Planned Public Outreach Activities

(a) Is this application subject to the public participation requirements of Title 30 Texas Administrative Code (30 TAC) Chapter 39?

☐ Yes ☐ No

(b) If yes, do you intend at this time to provide public outreach other than what is required by rule?

☐ Yes ☐ No

If Yes, please describe.

If you answered "yes" that this application is subject to 30 TAC Chapter 39, answering the remaining questions in Section 6 is not required.

(c) Will you provide notice of this application in alternative languages?

☐ Yes ☐ No

Please refer to Section 5. If more than 5% of the population potentially affected by your application is Limited English Proficient, then you are required to provide notice in the alternative language.

If yes, how will you provide notice in alternative languages?

- ☐ Publish in alternative language newspaper
- ☐ Posted on Commissioner's Integrated Database Website
- ☐ Mailed by TCEQ's Office of the Chief Clerk
- ☐ Other (specify)

(d) Is there an opportunity for some type of public meeting, including after notice?

☐ Yes ☐ No

(e) If a public meeting is held, will a translator be provided if requested?

☐ Yes ☐ No

(f) Hard copies of the application will be available at the following (check all that apply):

- ☐ TCEQ Regional Office ☐ TCEQ Central Office
- ☐ Public Place (specify)

Section 7. Voluntary Submittal

For applicants voluntarily providing this Public Involvement Plan, who are not subject to formal public participation requirements.

Will you provide notice of this application, including notice in alternative languages?

☐ Yes ☐ No

What types of notice will be provided?

- ☐ Publish in alternative language newspaper
- ☐ Posted on Commissioner's Integrated Database Website
- ☐ Mailed by TCEQ's Office of the Chief Clerk
- ☐ Other (specify)

Tab 15

Water Supply Contracts



February 9, 2024

Howard Huffman
General Manager
Palo Pinto County Municipal Water District No. 1
P.O. Box 387
Mineral Wells, Texas 76068-0387


RECEIVED FEB 16 2024

Re: Executed Water Supply Agreement Between the City of Abilene, Texas and Palo Pinto County Municipal Water District No. 1

Dear Mr. Huffman;

Enclosed for your records is an executed copy of the Water Supply Agreement Between the City of Abilene, Texas and the Palo Pinto County Municipal Water District No. 1. This Agreement is a companion item to the Temporary Resale Amendment to System Water Availability Agreement Between the Brazos River Authority, City of Abilene, & Palo Pinto County Municipal Water District No. 1, of which three copies, signed by Abilene, are being routed to you for signatures by Palo Pinto County MWD and subsequently forwarded to Jon Dulus of BRA. Please contact me at 325-676-6452 or email rodney.taylor@abilenetx.gov should you need additional information.

Sincerely,


Rodney Taylor
Director of Water Utilities

Enclosures

Water Utilities
4595 South 1st Street
Abilene, Texas 79605
325.676.6405
ABILENETX.GOV/WATER



**WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF ABILENE, TEXAS AND
PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1**

This Water Supply Agreement ("**Agreement**"), effective on the Effective Date (defined herein) is entered into by and between the **CITY OF ABILENE, TEXAS** ("**City**") and **PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1** ("**Purchaser**") (City and Purchaser are each, a "**Party**" and are collectively, the "**Parties**").

RECITALS

WHEREAS, the City has entered into a "System Water Availability Agreement" with the Brazos River Authority, effective July 20, 2020, contemplating in part the sale of 7,737 acre-feet of raw water ("**Total Water Supply**") from the Brazos River Authority to the City;

WHEREAS, under Section 33 of the System Water Availability Agreement, the City has the right to resell some or all of the water secured on a temporary basis to a third party with prior approval of the Brazos River Authority;

WHEREAS, the City desires to sell a portion of such water supply to Purchaser on a temporary basis, and Purchaser desires to purchase a portion of such water supply from the City on a temporary basis; and

WHEREAS, pursuant to Chapter 791, Texas Government Code, the Parties are authorized to enter into this Agreement providing for the undertaking, administrative, and implementation of the terms herein.

AGREEMENT

The City and the Purchaser agree as follows:

Article I. Definitions

In this Agreement:

BRA means the Brazos River Authority.

City means the City of Abilene, Texas.

Contract means the contract between the BRA and City, effective July 20, 2020, attached hereto and incorporated herein as **Exhibit A**.

Contract Year means the twelve month period beginning on September 1 of a calendar year and ending on August 31 of the subsequent calendar year.

Purchaser means Palo Pinto County Municipal Water District No. 1.

Temporary Consent to Assignment means an amendment to the Contract, to be executed after the execution of this Agreement.

Water means the raw water the City has a right to receive from BRA under the Contract.

Article II. Term

2.1. This Agreement shall commence on the date that BRA approves the Temporary Consent to Assignment ("**Effective Date**") and terminates on August 31, 2027 (the "**Termination Date**") (such period of time between the Effective Date and the Termination Date is the "**Initial Term**").

2.2. Subject to the BRA approval of the Temporary Consent to Assignment, this Agreement may be renewed after the Initial Term for two (2) additional three-year terms (the "**Renewal Term**") under the same terms and conditions in the Initial Term. This Agreement may only be renewed by mutual consent of the Parties, so long as Purchaser provides the City with prior written notice of a renewal on or before August 1 of the then-current year of the Agreement. Upon renewal, the Termination Date shall be redefined as August 31 of the then-current Renewal Term.

2.3. None of the Parties to this Agreement, or any renewal, will have any rights or obligations set forth in this Agreement before the Effective Date. This Agreement, as may be renewed, will be null and void if, and at such time as, the BRA does not approve the Temporary Consent to Assignment or the BRA terminates the Temporary Consent to Assignment for any reason prior to the Termination Date set forth in this Agreement.

Article III. Water Supply

3.1. From the Effective Date until August 31, 2024, the City allows the Purchaser to withdraw an amount of Water not to exceed 3,000 acre-feet of Water (the "**2024 Supply**"), prorated to the number of days beginning on the Effective Date and continuing through August 31, 2024, as specified under this Agreement, to supplement the Purchaser's water supplies.

3.2. From September 1, 2024 through August 31, 2027, the City allows the Purchaser to withdraw an amount of Water not to exceed 3,000 acre-feet of Water per Contract Year (the "**2027 Supply**"), as specified under this Agreement, to supplement the Purchaser's water supplies.

3.3. The Purchaser may make a written request to the City for each of two Renewal Terms of the Agreement that provides for additional three BRA Contract years (September 1 through August 31) ending on August 31, 2030 and August 31, 2033, respectively, allowing the Purchaser to withdraw an amount of Water not to exceed 3,000 acre-feet of Water per Contract Year (the "**2030 Supply**" and the "**2033 Supply**", respectively), as specified under this Agreement, to supplement the Purchaser's water supplies. Purchaser must request the Option prior to August 1, 2027, for the first Renewal Term, and August 1, 2030, for the second Renewal Term. The City reserves the right to deny the request for the Renewal Term based on the City's projected priority need for use of the water by the City, however, the request will not be unreasonable denied.

3.4 The Purchaser is not allowed to withdraw any Water before the Effective Date of the Temporary Consent to Assignment. Each Contract Year of the Initial Term or any Renewal Term,

Purchaser must withdraw the Annual Quantity of Water under this Agreement prior to the Termination Date or at such time as specified by the BRA in the Temporary Consent to Assignment.

3.5. Until the Termination Date, the City designates Purchaser as its agent to the BRA for the sole purpose of coordinating the delivery of Water under this Agreement.

3.6 The City holds three System Water Availability Agreements with the BRA totaling 19,411 acre-feet for the primary benefit of the City. The Contract quantity will be utilized by the City as the third in order of use as needed. The City maintains first priority right to the Water during an extreme water supply shortage due to drought or other water emergency, where an extreme water supply shortage is defined as the City entering into "Stage 4. Water crisis" as defined and detailed in the City's Water Conservation Plan Procedures found in the City's ordinances at Sec. 32-145. In such a situation, the Abilene City Manager will provide Purchaser with notice of at least one Contract Year, or the remaining term of Agreement if less than one Contract Year, of the City's intent to terminate the Agreement, or to terminate the renewal of the Agreement.

3.7. Under this Agreement and renewal:

(a) The Purchaser must abide by all of the terms and conditions of the Contract between the BRA and City, attached hereto, and incorporated herein as **Exhibit A**, and the Temporary Consent to Assignment between BRA and the City, to be executed after the execution of this Agreement.

(b) The Water availability is dependent on the provisions specified in the Contract between the BRA and City.

(c) The City does not guarantee that the quality of the Water meets the Purchaser's intended use(s).

(d) The Purchaser must comply with all BRA water reporting requirements.

(e) The Purchaser represents and warrants that it will use the Water made available under this Agreement for the purpose of municipal, domestic, and industrial use and may not assign this Agreement or any renewal without the City's prior written consent.

3.8. If during any Contract Year (i) the quantity of Water made available under the Contract is curtailed for any reason and (ii) the City is not withdrawing any remaining portion of the Total Water Supply, then the City will work with the BRA and Purchaser to allocate the curtailment to such remaining portion of the Total Water Supply or make other accommodations with the remaining portion of the Total Water Supply, so that the Purchaser can continue to take as much of the Annual Quantity as possible, without curtailment.

3.9 For any Contract Year, the City agrees to work with the Purchaser and shall consider any reasonable request to purchase additional Water in excess of the Annual Quantity, but not in excess of the Total Water Supply. Such additional Water would be sold by the City to Purchaser on a take-or-pay basis at the same charged for the Annual Quantity. The Parties agree that such additional Water could be sold at any time of a Contract Year and may be evidenced by memorandum or letter agreement. A formal amendment to this Agreement shall not be required.

Article IV. Payment

4.1. For the prorated quantity available between the Effective Date and August 31, 2024, the Purchaser will pay to the City the applicable BRA System Rate of \$93.54 per acre-foot of Water plus an additional Administrative Fee of three percent (3%) markup of the BRA System Rate ("*Admin Fee*"); and such payment shall be made on the Effective Date. For each Contract Year thereafter, the Purchaser will pay the City the BRA System Rate per acre-foot of Water, effective as of September 1 of that Contract Year, for the Annual Quantity on a take-or-pay basis, plus the Admin Fee; and such payments shall be delivered to the City no later than September 1 of the then-current Contract Year (the "*Due Date*").

4.2. All payments must be delivered to the City's Finance Department, P.O. Box 60, Abilene, TX 79604. Please reference "Resale of BRA water to Palo Pinto County Municipal Water District No. 1" in cover correspondence if possible.

4.3. The City will refund to the Purchaser any amount paid to the City by the Purchaser for Water the BRA is unable to provide as specified under the terms of the Contract between the BRA and City, provided the City has been refunded by BRA.

Article V. Miscellaneous Provisions

5.1. Notices. All notices and other communications given or made pursuant to this Agreement must be in writing and deemed effective (i) upon personal delivery to the party to be notified; (ii) when sent by electronic mail (E-mail) if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day of the date sent; (iii) the first business day following deposit with any courier service that provides a same day or overnight courier service that guarantees receipted delivery; or (iv) three (3) days after the notice is deposited in the United States mail as certified or registered mail, postage prepaid; in each case addressed to the party to be notified, at the address set forth below or at such other address, or electronic mail (E-mail) address for a party as that party may specify in writing to the other party from time to time:

For the City:

City of Abilene
555 Walnut Street,
Abilene, Texas 79601
Attention: City Manager
Phone: (325) 676-0630
Email: [REDACTED]

With a copy to:

Stanley Smith, City Attorney
P.O. Box 60
Abilene, Texas 79604
Phone: (325) 676-6256
Email: [REDACTED]

For the Purchaser:

Palo Pinto County Municipal Water District No. 1
P.O. Box 387
Mineral Wells, Texas 76068-0387
Attention: Howard Huffman, General Manager
Phone: (940) 328-7712
E-mail: [REDACTED]

With a copy to:

Rhett Warren, Counsel for PPCMWD No. 1
1635 Rogers Rd
Fort Worth, TX 76107
Phone: 940-452-6999
Email: [REDACTED]

Either Party may change its address or contact information by giving notice, within ten (10) business days, to the other Party.

5.2. Law and Venue. Texas law governs this Agreement, and any lawsuit arising out of this Agreement must be filed in a court that has jurisdiction in Taylor County, Texas.

5.3. Force Majeure. Neither Party is in default if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, pandemic, act of government, its agencies or offices, or any other cause beyond the control of the Parties.

5.4. Entire Agreement. This Agreement represents the entire agreement between the City and the Purchaser and supersedes all prior negotiations, representations, or contracts, either written or oral, between the City and Purchaser. This Agreement may be amended only by written instrument signed by both Parties.

5.5. Dispute Resolution Procedures. If a party disputes any matter relating to this Contract, the parties agree to try, in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

5.6. Attorney's Fees. Should a Party to this Contract bring suit against the other Party for any matter relating to this Contract, neither Party will seek or be entitled to an award of attorney's fees or other costs relating to the suit.

5.7. Cooperation. The Parties acknowledge and agree that the Purchaser will be diverting the Water at a location that is different from the location contemplated by Contract, with withdrawal facilities that are different from the withdrawal facilities contemplated by Contract. The City

agrees to cooperate with Purchaser and work with the BRA to obtain approval of such alternate location and diversion facilities.

5.8 Termination for BRA Disapproval. In the event that the BRA (i) does not allow the Purchaser to withdraw Water at the Purchaser's proposed location, (ii) does not approve of Purchaser's withdrawal facilities, or (iii) takes any other action that would impair the Purchaser from withdrawing the Annual Quantity of Water, save and except for a shortage in Water by BRA, then Purchaser may terminate this Agreement in its sole discretion for convenience.

5.9 Texas Gov't Code §791.011(d). The Parties agree that this Agreement:

- (a) has been authorized by the governing body of each party to the contract;
- (b) states the purpose, terms, rights, and duties of the contracting parties;
- (c) hereby specifies that each party paying for the performance of governmental functions or services shall be making those payments from current revenues available to the paying party; and
- (d) contains a contractual payment that contains an amount that fairly compensates the performing party for the services or functions performed under the contract.

[Signature Page Follows]

CITY OF ABILENE, TEXAS

**PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT NO. 1**

Robert Hanna
Robert Hanna, City Manager

Howard Huffman
Howard Huffman, General Manager

Date: 13 Feb 2024

Date: January 29th, 2024

ATTEST:
[Signature]

ATTEST:
[Signature]

EXHIBIT A
BRA CONTRACT

SYSTEM WATER AVAILABILITY AGREEMENT

*Brazos River Authority
P. O. Box 7555
Waco, Texas 76714-7555
(254) 761-3100*



CITY OF ABILENE

**SYSTEM WATER AVAILABILITY AGREEMENT
BETWEEN
BRAZOS RIVER AUTHORITY
AND
CITY OF ABILENE**

AGREEMENT made and entered into this the 20th day of July 2020, by and between **BRAZOS RIVER AUTHORITY** ("BRA"), a river authority of the State of Texas, and **CITY OF ABILENE** ("Purchaser"), a municipal corporation organized and operating under the laws of the State of Texas.

1. RECITALS. BRA owns and operates various reservoirs in the Brazos River Basin. BRA also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various reservoirs owned and operated by the United States Army Corps of Engineers ("USACE"). BRA is authorized by the State of Texas to store state waters in the reservoirs owned by BRA and various reservoirs owned and operated by the USACE in the Brazos River Basin; BRA has been granted water rights permits and certificates of adjudication by the Texas Commission on Environmental Quality, or its predecessors, and to make such stored waters available for beneficial use. BRA is authorized to operate the System as a hydrologic unit(s) to more efficiently utilize the waters of the Brazos River Basin included in the System and to make water available to meet the needs of BRA's customers.

BRA's System Operation Permit authorization allows BRA to use naturally occurring flows in the basin and return flows from wastewater treatment plants, in conjunction with the water supply in the reservoirs within the BRA System. The uncontrolled natural flow, originating downstream of the BRA's reservoirs during wet times, can be augmented by releases from BRA reservoirs upstream during dry times and collectively achieve a System yield that is greater than the sum of the individual reservoir yields.

Purchaser wishes to contract with BRA to make available 7,737 acre-feet of Sys Ops Water per Fiscal Year under the terms of this Agreement pursuant to the System-wide pricing methodology, and BRA agrees to make water available to Purchaser pursuant to the terms and conditions herein provided.

2. DEFINITIONS.

- a) The term "Agreement" means this agreement.
- b) The term "Annual Contracted Amount" shall mean the total volume, expressed in acre-feet per Fiscal Year, which BRA agrees to make available and Purchaser agrees to purchase. For this Agreement, the amount is 7,737 acre-feet.
- c) The term "BRA" shall mean Brazos River Authority.
- d) The term "Board" shall mean the Board of Directors of Brazos River Authority.

- e) The term "Budgeted Cost of Service" shall mean all reasonable economic requirements to develop, operate, maintain, protect and/or expand the System. Specific costs include, but are not limited to, personnel, operations, capital, infrastructure, financing, administration and overhead.
- f) The term "Fiscal Year" shall mean BRA's fiscal year from September 1 through August 31, or such other annual fiscal year period as BRA may later determine.
- g) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric, but does not include agricultural use.
- h) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pasture land, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.
- i) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.
- j) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the use of return flows authorized pursuant to Texas Water Code, §11.042, in lieu of potable water for the preceding purpose, the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:
 - (A) the application site is land owned or leased by the Chapter 26 permit holder; or
 - (B) the application site is within an area for which the TCEQ has adopted a no-discharge rule.
- k) The term "Overuse" shall mean withdrawal or release of water in excess of the amount contracted.
- l) The term "Purchaser" shall mean City of Abilene.
- m) The term "Reuse" shall mean the authorized use of any portion of the water sold hereunder that remains unconsumed after the water is used for the purpose authorized herein.
- n) The term "Sys Ops Water" shall mean raw water derived from and made available under this Agreement through the issuance of BRA's System Operation Permit.
- o) The term "System" shall mean BRA's water supply system and shall include the BRA's facilities, infrastructure and properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and/or all replacements thereof whether from surface water supplies, groundwater, System Operation Permit, current and/or future TCEQ water right permits or certificates of adjudication, contractual rights to water supply, or a combination thereof, unless specifically excluded from the System by resolution of the Board.
- p) The term "System Operation Permit" shall mean Permit No. 5851 issued on November 30, 2016; whereby the BRA is authorized by TCEQ the right to contract for Sys Ops Water with customers in areas designated by TCEQ.
- q) The term "System Rate" shall mean the annual rate per acre-foot of water established by BRA from time to time under the system-wide pricing methodology for water made available to Purchaser from the System under this Agreement.
- r) The term "TCEQ" shall mean the Texas Commission on Environmental Quality or any successor regulatory bodies, either state or federal, with the power to

regulate water rights permitting, water quality, metering and/or reporting within the Brazos River Basin.

3. EFFECTIVE DATE. The effective date of this Agreement is **September 1, 2020.**

4. AVAILABILITY OF WATER. While this Agreement remains in force, BRA agrees to make available to Purchaser for withdrawal from the System an amount of Sys Ops Water not to exceed the Annual Contracted Amount; provided however, BRA may curtail the water supplied under this Agreement as required by law or in accordance with the BRA's Drought Contingency Plan. Purchaser agrees that it is contracting to have water made available to it in amounts and at such times and locations as are provided for herein and that the water to be provided under this Agreement is subject to local availability. Purchaser acquires no property right in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. BRA agrees to make water available from the System, and Purchaser acquires no rights or interests in any of the water supply sources that comprise the System above and beyond those rights that accrue to it as a customer of the System under this Agreement.

5. TYPE OF USE. Purchaser represents, and BRA relies on such representation, that all water to be made available by BRA under this Agreement to Purchaser shall be used solely for municipal purposes.

6. DATE AND PLACE OF PAYMENTS. Payments to be made hereunder shall be made at BRA's office in Waco, McLennan County, Texas. BRA contemplates that by the first day of each Fiscal Year (currently September 1) it will have adopted budgets for BRA for said Fiscal Year and established the System Rate for said Fiscal Year. Payments for water made available each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. Annual payments shall be made on or before September 15 of each year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 of each year. Monthly payments shall be made on or before the fifteenth of each month each year. Quarterly payments or monthly payments shall include a multiplier to be applied to the Annual Contracted Amount to allow BRA to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis using the method approved by the Board and shall be just and reasonable.

If, in accordance with Section 7b) of this Agreement, BRA increases the payment due from Purchaser during a Fiscal Year, it shall notify Purchaser of any increased amount of payment due for the remainder of the Fiscal Year and the increased amount shall be paid by Purchaser (i) within 30 days after receipt of notice of the increase if Purchaser has already paid all amounts otherwise due to BRA for such Fiscal Year, or (ii) in approximately equal installments added to any further installment amounts owed by Purchaser for the

remainder of such Fiscal Year if Purchaser has selected a payment option which resulted in Purchaser still having payments due to BRA during the remainder of such Fiscal Year.

7. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agrees to pay BRA annually for the water agreed to be made available to Purchaser hereunder at a price equal to the product of multiplying the System Rate times the Annual Contracted Amount regardless of whether the full Annual Contracted Amount of water is diverted and used by Purchaser.

b) The System Rate shall be established annually by the Board; it shall be calculated by utilizing a Budgeted Cost of Service basis considering the water supply System costs and the acre-feet of long term water sold under contract; and it shall be just, reasonable and non-discriminatory. Purchaser shall be provided at least 15 days' notice of the proposed amount and the meeting date at which the System Rate shall be established and shall be provided an invoice before the payment is due and payable. The 2020 BRA Fiscal Year System Rate has been established by the Board at a rate of \$79.00 per acre-foot of water. The 2021 System Rate has not yet been established and will go into effect as of the Effective Date of this Agreement, and the 2021 System Rate is the rate per acre-foot of water agreed to be made available annually to Purchaser for the 2021 Fiscal Year. BRA shall not increase the System Rate other than on a Fiscal Year basis, which determines the System Rate for the following Fiscal Year under this Agreement, except for unforeseeable reasons of a serious or substantial nature. Such reasons include Force Majeure, government legislation or regulations, or permit requirements.

8. SOURCE OF PAYMENTS. The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

9. INTEREST ON PAST DUE PAYMENT. In the event of failure of Purchaser to make any payment to BRA provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

10. REMEDIES FOR NONPAYMENT OR DEFAULT. Should Purchaser fail to make any payment to BRA when due hereunder or otherwise be in default in performance or compliance of any provision herein, BRA, at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to: (i) suspend its duty to make water available to Purchaser under this Agreement; (ii) terminate this Agreement, by providing written notice of such termination delivered to Purchaser on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice; or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach of any of the terms of this Agreement or as provided herein, the Purchaser shall immediately discontinue all diversions and use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. REMEDIES FOR OVERUSE. Purchaser recognizes that any diversion of water in excess of its Annual Contracted Amount will impact BRA's ability to make available water to BRA's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the Annual Contracted Amount, Purchaser will give written notice to BRA 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. BRA, in its sole discretion, may make all or a portion of the requested water available. Nothing contained herein shall obligate the BRA to provide water in excess of the Annual Contracted Amount nor should Purchaser rely on additional water being made available in excess of the Annual Contracted Amount except as approved by BRA under the terms stated herein.

In the event that BRA determines that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser shall pay for such water to be made available in advance of diversion at a rate that is equal to twice the current System Rate.

In the event Purchaser fails to notify BRA of its need for additional water to be made available, and exceeds the Annual Contracted Amount or should Purchaser, after notification of BRA and BRA's determination that additional water is not available for Purchaser's use, nonetheless exceed the Annual Contracted Amount, BRA may elect to: (i) cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation; (ii) charge the Purchaser for the overuse at a rate of the lesser of ten times the System Rate or the highest charge allowed by law at the time of breach; and/or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach for overuse, the Purchaser shall immediately discontinue all diversions of use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

12. DIVERSION POINT(S). Upon execution of this Agreement, the BRA and the Purchaser shall agree on a point(s) of diversion which shall be attached hereto and incorporated by reference herein for all purposes as Exhibit "A". Withdrawal facilities for diversion of water made available under this Agreement shall be solely the responsibility of Purchaser and shall comply with Section 14., below. Subsequent changes regarding the

location of the diversion point(s) are in the sole discretion of the BRA and shall only be made by written amendment. Any change in the location of the diversion point(s) without the written consent of BRA is not allowed.

13. DIVERSION RATE. The water to be made available to Purchaser under this Agreement may be diverted from System at daily rates desired by Purchaser provided that BRA shall not be required to make water available for diversion by Purchaser at a daily rate in excess of five times the average daily rate which would result in diversion during a Fiscal Year of the total number of acre-feet of water per year then agreed to be made available for diversion by Purchaser.

14. WITHDRAWAL FACILITIES. The provision of facilities for diversion of the water agreed to be made available by BRA to Purchaser hereunder shall be solely the responsibility of Purchaser, including the right to legally access land to place such facilities. Where applicable, BRA may allow the construction of such facilities on and across BRA land, subject to the conditions, requisites, insurance requirements and/or obligations as established from time to time by the BRA, USACE and/or any other applicable regulatory body. Prior to construction of such facilities, Purchaser shall coordinate with BRA to determine the location, size and type of facilities to be installed. At the termination of this Agreement, all facilities must be removed and the land restored to its original condition in a manner acceptable to BRA.

15. METERING. Purchaser agrees that, at its sole cost and expense, it shall own, install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid BRA in accurately reporting water usage to the TCEQ as required by applicable law or regulation. Prior to pumping any water, Purchaser shall allow BRA and any other regulatory agencies access to such meter in order to verify its accuracy. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each Fiscal Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to BRA. BRA shall be given at least two prior days' notice of the time of any test and calibration of Purchaser's meters, or any of them, and BRA shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. BRA shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days' notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of BRA, the expense of such test to be borne by BRA if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial BRA demand for meter testing, and the records of readings shall be adjusted accordingly. In addition, Purchaser shall permit BRA to access its meter at all times and releases BRA from any and all liability for disabling the meter in the event Purchaser is in default of this Agreement.

16. REPORTING Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 15., Metering, above. These records shall be subject to inspection by BRA and/or TCEQ at reasonable times and places. Purchaser shall submit reports to BRA pursuant to BRA and/or TCEQ requirements at regular time intervals specified by BRA or as required by TCEQ, in addition to any other reporting requirements set forth by BRA and/or TCEQ. In addition to other contractual penalties and/or damages, failure to comply with BRA and/or TCEQ reporting requirements will result in monetary penalties assessed by BRA, TCEQ, and/or any other applicable regulatory body.

17. SYSTEM EXPANSION. Purchaser and BRA understand that BRA may desire to make water available to other customers in a manner or in an amount which may necessitate expansion or enlargement of or additions to the System and that in connection with any such expansion, enlargement or addition, BRA will incur additional costs. The reasonable costs incurred by BRA related to such expansion, enlargement, or addition shall be costs of the System.

18. DROUGHT CONTINGENCY PLAN. Purchaser agrees to abide by any and all policies and/or procedures, adopted from time to time by the BRA, related to water conservation and drought response, including but not limited to: the BRA "Drought Contingency Plan" adopted by the Board on April 29, 2019, or any subsequent Drought Contingency Plan duly adopted by the Board, and any and all drought contingency programs developed by the BRA. If required by applicable law or regulation or by BRA, Purchaser agrees to develop a drought contingency program, submit a copy to the BRA for review, and agrees the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such program. Purchaser recognizes and agrees that should the BRA's Drought Contingency Plan, and the implementation of any requirements thereof, result in the curtailment of water, Purchaser shall be required to immediately reduce the water made available under this Agreement by an amount determined solely by the BRA, and any withdrawal in excess of this amount during the time of drought shall be considered a default by Purchaser. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to BRA's Drought Contingency Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a drought contingency program in compliance with such applicable law or regulation.

19. WATER CONSERVATION. It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Water Conservation Plan" adopted by the Board on April 29, 2019, or any subsequent Water Conservation Plan duly adopted by the Board and any Water Conservation Plan developed and adopted by the BRA. In addition, Purchaser agrees to implement its own water conservation plan and submit a copy to the BRA for review.

Purchaser further agrees that the water impounded and/or diverted by Purchaser pursuant to this Agreement will be used in accordance with such plans. Purchaser shall implement water conservation measures that provide for the utilization of those reasonable practices, techniques, and technologies that will reduce on a per unit basis the consumption of water, prevent or reduce the loss or waste of water, improve the efficiency in the use of water, increase the recycling and reuse of water, and prevent the pollution of water, so that a water supply is made available for future and alternative uses. The practices, techniques, and technologies used shall be designed to achieve a level of efficiency of use that is equal to or greater than the level provided for in BRA's Water Conservation Plan. Purchaser further agrees to amend its water conservation plan, as necessary, to reflect amendments in state law, regulations or BRA's water conservation rules and regulations. Purchaser agrees that if a shortage of water results from drought, accident, or other cause, BRA shall divide the water made available to all its customers on a pro rata basis in accordance with the amount of water to which each customer may be entitled or the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to the BRA's Water Conservation Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

20. WATER QUALITY. As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of water made available hereunder. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

21. REUSE. All rights to Reuse made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water shall remain with the BRA. Purchaser may not use, sell, or make available to others, any form of Reuse without the express written consent of the BRA. However, Purchaser may directly reuse treated wastewater effluent or untreated water provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water.

22. INTERBASIN TRANSFER. Water made available under this Agreement shall not be transferred or used outside of the Brazos River Basin unless Purchaser obtains the express written consent of BRA and obtains all required governmental approvals.

23. SHORTAGES AND YEARLY REPORTS. BRA makes no guarantee that any reservoirs or other sources of supply in the System will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final

diversion. It is fully understood by the parties hereto that the level of reservoirs or other sources of supply in the System will vary as a result of weather conditions beyond the control of BRA, the use of water from the System by other water customers of BRA, and in USACE reservoirs, as a result of releases made by the USACE and that this instrument is merely an agreement to require BRA to make available water when and if water is present in the System, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply and in conformity with BRA's water rights from the TCEQ and the System.

BRA covenants that it will use its best reasonable efforts in accordance with accepted hydrological engineering practices to provide the quantities of water agreed to be provided herein. In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the System becomes in short supply, Purchaser acknowledges and agrees that BRA may curtail or cutback Purchaser's water utilization. Purchaser acknowledges that it shall hold BRA harmless from any and all liability, damages, claims or actions which may exist as a result of shortages of water to be made available.

24. REDUCTION IN CONTRACTED AMOUNT. Purchaser recognizes and agrees that the Annual Contracted Amount made available is Sys Ops Water and may be reduced by regulatory bodies in charge of issuing such permits. If a regulatory body reduces the amount of water made available to BRA under the System Operation Permit, BRA shall reduce the amount of water made available under this Agreement to Purchaser in a manner that equitably affects all impacted BRA customers.

25. OPERATION OF SYSTEM; BRA'S OTHER CONTRACTS. The right of BRA to maintain and operate the System and at any and all times to impound, release and make available waters therefrom in any lawful manner and to any lawful extent BRA may see fit is recognized by Purchaser; and, except as otherwise provided herein, there shall be no obligation hereunder upon BRA to pump or not pump, store or not to store, or to release and make available or not to release or make available any waters at any time or to maintain any waters at any specified level or to operate the System in any manner not in compliance with applicable laws or regulations, and BRA's water rights. BRA may enter into agreements with other parties regarding the System, including its operation and maintenance and the storage, release and making available water therefrom. BRA makes no representation as to the quality of the water in the System.

26. FORCE MAJEURE. Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, major infrastructure failure, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees, actions or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such

party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

27. WAIVER. Any waiver at any time by any party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

28. NOTICES AND CERTIFICATIONS. Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by standard overnight carriers or postal service, sent postage paid, or hand delivered, to the respective parties at the following addresses:

BRA: Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555
or
4600 Cobbs Drive
Waco, Texas 76710
Telephone: (254) 761-3100
Email: info@brazos.org

Purchaser: City Manager
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060
Telephone: (325) 676-6206
Fax: (325) 676-6229

Either party may change its address as shown above by written notice to the other party.

29. OTHER REQUIREMENTS. This Agreement is subject to all conditions, provisions, and limitations included in BRA's water rights from applicable state agencies. Further, this Agreement is subject to all applicable federal, state and local laws, BRA policies and procedures, any and all regulatory requirements, and any other applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

30. SEVERABILITY. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions 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.

31. INDEMNITY/HOLD HARMLESS CLAUSE. TO THE EXTENT ALLOWED BY LAW, THE PURCHASER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD BRA HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE PURCHASER AGREES TO KEEP, SAVE AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE PURCHASER RELATED TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE PURCHASER OR THE PURCHASER'S AGENTS, SUBCONSULTANT, OR EMPLOYEES.

32. MULTIPLE CONTRACTS. If Purchaser possesses more than one long-term water supply agreement with the BRA for diversion of water with the same diversion point or a diversion point within the same general location, water use or consumption shall be applied against the oldest contract first, until all quantities of water that may be diverted from such diversion point under that contract have been fully utilized and billed against, and then in like manner to each successive contract in date order, from oldest to most recent. Once water use or consumption has been so applied against all previous contracts, any remaining usage shall be applied against this Agreement.

33. WATER SURPLUS, RESALE AND ASSIGNMENT. Should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by BRA under this Agreement, Purchaser may provide the BRA with a minimum of thirty (30) days' written notice prior to the expiration of the then-current BRA Fiscal Year as to the amount of water no longer needed to be made available to it and, subject to BRA approval, return such water to BRA. If approved by BRA, this Agreement will be amended to reduce the amount of water to be made available to Purchaser, and Purchaser will be relieved of the obligation to make payments for such availability of water beginning on the first day of the next Fiscal Year.

If Purchaser does not wish to return the excess water to the BRA, Purchaser may elect to resell the water on a temporary basis to a third party with prior approval of the BRA, on a form approved by the BRA, and in compliance with the BRA's Water Policy, as in effect at the time of request. Purchaser shall remain responsible for tendering full payment to the BRA in advance of the temporary resale period and agrees to monitor the third party's performance, ensuring compliance with all terms of this Agreement.


The assignment of BRA water by Purchaser is prohibited; provided, however, the Brazos River Authority may allow Purchaser to permanently assign the Agreement to a third party in the event of the following: 1) name changes, restructuring, mergers, acquisitions, assignments, or other transfers of a business, organization or entity; 2) acquisition, transfer of an interest in the Agreement through inheritance, change in marital status, or interfamily transfer; 3) Purchaser has sold the real property underlying the Agreement and the new owner of the real property desires to continue use of Agreement; 4) a court order necessitating the assignment of the Agreement has been issued; or 5) a

change in BRA Water Policy. Such assignments will only be approved if the diversion location and use remain, are not modified or changed, and only on a form acceptable to the BRA.

Additionally, if the Purchaser intends to resell the water under this Agreement, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures meeting the requirements of this Agreement.

34. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on August 31, 2045. At the sole discretion of the BRA, this Agreement may be renewed thereafter at the written request of Purchaser under the terms and conditions of BRA's standard long-term water availability contract at that time for so long as, and to the extent that, BRA determines it has Sys Ops Water available for purchase.

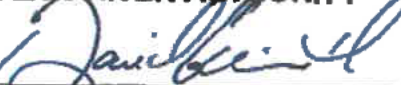
CITY OF ABILENE

By 
Robert Hanna
City Manager

ATTEST:



BRAZOS RIVER AUTHORITY

By 
David Collinsworth
General Manager/CEO

ATTEST:



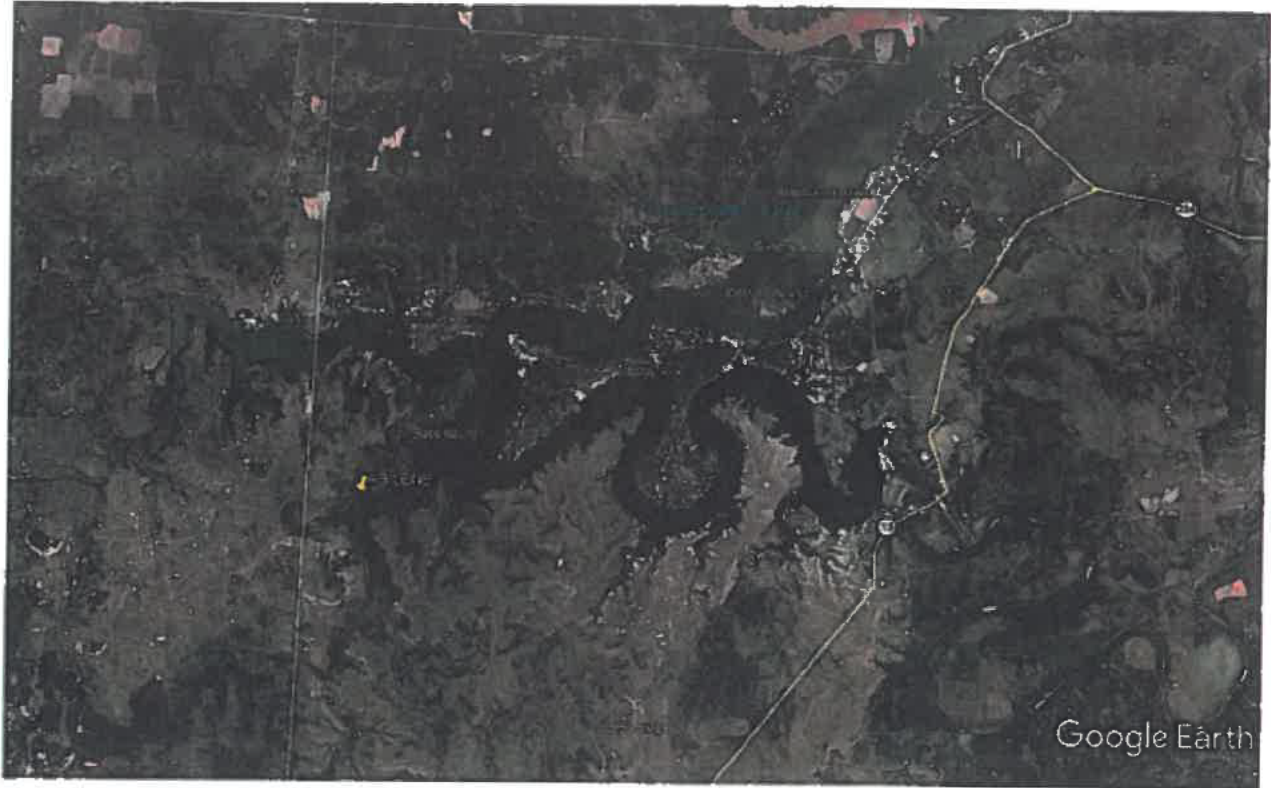


EXHIBIT A: CITY OF ABILENE, 7,737-ACFT (MU)

Contract ID: ABILENE 20

Diversion ID: ABILENE 20

**N32.851460 W98.5618877, PSMT2 WCBPL (1207), Lakeside Possum Kingdom,
Upper Basin, Palo Pinto County, WAP Reach: Lk Possum Kingdom Lake**

Prepared by: Julie Andress, Water Accounting Specialist, 3/20/2020

February 27, 2024

Mr. Howard Huffman
General Manager
Palo Pinto County MWD #1
P.O. Box 387
Mineral Wells, TX 76068-0387

RECEIVED MAR 04 2024

Re: Executed Temporary Resale Amendment to System Water Availability Agreement between
Brazos River Authority and the City of Abilene, & Palo Pinto Municipal Water District No.1

Dear Mr. Huffman:

Please find enclosed a fully executed Resale Amendment to System Water Availability Agreement as referenced above. If you have any questions regarding the agreement, please do not hesitate to contact me at (254) 761-3274.

Sincerely,



Jon Dulus
Regional Business & Project Development Manager – Upper Basin

JD:jg
Enclosures

**TEMPORARY RESALE AMENDMENT TO SYSTEM WATER
AVAILABILITY AGREEMENT BETWEEN BRAZOS RIVER AUTHORITY
AND CITY OF ABILENE, TEXAS**

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the day of February, 2024, (Effective Date) by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Abilene ("Purchaser"), and Palo Pinto County Municipal Water District No. 1 ("Resale Purchaser"), (collectively, the "Parties"). 27th

RECITALS

WHEREAS, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of July 20, 2020, whereby BRA agreed to make available, and Purchaser agreed to purchase 7,737 acre-feet of raw water per Fiscal Year for municipal purposes; and

WHEREAS, in accordance with Section 33 of the Agreement, Purchaser has requested to temporarily resell 3,000 acre-feet of raw water made available under the Agreement to Resale Purchaser; and

WHEREAS, to facilitate this resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for municipal purposes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to temporarily amend the Agreement as follows:

AMENDMENTS

1. The BRA hereby consents to the temporary resale of 3,000 acre-feet of water under the Purchaser's Agreement to the Resale Purchaser. From the Effective Date of this Amendment until August 31, 2024, Resale Purchaser's total withdrawal amount shall be prorated based upon the number of days from the Effective Date to August 31, 2024. From September 1, 2024, Resale Purchaser shall be able to utilize the full authorized amount by this Amendment until this Amendment terminates on August 31, 2027 ("Termination Date"). Resale Purchaser may request, subject to BRA and Resale Purchaser approval, two Renewal Terms of this Amendment which would terminate August 31, 2030, and August 31, 2033, respectively. Such requests must be made in writing by August 1, 2027, and August 1, 2030, respectively.
2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.
3. Resale Purchaser may utilize the water for municipal purposes.
4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".

5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.
6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster ("Watermaster") related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply with all BRA water reporting requirements, water conservation plans, drought contingency plans and Watermaster requirements. Non-compliance with the Watermaster's rules and regulations may result in monetary fees or 'water penalties.' Any monetary fees will be the sole responsibility of the Resale Purchaser and any water penalties will be applied directly to this Amendment, which may result in the amount of water authorized under this Amendment to be used at an accelerated rate.
7. Resale Purchaser recognizes that any diversion of water in excess of this Agreement's Temporary Resale Amount ("Resale Amount"), which is 3,000 acre-feet per year, is strictly prohibited. Nothing contained herein shall obligate the BRA or the Purchaser to provide water in excess of the Resale Amount nor should Resale Purchaser rely on additional water being made available. If Resale Purchaser exceeds this Agreement's Resale Amount, Resale Purchaser must immediately discontinue all diversions of water made available under this Agreement.
8. In the event the Resale Purchaser diverts more than the Resale Amount, the Resale Purchaser shall be responsible for paying BRA a penalty for the overuse at a rate of three times the System Rate per acre-feet of overuse. Any water diverted in excess of the Resale Amount shall be accounted against the Purchaser's Agreement, thus causing a reduction in Purchaser's available water for that year. In the event the Resale Purchaser's overuse results in the Purchaser exceeding the authorized amount of their Agreement, the Purchaser shall not be responsible for paying the associated penalty within the Agreement unless the Resale Purchaser fails to pay BRA the penalty for such overuse. The Parties hereby agree that any claims/damages to Purchaser, associated with Resale Purchaser's overuse, shall be managed separately between Purchaser and Resale Purchaser, without the involvement of BRA.
9. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.
10. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.
11. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.

12. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:


Palo Pinto County Municipal Water District No. 1
P.O. Box 387
Mineral Wells, Texas 76068-0387
Attention: Howard Huffman, General Manager
Phone: (940) 328-7721
Email: [REDACTED]

13. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.
14. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: 
DAVID COLLINSWORTH
Title: **GENERAL MANAGER/CEO**

Date: 2/27/2024

Attest: 
LISA JONES

CITY OF ABILENE, TEXAS

By: 
ROBERT HANNA

Title: **CITY MANAGER**

Date: 2/8/24

Attest: 

**PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT NO. 1**

By: 
HOWARD HUFFMAN

Title: **GENERAL MANAGER**

Date: 2/19/2024

Attest: 



RE-SALE AGREEMENT with CITY of ABILENE

EXHIBIT A-1: PALO PINTO COUNTY MWD NO. 1, 3,000-ACFT (IN/MU)

Contract ID: ABILENE-PALO PINTO 24

Diversion ID: ABILENE-PALO PINTO 24

N32.657902 W98.124425, PLOT2 DNNT2 (1206), Downstream Possum Kingdom –
Palo Pinto Creek, Lower Basin, Palo Pinto County, WAP Reach: Palo Pinto Gage to
Dennis Gage

* Approximately 3200 feet east of the water districts diversion dam on Palo Pinto Creek, which is in the
SW corner of the T&P RR Survey No. 38, West of the Brazos, Abstract 1112, Palo Pinto Co, TX.

Prepared by: Julie Andress, Water Accounting Specialist, 2/6/2024

Tab 16

Authorization to Execute and File Application on Behalf of Trust



Palo Pinto County Municipal Water District No. 1

April 23, 2025

Jennifer Gardner Boyd
Trustee, Comanche Bend Trust
304 E. Rusk St.
Santo, Texas 76472

Re: Authorization to Execute and File an Application at the Texas Commission on Environmental Quality ("TCEQ") on Behalf of Comanche Bend Trust

Dear Ms. Boyd,

I hope this letter finds you well. As you likely recall, Palo Pinto County Municipal Water District No. 1 (the "**District**") and Comanche Bend Trust ("**CBT**") entered into that certain Water Right Lease/Amendment Agreement ("**Agreement**"), effective November 1, 2024, establishing the terms and conditions by which CBT will lease its rights under Certificate of Adjudication ("**COA**") No. 12-4012 to the District. As contemplated in that Agreement, for the District to utilize the surface water rights contemplated by COA No. 12-4012 for the District's needs, an application to amend COA No. 12-4012 will need to be prepared, filed, and prosecuted at the TCEQ. Namely, such amendment application will need to (i) add municipal and industrial purposes of use to the water supply contemplated by such water right and (ii) add an additional diversion point on Palo Pinto Creek to divert such water supply.

Under Section 5 of the Agreement, CBT and the District agreed that (i) the District may prepare, file, and prosecute an application at the TCEQ to amend COA No. 12-4012 (defined therein and herein as the "**Amendment Application**") to add such purposes of use (defined therein and herein as the "**Additional Purposes of Use**") and new diversion point (defined therein and herein as the "**New Diversion Point**"); and (ii) CBT shall cooperate with the District in this effort, including, but not limited to, authorizing in writing that the District may prosecute the Amendment Application at the TCEQ on behalf of CBT ("**Written Consent**"). The District would now like to enter into this Letter Agreement to implement the terms of the Agreement and memorialize CBT's authorization enabling the District to prepare, file, and prosecute the filing of the Amendment Application at the TCEQ. If you agree with the terms provided below, then please countersign this Letter Agreement, where marked.

Letter Agreement

CBT and the District agree to the following terms and conditions:

1. CBT hereby authorizes the District to prepare, execute, file, and prosecute the Amendment Application and any other documents as necessary to secure the amendments to COA No. 12-4012 from the TCEQ on behalf of CBT, in accordance with the Agreement and this Letter Agreement.
2. The District shall prepare, execute, file, and prosecute the Amendment Application in accordance with the Agreement and this Letter Agreement.
3. This Letter Agreement shall serve as CBT's Written Consent.
4. Nothing in this Letter Agreement shall be construed as amending or modifying the rights and obligations established by the Agreement.

P.O. Box 387 Mineral Wells, TX 76068-0387
(940) 328-7712 - [REDACTED]

If you agree with the terms of this Letter Agreement, then please countersign this letter at the signature block below, indicating CBT's acceptance of the terms and conditions proposed herein. I sincerely appreciate your assistance and cooperation.

Sincerely,

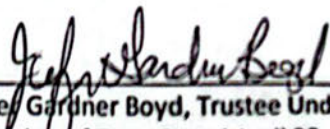
HOWARD HUFFMAN, on behalf of Palo Pinto County Municipal Water District No. 1

By: 
Howard Huffman, General Manager

Date: April 25, 2025

AGREED AND ACCEPTED:

JENNIFER GARDNER BOYD, on behalf of
Comanche Bend Trust

By: 
Jennifer Gardner Boyd, Trustee Under
Declaration of Trust Dated April 22, 1985
Named Comanche Bend Trust

Date: 4-27-25

CC:

Prichard Bevis, Decker Jones, P.C.
David Klein, Lloyd Gosselink Rochelle & Townsend, P.C.
Samantha Tweet, Lloyd Gosselink Rochelle & Townsend, P.C.

Tab 17

Addendum to Worksheet 5.0

For photos of diversion point, see Tab 9