

1999 AGREEMENT, AMENDING WATER SUPPLY
AGREEMENT,

1992 WATER SUPPLY AGREEMENT

AND

1995 AGREEMENT RELATED TO WATER
AVAILABILITY BETWEEN BEXAR-MEDINA-ATASCOSA
COUNTIES W.C.I.D. NO. 1

AND

BEXAR METROPOLITAN WATER DISTRICT

1999 AGREEMENT, AMENDING WATER SUPPLY AGREEMENT,
 1992 WATER SUPPLY AGREEMENT
 AND
 1995 AGREEMENT RELATED TO WATER AVAILABILITY BETWEEN BEXAR-
 MEDINA-ATASCOSA COUNTIES W.C.I.D. NO. 1
 AND
 BEXAR METROPOLITAN WATER DISTRICT

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EXECUTED IN 6 (SIX)
DUPLICATE ORIGINALS
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**1999 AGREEMENT
AMENDING
1991 WATER SUPPLY AGREEMENT, 1992 WATER CONSERVATION AGREEMENT
AND
1995 AGREEMENT RELATED TO WATER AVAILABILITY
BETWEEN BEXAR-MEDINA-ATASCOSA
COUNTIES W.C.I.D. NO. 1
AND
BEXAR METROPOLITAN WATER DISTRICT**

This 1999 Agreement, Amending the 1991 Agreement, 1992 Conservation Agreement and 1995 Agreement Related to Water Availability Between Bexar-Medina-Atascosa Counties WCID No. 1 and Bexar Metropolitan Water District (hereinafter, this "1999 Agreement") is entered into as of the date(s) the same is approved by the Parties' respective governing Boards at a public and open duly noticed public meeting, as evidenced by the execution hereof by the respective officers, to be effective as of the 1st day of November, 1999 (the "Effective Date"). Bexar-Medina-Atascosa Counties W.C.I.D. No. 1 ("BMA") and Bexar Metropolitan Water District ("BexarMet") may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, BMA is a water control and improvement district and political subdivision of the State of Texas originally organized as a water improvement district pursuant to Article III, Section 52 of the Texas Constitution and Chapter 87 of the General Laws, and currently operating as a converted water control and improvement district in accordance with Article XVI, Section 59 of the Texas Constitution, Chapters 49, 50 and 51 of the Texas Water Code, and other applicable general and special laws of the State of Texas.

WHEREAS, BexarMet is a governmental agency of the State of Texas, a water conservation district and a body politic and corporate, created and operating pursuant to Article XVI, Section 59 of the Constitution of Texas, and Texas Revised Civil Statutes Articles 8280-126, as amended, and the applicable general laws of the State of Texas.

WHEREAS, BMA and BexarMet are empowered to enter into this 1999 Agreement in furtherance of the purposes of Article XVI, Section 59 of the Texas Constitution pursuant to the applicable General Laws of the State, including without limitation Texas Water Code Sections 11.036, 49.211, 49.213, 49.215, 49.218, 49.219, 49.227, 51.187, and 51.188, and Texas Government Code, Section 791.026.

WHEREAS, BMA and BexarMet have existing contracts, including (i) that certain "Water Sale Agreement" effective September 1, 1991, as amended (the "1991 Agreement"); (ii) that certain "1992 Water Conservation Agreement" effective September 1, 1992, (the "1992 Agreement"); and (iii) that certain "1995 Agreement Related to Water Availability for Delivery to the Bexar Metropolitan Water District by the Bexar-Medina-Atascosa Counties WCID No. 1," effective December 1, 1995, as amended (the "1995 Agreement"). These contracts may be referred to collectively as the "Existing Agreements."

WHEREAS, BMA and BexarMet acknowledge that the previously Amended Contractual Agreements, identified as the "Existing Agreements" in this 1999 Agreement, have been amended to conform the Parties' obligations and duties to changed circumstances that were occasioned by both parties intent and actions to improve water efficiency, regulatory and judicial requirements, and the extended TNRCC permitting process necessary to secure conversion of water use from irrigation to irrigation and municipal use (now 19,974 acre feet).

WHEREAS, BexarMet and BMA entered into the Existing Agreements pursuant to their joint efforts to further their mutual goals to develop and maximize the availability and efficient beneficial use of water available from Medina Lake pursuant to BMA's Certificate of Adjudication No. 19-2130 (as amended)("BMA's COA 19-2130"), both for irrigation use by BMA Landowners and to develop surface water supplies for municipal use as an alternative to the present dependence upon groundwater, particularly the Edwards Aquifer, within central Texas.

WHEREAS, early in the contractual relationship of the parties, BMA with support from BexarMet, in 1993 initiated processing of a Small Watershed Act application pursuant to Public Law 83-566 (as amended).

WHEREAS, the Parties did so for the purpose of securing additional resources to protect and enhance the irrigated agricultural interests within the BMA District, to demonstrably further improve water efficiency within both the delivery system and on-farm, and the Parties have continued to pursue beneficial use of permitted water by increasing such efficiencies and to make resulting saved water available for sales for municipal purposes to secure added project driven revenue for BMA water efficiency improvements.

WHEREAS, this 1999 Agreement moves the Parties forward in connection with P.L. 83-566 endeavors and provides the financing and administrative process for accomplishing the Small Watershed Act program objectives for the benefit of the irrigators, ratepayers, the entities and the region.

WHEREAS, this 1999 Agreement is entered into as a result of the progress of the Parties toward accomplishing their mutual objectives under the Existing Agreements, with the present intent and commitment to refine the contractual duties and benefits in furtherance of these objectives. The amendments in this 1999 Agreement are made in light of the developments since the last amendment to the Existing Agreements, including

completion of the USDA/NRCS Small Watershed Project Report and EIS, Office of Management and Budget approval of the P.L. 83-566 Project for submission to Congress, U.S. House of Representatives Agriculture Committee support of the Small Watershed Act Project, constituting U.S. House of Representatives' authorization of P.L. 83-566 Project, BexarMet's progress in constructing its state-of-the-art Water Processing Facility, the Texas 75th and 76th Legislature's landmark water resources enactments, population growth and urbanization within both districts' boundaries, prospective limitation of groundwater use by the Edwards Aquifer Authority, and BexarMet's preparation of a Section 10(a) Habitat Conservation Plan and Environmental Assessment.

WHEREAS, Part One of this 1999 Agreement correlates to the 1995 Agreement to the extent this amendment modifies the delivery arrangements, priorities, application of payment credits, if any, and the term. This Part One is designed to support the practical working relationship between the Parties and to commence water deliveries and the resulting infusion of revenues into the BMA System therefrom on an immediate basis.

WHEREAS, Part Two focuses on BexarMet's contribution as a participant and co-sponsor in the Public Law 83-566 Small Watershed Act Project, and further develops the water conservation and efficiency initiatives contemplated in the 1992 Conservation Agreement, modifying and solidifying the commitment to enhanced water efficiency resulting from improvements via P.L. 83-566 funding, metering, and sound management and addressing the application of payment credits. (See Section 3.1.G. for provisions relating to the USDA/NRCS and the Parties' Joint Annual Design and Work Program Memorandum ("ADWPM") (See Sections 3.1.E.-H.) Committee to implement the Small Watershed Project and other purposes of this 1999 Agreement.)

WHEREAS, both Parties have contracted herein to conduct serious investigation into the feasibility of one or more hydroelectric project(s), and this initiative is covered under Part One. (See Section 2.10.C. for hydro activities and the Hydro Joint Committee. See Section 3.4 creating the office of Contract Comptroller for budget and accountability.)

WHEREAS, the Parties expressly agree and acknowledge that this 1999 Agreement integrates and merges respective rights and obligations of the Parties established pursuant to the Existing Agreements, but only as specifically set forth herein. Although this 1999 Agreement shall govern and supersede, a Disposition Table will be prepared and attached as Exhibit "A", for convenience as an aid in comparing this 1999 Agreement's amendments to the Existing Agreements.

WHEREAS, BexarMet and BMA are entering into this 1999 Agreement in furtherance of the goals set forth above, the Parties intend, in particular, to accomplish the following: (I) to modify the delivery arrangements for the sale of water to BexarMet by BMA, (ii) to enhance BMA's revenue potential through water sales and potential hydroelectric revenue, (iii) to improve the efficiency and quality of water delivery services BMA provides its Landowners, (iv) to facilitate BMA's fulfillment of its responsibilities as steward of its permitted water rights, (v) to provide for the priority under which water permitted to BMA shall be made available for sale and delivery to BMA Landowners,

Bandera County, BexarMet and other qualified entities contracting with BMA, (vi) to support BexarMet's efforts to coordinate with and supply the needs of the military bases in the San Antonio Metropolitan Area, (vii) to provide for additional efficiency measures to maximize water available for delivery, (viii) to solidify BMA's commitment to deliver water to BexarMet to support BexarMet's Habitat Conservation Plan and Endangered Species Act §10(A) proposed permit, to meet S.B. 1 requirements (75th Leg.), and to implement BexarMet's Groundwater Management Plan; (ix) to provide for BexarMet's participation with BMA as co-sponsor in implementing and meeting the obligations of the P.L. 83-566 Small Watershed Act Project, (x) to provide for a means to repair and maintain BMA's reservoirs and delivery system to improve delivery efficiencies and reduce water losses, (xi) to provide for expansion, development, and construction of Pearson Lake in Medina County, Texas, and other regulating reservoirs in the BMA system, including Chacon, to provide for additional storage capacity, (xii) to increase control and water application efficiency by metering of delivered water, and (xiii) to enhance BexarMet's surface water treatment facility reliability through water to be made available by BMA pursuant to this 1999 Agreement and as previously contemplated by the Existing Agreements.

WHEREAS, BMA and BexarMet believe that entering into this 1999 Agreement will have the mutually beneficial effect of further improving and enhancing the benefits, rights, and privileges that the Parties respectively enjoy together under the Existing Agreements.

NOW THEREFORE IT BE FURTHER AGREED AS SET FORTH BELOW.

AGREEMENTS

1.1. For and in consideration of the mutual endeavors undertaken by the Parties, the mutual promises with respect to substantial, continuing, and long-term undertakings, and the reciprocal obligations set forth herein, ten and no/100ths dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as set forth below.

EFFECT OF 1999 AGREEMENT ON EXISTING AGREEMENTS

1.2.A. Purpose & Intent. The Parties acknowledge that the purpose of this 1999 Agreement, and the desire of the Parties, is to affirm their commitment to maximize water efficiency, make beneficial use of water, and to pursue contractual benefits available to both Parties under the Existing Agreements, as modified herein, and to continue to work cooperatively to ensure the further contractual goals of this 1999 Agreement.

1.2.B. As of the Effective Date of this 1999 Agreement, the Parties agree that this 1999 Agreement merges and integrates the Existing Agreements, as specifically set forth herein. The Parties recognize that some provisions of these Existing Agreements will be terminated, while other provisions of these prior agreements will be amended or incorporated, in whole or in part, into this 1999 Agreement. To the extent terms of the Existing Agreements are not implicated by this 1999 Agreement, it is the intent of the

Parties that those terms survive and be binding upon the Parties, beyond the stated expiration of any and all other agreements, contracts, and/or memoranda of understanding of every kind or nature, regardless of whether the same are executed before, simultaneously with, or after the signing of this 1999 Agreement. For ease of reference all of the Existing Agreements as amended are attached hereto as Appendix Items 1-3.

1.2.C. Existing Third Party Agreements Recognized. This 1999 Agreement incorporates and/or recognizes and confirms, as between BMA and BexarMet, all existing contracts with third parties for the limited purposes of this 1999 Agreement, including without limitation the following Agreements with third parties:

I. The "Water Supply Agreement" between BMA and Bandera County, Texas ("Bandera County") effective March 19, 1997, hereinafter referred to as the "1997 Bandera Agreement."

II. The "Agreement to Terminate the Interlocal Agreement for Regional Cooperation for the Development of Available Municipal Water Supply Resources" by and between the Bexar-Medina-Atascosa Counties WCID No. 1 and the Springhills Water Management District, effective March 19, 1997, hereinafter referred to as the "1997 Springhills Termination Agreement."

III. The "Memoranda of Understanding to Facilitate Regional Cooperation for the Maximization of Beneficial Development of the Water Resources Available From Medina Lake Pursuant to BMA's Certificate of Adjudication 19-2130 and to Settle and Compromise Issues and Disputes Among the Parties," effective March 19, 1997, by and between, BMA, Bandera County, Bexar Metropolitan Water District and the Springhills Water Management District, hereinafter referred to as the "1997 Regional MOU."

IV. Interlocal Agreement For Regional Cooperation For The Maximization Of Beneficial Development Of Water Resources Affecting Regional Management Of The Edwards Aquifer, effective September 1, 1994, hereinafter referred to is the "1994 Edwards MOU."

For ease of reference, all of the foregoing agreements and memorandum are attached hereto as Appendix Items 4-7.

1.2.D. Landowner's "Privilege." The Parties recognize the underlying public policy that supports and sustains the irrigators within the BMA district is based upon the "privilege" afforded BMA landowners who (i) are compliant with all applicable laws, ordinances, rules and/or regulations of BMA and any other governmental authority of competent jurisdiction, and (ii) have fully paid all lawful assessments or taxes levied by BMA (including by way of example only the BMA annual assessment for operation and maintenance known as the "flat rate tax") to purchase water for irrigation, or domestic and livestock purposes from BMA remains BMA's primary purpose as a District. For purposes of this 1999 Agreement, the term "BMA Landowner" is defined to include any person(s) or lawful entity who owns,

leases, or operates or otherwise controls land within the BMA district eligible under BMA's rules, guidelines or practices to apply for and purchase such water from BMA.

1.2.E. Disposition Table. The Parties agree that the Disposition Table, which is to be included herein by reference, as Exhibit "A," summarizes the major modifications to the contractual obligations under the Existing Agreements as a result of this 1999 Agreement. To the extent of any conflict, however, this 1999 Agreement shall control over the Disposition Table. Furthermore, to the extent any provision(s) within the Existing Agreements conflict with any provision(s) of the 1999 Agreement, the term(s) of the 1999 Agreement control.

1.2.F. Open Records. In addition to the requirements of the Texas Open Records Act, the two (2) Parties agree to cooperate with each other to routinely exchange documentation related to the construction, interpretation and/or implementation of this 1999 Agreement, including without limitation all reasonably related materials and information. The Parties agree to comply with the intent of this provision without the necessity of any formal request.

PART ONE

2.1.A. Term. For the purpose of complying with S.B. 1, enacted in 1997, which requires a 50 year water planning scope, the Parties agree that the term of this 1999 Agreement and the provisions of the underlying Existing Agreements which are merged or incorporated herein shall all commence on the Effective Date of this 1999 Agreement and continue for a stated term of 50 years from the Effective Date, and thereafter, and for an additional period of forty years, upon option of either party or for so long as both Parties continue to perform their respective interdependent obligations to deliver, receive, and pay market rates for water, pursuant to the mutually specified requirements and reciprocal obligations set forth in this 1999 Agreement. This provision supercedes any and all term provisions set forth in the Existing Agreements. Either party shall have the right, upon written notice, five (5) years prior to expiration of the initial term, to advise the other of its desire to exercise its option right to continue this 1999 Agreement for an additional term period of 40 years, and do so upon terms and conditions that are then in effect or as the Parties may determine agreeable within the five (5) year option window.

2.1.B. Contract Year. "Contract Year," for purposes of this 1999 Agreement, shall be the twelve (12) month calendar year beginning any January 1st and ending on December 31st of the same year; provided, however, that the period of the First Contract Year shall be a shortened year beginning on the Effective Date of this 1999 Agreement and ending on December 31, 1999.

2.1.C. Permitting Approvals. The Parties acknowledge that permitting approvals from the TNRCC, for the purpose of converting water use from irrigation to municipal, required an extended period from 1991 to 1999, that the amount of water permitted to be converted to municipal use was limited to 19,974 acre-feet (rather than BMA's request to convert all its permitted water for multiple use), and that this 1999 Agreement provides for the fullest

possible development, efficiency and beneficial use of the permitted water available to BMA and its contracting parties, including BexarMet and Bandera County entities recognized in the 1997 permit-related Agreements. The Parties further acknowledge that the first time that significant water is to be used by BexarMet, for municipal purposes, will start in December 1999, and thereafter, and that this 1999 Agreement requires significant further long term capital investment by BexarMet that will benefit BMA and its irrigators, BexarMet and its customer-ratepayers and the Region. Further, the 1999 Agreement provides continuing obligations for maintenance, regulating storage, and purchase and payment for water pursuant to new take-or-pay provisions, and for continuing obligations here undertaken by BexarMet throughout the term of this contract to develop and market water for both entities. In consideration for past, present and future obligations under this 1999 Agreement, both Parties shall be bound by the terms of this Agreement for its entire term, unless otherwise agreed in writing. The provisions in Section 1.1 supersede all prior agreements with respect to the term of the Agreement, and such term provisions constitute additional consideration upon which both parties are benefited and bound.

2.2 Additional Cash Consideration. As additional consideration in support of the agreements and commitments herein, BexarMet hereby agrees to pay \$500,000.00 (five hundred-thousand dollars) to BMA at closing in connection with execution of this Agreement by both Parties.

2.3. Contractual Priority of Water Deliveries.

2.3.A. Availability of Water for Municipal Use. Availability of Water for Municipal Uses: The Parties recognize and agree that BMA's Certificate of Adjudication (hereinafter "COA") 19-2130 authorizes diversion of up to 19,974 acre-feet of water for municipal purposes, the Texas Supreme Court having refused to grant a Petition for Review in 1999, thereby concluding the 1993 permit process.

2.3.B. Category of BMA Water Rights Provided by Contract To BexarMet.

2.3.B.1. Pursuant to Texas Water Code Section 51.184, entitled Preference In Use of Water, the Parties agree that water shall be apportioned and delivered by BMA based upon the following contractually established priority, in descending order, with the highest priority interest stated first:

- I. Priority Water, defined for purposes of this 1999 Agreement to mean the water available under BMA's COA 19-2130 and actually sold for irrigation and/or municipal use to BMA Landowners, BexarMet and/or Bandera County.
- II. Contractual Water, defined for purposes of this 1999 Agreement to be water available under BMA's COA 19-2130 for sale as Priority Water but not needed for such sales and use and, therefore, available in any contract year for lawful sales to third parties.

2.3.B.2. The Parties recognize and agree to the following Priority Water interests:

- I. BMA's landowners' privilege to purchase water from BMA for beneficial irrigation use, based upon timely request and payment of all applicable assessments, metered water delivery, and fee payment as further described in Section 1.2.D..
- II. Bandera County's 5,000 acre foot Priority Water contractual interest, unless the MSL is below 1035 feet, in which case Bandera County's Priority Water interest is 1,000 acre feet.
- III. BexarMet's 10,000 acre foot Priority Water contractual interest as contemplated by the 1995 Agreement, and such annual increases in Priority Water through the conversion procedure provided in this 1999 Agreement.
- IV. Contractual Water is that water which is surplus to the needs of the Parties as stated above, which by terms of this 1999 Agreement, BexarMet has a duty to market for the benefit of both Parties pursuant to 3.10 ("BexarMet's Marketing Obligations").

2.3.B.3. In the event that water is physically not available for delivery to meet all requests for Priority Water, the Parties agree to reduce the respective requirements proportionately consistent with the principles stated in Texas Water Code §11.039.

2.3.C. Partial Considerations. In partial consideration for BexarMet's payment of \$500,000.00 pursuant to Section 2.2, and in further consideration of payment by BexarMet to BMA of \$280,000.00 pursuant to Sections 3.3.D. and 3.4., BMA hereby merges BMA's Priority interest in 2,500 acre feet of water set forth in the 1995 Agreement with that 6,000 acre-feet of Priority Water for which consideration was previously provided by BexarMet, BMA hereby acknowledges that previous consideration and declares this 1999 availability of the 10,000 acre feet of Priority Water for the benefit of BexarMet based on these additional considerations and this declared merger of interests. (See Section 2.4.B.).

2.3.D. BMA's Expense. The obligation, as set forth in the 1995 Agreement, for BMA, at its sole expense, to file for and obtain a bed and banks permit from the TNRCC for delivery of water from the second BMA siphon to the point designated by BexarMet for take out, for purposes of the water processing facility, is hereby expressly continued. Further, the first siphon may be used for the initial take out if the Parties determine greater utility may occur by such arrangement. Based upon the fact that the Texas Supreme Court, by 1999 denial Protestants' Petition for Review requested, concluded the 1993-initiated TNRCC permit processing in February 1999, and the Diversion Point(s) was subsequently confirmed in June 1999 by BexarMet and BMA, the Parties agree that the timetable for seeking the 1995 Agreement's Bed & Banks permit is hereby extended, that the hydrologic study in support of the study is underway, and that BMA shall file the 1995 contemplated Bed and

Banks application not later than December 1, 1999, and take all necessary actions to secure the permit as soon as possible.

2.4. Delivery Point at Kelly Road.

2.4.A. Additional Delivery Point. The Parties hereby adopt the Kelly Road delivery point depicted on Exhibit "B" as an additional delivery point for the delivery of Priority Water to BexarMet beginning in December 1999. This provision is an added Delivery Point and does not modify the Delivery Points agreed to in Existing Agreements.

2.4.B. Annually Deliver. BMA shall annually deliver to BexarMet's Delivery Point(s) 10,000 acre feet of Priority Water, subject to physical and legal limitations, which limitations are not the subject of improvements contemplated by the 1999 Agreement. Such delivery shall occur over the course of a Contract Year pursuant to Priority Water requirements conforming to delivery of the requested quantities; provided, however, that BexarMet shall reduce its request for Priority Water in the shortened time period for the First Contract Year during 1999 and receive full credit for water purchased prior to the commencement of the first full calendar year (2000) of operation under this 1999 Agreement.

2.4.C. Kelly Road Delivery Point. The Parties stipulate and agree that BexarMet will be required to complete extensive delivery system improvements to make possible the initial and continuing delivery of BMA municipal water under this 1999 Agreement, and that certain improvements must be made on a priority basis, concurrent with the completion of the Water Processing Facility in 1999, since no other means of physically delivering required quantities of water is currently available from BMA for delivery to BexarMet. BexarMet will invest an estimated \$1,000,000.00 to be able to take water at Kelly Road Delivery Point beginning in December 1999. Of that amount at least \$500,000.00 will be used to construct an off-channel reservoir that is intended to be eligible for Local Sponsor Credit under P.L. 83-566, which would entitle BMA to receive \$500,000.00 in matching federal grant monies. For this reason it is shown as "additional" income to BMA in this year. Although, BMA WILL NOT ACTUALLY RECEIVE THE \$500,000.00 (it will be an "in-kind" contribution). Such BexarMet construction of the delivery system improvements shall satisfy BexarMet's matching obligation set forth under Part Two, Section 2.1.B, et seq., for calendar year 2000 (the second contract year) and thereby justify conversion of 1,000 acre feet of Priority Water beginning in calendar year 2001.

2.4.D. Water Loss. As provided in the 1991 Water Sale Agreement at Paragraph 6.3, BMA shall continue to bear all transportation losses, including without limitation, any loss by theft, evaporation or seepage in the delivery of water to the Point(s) of Diversion. BexarMet shall continue to bear all risks of loss of every kind for all water diverted by BexarMet, from and after BMA's Point(s) of Diversion.

2.5. Delivery of 6,000 Acre Feet of Prepaid Priority Water Pursuant to Section 3 of the 1995 Agreement.

2.5.A. Prepaid Water. BexarMet's 1995 contractual interest in [6,000 acre feet of] prepaid Priority Water is recognized and preserved. Prepaid water credit accrued to BexarMet, standing in the name of Bexar Metropolitan Water District, is to be recouped over time pursuant to the controlling schedules attached and included here by reference (as Exhibit "E").

2.6.B. Purpose of Water Use. BexarMet shall be authorized to use the water purchased from BMA, under this 1999 Agreement, for any and all lawful purposes. BexarMet is required to observe the obligations for revenue sharing with BMA derived from any third-party raw water sales as provided in this 1999 Agreement pursuant to Section 2.8.B.2.

2.7. Repair of Medina Dam.

2.7.A. Repair of Gates. The Parties agree that it is in their mutual best interest to make all needed repairs at the Medina Lake Dam gates, including but not necessarily limited to, the repair of at least two (2) main gates and the associated facilities, and to the extent determined mutually beneficial, the operators, the gallery (including relief wells), and the dam turnouts over a scheduled period agreed to by the Parties through the ADWPM Joint Committee. The repairs contemplated by this subparagraph 2.7.A., and subparagraph 3.6.D.7, will be made to applicable TNRCC dam safety standards and professional engineering practices.

2.7.B. Evaluation of Gates. BexarMet agrees to fund and contract for an initial engineering analysis of the gates of up to \$30,000.00 (thirty thousand dollars) to retain qualified technical/engineering specialist(s). Selection of Specialists shall be by the ADWPM Joint Committee with contract administration to be executed by BexarMet. (See Section 3.1.E.-H. providing for the function of the ADWPM.) Such engineering investigations shall evaluate the extent of needed gate repairs, facilitate preparation of the necessary bid specifications to have the repairs accomplished and result in the submission of a report containing such information to BMA and BexarMet pursuant to terms of the ADWPM Review process provided in this 1999 Agreement.

2.8. Payment for BexarMet's Purchase of BMA Water.

2.8.A. Take or Pay. All Priority Water under this Part One shall be paid for by BexarMet to BMA on a **take or pay basis**, paid in equal monthly installments during each Contract Year. Without waiver of any remedies available to BexarMet, payments shall be due and owing each month at BMA, to be placed by BMA in the account designated by BMA, with payment delivery by the tenth working day of each month even if BexarMet cannot take or process such water. Provided however, that BexarMet shall be obligated to pay for the Priority Water actually requested by BexarMet for delivery at the Kelly Road delivery point in the 1999 contract year and, thereafter, unless BMA shall fail to deliver same. For purposes of this 1999 Agreement, the term "take or pay" shall mean that BexarMet is

obligated during each and every Contract Year to make all monthly payments for water contemplated by this Agreement regardless of whether BexarMet can actually physically receive and use such water in any given Contract Year, recognizing that all water not received in any Contract Year is lost to BexarMet and no credit or future right to recover or receive such water shall be granted to BexarMet. This provision is being expressly agreed to and acknowledged by the Parties because of the fact that the availability of water under BMA's COA 19-2130 is governed by state law which provides that water authorized by a water right and not used during the calendar year according to its terms is lost to the water right holder.

2.8.B. Pricing. The Parties understand, agree, and stipulate that the contractual per acre-foot price of untreated (raw) state-owned surface water pursuant to the Certificate of Adjudication, does not reflect the significant additional consideration provided to BMA by BexarMet for in this 1999 Agreement and the Existing Agreements.

2.8.B.1. Priority Water Municipal Use. Priority Water used for municipal purposes shall be sold to BexarMet at \$69.00 per metered acre-foot through the calendar year 2012 as reflected on the schedule attached hereto as Exhibit "E". Thereafter, for the calendar year 2013, the cost per acre foot may be increased pursuant to the mechanism detailed at Section 2.8.C. (See Exhibit "E.")

2.8.B.2 Contractual Raw Water Sold to Third Parties. In conformity with its duties to market water, BexarMet agrees to remit to BMA 50% of the differential in sales price, after deducting cost of delivery, regarding net revenues for untreated water delivered by BMA at any delivery point, which water is subsequently sold to third parties as raw water by BexarMet on behalf of the Parties. The requirement for differential sales sharing shall not apply to treated water where BexarMet is undertaking the full expense of construction of a water processing facility and the cost of actually treating the raw water to drinking water standards, including but not limited to compliance with TNRCC requirements for community water facilities, the responsibility for rate base and capital costs, as is the case with the phased development of the water processing facility at the Bexar Metropolitan International Business Park, in the vicinity of Von Ormy, Bexar County, Texas.

2.8.C. Water Cost Adjustment Mechanism / Market Rate. Subject to the provisions stated herein at Section 2.8.B., BMA may elect to annually adjust BexarMet's annual cost on a per acre-foot basis for 10,000 or more acre feet of Priority Water detailed in this Part One commencing in calendar year 2013, which adjustments reflect a basin wide Market Rate, then existing, which the Parties hereby stipulate is a term fashioned for, and applicable solely to this Agreement, limited exclusively to this Agreement, notwithstanding any other provision of law. For purposes of calculating and applying the water cost adjustment mechanism of this 1999 Agreement, the Parties stipulate that the Contract Market Rate shall be as defined and hereby is established as the Guadalupe Blanco River Authority's ("GBRA's") basin-wide benchmark water sales price per acre foot for raw water then existing on January 1st of each Contract Year.

2.9. Part One / System-Wide Monitoring by Metering.

2.9.A. Tracking Efficiency of Water Deliveries: System Meter Installation Plan. BexarMet shall install and maintain one or more metering devices, consistent with water efficiency measures acceptable to TNRCC, at or near (i) Diversion Lake (the inception of the canal system), and (ii) additionally throughout the BMA canal system to account for water, to record water efficiencies in water delivery to irrigators and to BexarMet, and measure the effectiveness of system-wide efficiency measures, and (iii) meter water delivered by BMA to BexarMet at each of BexarMet's points of delivery within the BMA system. Within 45 days of signing this 1999 Agreement, the Parties through the ADWPM Committee (pursuant to Sections 3.1.E.-H.) will produce a preliminary Meter Installation Plan, which shall be reported to the respective Board of Directors for approval. Upon approval by both Boards, said approved Meter Installation Plan shall be reported to the Water Master and TNRCC. Upon installation of the meters, the Plan shall form the basis for annual water and water efficiency recordkeeping and reporting to the Parties.

2.9.B. Meters. BexarMet, at its sole cost, shall install and maintain meters in accord with the Plan, and acceptable to TNRCC, and BMA shall provide all approvals for such site installations on property owned by BMA, with necessary easements for installation and maintenance of such meters.

2.9.C. Metering Water Sales to BexarMet. BexarMet shall install and maintain metering devices acceptable to BMA at BexarMet's Delivery Point(s). BMA shall have the right to inspect and secure meter results at any time.

2.9.D. Accuracy of Meters. All meter(s) installed pursuant to this 1999 Agreement shall be capable of measuring within at least five percent (5%) accuracy. BexarMet shall calibrate meters at least semi-annually, unless BexarMet shall establish a more frequent interval, after review with BMA. Meter errors, if any, shall be reconciled back to a date midway between the date of error detection and the prior calibration date. Either Party may review meter accuracy at any time.

2.9.E. Cost of Meters. To the extent not provided through the ADWPM Committee process (Sections 3.1.E.-H.), upon written notice of intent provided by BexarMet to install a meter, BMA agrees to respond within 21 calendar days to approve selection of type and location of the proposed meter(s). BexarMet agrees to act reasonably in its selection of meter type and meter location, and BMA agrees not to unreasonably withhold approval of meter type and location. Both Parties shall support request for P.L. 83-566 credit for any and all expenditures for the system-wide metering program. All meter installations and records of meter readings shall be maintained by both parties according to the Meter Installation Plan.

2.10. Hydro Project(s).

2.10.A. Potential Hydro Benefit. The Parties agree that multiple potential hydroelectric power generation sites exist within the BMA system. In consideration for BexarMet

conducting feasibility studies, and performing as stated below, it is agreed that (i) BexarMet shall be entitled on condition of payments to BMA as provided herein, to proceed with those hydro electric generation projects that may be determined to be feasible, and (ii) BMA shall provide necessary BMA approvals and cooperation to obtain other approvals to effect such projects' purposes.

2.10B Operator. BexarMet shall serve as the operator of the hydro projects, if any, and shall be obligated to fund the feasibility studies, provide financing for such projects, and if the project is found by BexarMet to be feasible and undertaken, BexarMet shall be obligated to fund associated costs of permitting, construction, and operation of the project(s). BexarMet may contract with third parties to perform obligations hereunder. Records of hydro projects shall be separately maintained and relevant financial costs, estimates, expenses, income and related activities shall be recorded separately from other water activities provided under the terms of this 1999 and such project activities shall be separately reflected in Annual Audit Reporting.

2.10.B.1. Project Feasibility. BexarMet, if it determines that a project is feasible and so notifies BMA, BMA shall be obligated to provide any necessary land rights and approvals within BMA's control. BMA shall also be obligated to provide full cooperation at no cost to BMA in securing land rights, permits, licenses, approvals and sale of such electricity to and/or from third parties. BexarMet shall first utilize revenues from such project(s) to recoup investment costs of the project. BMA shall also provide such approvals as may be necessary to facilitate BexarMet's ability to secure financing for the project(s).

2.10.B.2. Contracts. BexarMet, at its initiative, may enter into contracts with other entities to aid in financing, marketing and sale of electricity, or assist in the management of said hydro electric plant(s), and to take any other step necessary to provide the most efficient licensing, operation, recoupment of capital investment and greatest practicable revenue for the mutual benefit of BMA and BexarMet.

2.10.B.3. Written Notice. In the event BexarMet opts not to undertake any hydroelectric generation project, BexarMet shall provide written notice to BMA at which time BMA will be provided all rights to BexarMet's plans, investigations or analysis for such particular project.

2.10.C. Hydro Joint Committee. In furtherance of this commitment, the Parties hereby agree to constitute a Joint Committee on Hydroelectric Power Generation Project (the "HPGP Joint Committee").

2.10.C.1. Purpose of the HPGP Joint Committee. The purpose of the HPGP Joint Committee shall be to receive information and oversee BexarMet's hydro electric activities as set forth in this section, and make recommendations to BexarMet as to the development and operation of any hydroelectric power generation projects.

2.10.C.2. Composition of HPGP Joint Committee. Each Party shall appoint its district's Manager and two Board Members to the HPGP Joint Committee, thereby comprising a

joint committee of six members. The committee chair shall annually alternate, with the BMA designated as the chair in odd numbered years, and the BexarMet designated to chair the committee in even numbered years, unless members of the committee shall otherwise agree and reflect in writing. Proceedings of the HPGP Joint Committee will be posted pursuant to the Texas Open Meetings Act ("TOMA), minutes will be maintained and routinely approved, and decisions will be controlled by General Henry M. Robert, Robert's Rules of Order Newly Revised (1990 Edition, Ninth Edition [Paperback July 1997 ISBN: 0-06-276051-3]) for purposes of establishing a quorum, voting, and other procedural requirements necessary to govern HPGP Joint Committee.

2.10.D. Recoupment. At the time BexarMet has recouped its project related investment costs or sooner as the project revenue may allow, at BexarMet's election, in accord with Government Generally Accepted Accounting Principles, BexarMet shall immediately commence sharing net revenues from electricity generation equally with BMA.

PART TWO

3.1. The Small Watershed Act Project, P.L. 83-566 Funding, Implementation of the NRCS Program, and Conversion of Excess Water to Priority Water.

3.1.A. Benefit. Both Parties recognize and agree that the P.L. 83-566 funding and implementation of the NRCS program enhances the potential for water efficiency and application of water for beneficial use as a benefit to both Parties and further provides significant benefits to individual irrigators by improved delivery at reasonable rates. Both Parties recognize the benefit to the region that accrues from providing (a) stable economics and water efficient operation to the BMA system irrigators and (b) that resulting water efficiencies will facilitate the objectives of the Parties in assuring the long-term efficiencies that support all party beneficiaries including the Bandera County Contract interests.

3.1.B. Federal Matching Funds and Conversion to Priority Water. BMA recognizes that it must match and support, by local funding, all federal funding authorized and appropriated by the U.S. Congress pursuant to P.L. 83-566.

3.1.B.1. In-kind Payment. BexarMet hereby contractually agrees, in performance of BMA's obligations under the P.L. 83-566 to pay, or provide, for the period of 2001-2010, in-kind payment or perform creditable activity acceptable to NRCS in an amount not less than \$500,000.00 per project year toward the federal matching fund obligation, whether or not Congress appropriates the federal funds required to match BMA through BexarMet's contractual annual capital investment of \$500,000.00 year allocation to the P.L. 83-566 project. BexarMet shall fund these annual matching P.L. 83-566 payments for 11 years as provided in this 1999 Agreement and to conform that period to the term of years set out in Exhibit "E." In consideration for BexarMet's funding of the annual matching project contribution, beginning in calendar year 2001 BMA shall annually convert 1,000 acre-feet out of the 19,974 acre-feet allocated to municipal use under BMA's COA 19-2130, of BexarMet's Excess Water [as that term was defined in the 1991 Contract] to Priority

Water, at the end of the year of contribution, for purchase by BexarMet on a priority basis commencing in the next calendar year, and for all remaining years during the term of this 1999 Agreement for water delivered, governed by the take-or-pay pricing provisions of Section 3.7 herein; provided, however, that once \$5,500,000.00 (five million five hundred thousand dollars) is spent by BexarMet, BexarMet shall have the discretion to provide any additional matching fund payments but not the obligation.

3.1.B.2. Annual Conversion to Priority. As a result of BexarMet's performance, by annual increment, BMA shall be obligated to convert the balance of the 19,974 acre feet of water authorized for municipal use for BexarMet pursuant to Certificate of Adjudication No. 19-2130C, *i.e.* 9,974 acre feet, to Priority Water under this 1999 Agreement, subject to the prior joint obligations to Bandera County pursuant to the 1997 Bandera Agreement.

3.1.B.3. Separate Capital Account by BMA. In consideration of BexarMet's performance under 3.1.B.2., by providing \$500,000.00 annual matching fund payments or in-kind performance, BMA agrees to establish an annual capital budget and, further, to dedicate a specified amount of money determined by the BMA Board annually or as a part of BMA's capital budget to a separate account for additional water efficiency improvements to be made within the BMA system and for which P.L.83-566 matching federal project fund payments will be sought. Provided, however, that by the year 2003, BMA commits to budget at least \$250,000.00 per year for P.L. 83-566 related improvements for each year BexarMet provides at least \$500,000.00 in matching funds.

3.1.C. Matching Funds Over \$500,000 Per Year. If Congress appropriates more than \$500,000.00 per year, BexarMet, at its option, may pay a portion or all of the matching fund payment due (in excess of the annual obligation of \$500,000.00). For each \$1,000.00 paid by BexarMet in excess of \$500,000.00 in any one Contract Year, BMA agrees to convert 1 (one) acre foot of BexarMet's right to Excess Water to Priority Water, at the start of the next Contract Year, and for all remaining years during the term of this 1999 Agreement (and the Existing Agreements), governed by the take-or-pay pricing provisions of Section 3.7 herein. Based upon BexarMet's payment of the monies contemplated by this 1999 Agreement, BMA is obligated to convert the additional 9,974 acre feet to Priority Water under this 1999 Agreement. Any accelerations in Congressional funds or acceleration in local contributions of matching funds will form the basis for accelerated conversion of Priority Water herein provided up to 9,974.

3.1.D. Credit toward Matching Fund Payment. The Parties agree to seek approval from the NRCS for eligible credit regarding the matching fund payment for actual engineering or other creditable activities or improvements to be made by either of the Parties made in lieu of periodic cash payments. In the event the NRCS grants such a credit toward the matching fund payment, and BexarMet incurred the expense for improvements, this credit shall count toward BexarMet's payment under 3.1.B, C, or D of this Section.

3.1.E. Annual ADWPM Review. It is understood by the Parties that the schedule and detailed plan for on-farm, system canal improvements, or water storage impoundments,

shall be guided by the NRCS work program objectives, sequencing, and regulatory authorization, as well as other subsequent Congressional enactments.

3.1.F. Parties' Water Efficiency. It is agreed that BMA's and BexarMet's interest in water efficiency, compliance with TNRCC water conservation regulations (or other applicable regulations by any agency with jurisdiction over the contracting parties), water storage, and delivered Priority Water may be accomplished by modification of the initial NRCS project submitted to Congress. The Parties further agree that *annual reviews*, including annual water, work budget requirements, and financial review shall be conducted not later than the months of September, October, and November of each calendar year, which *annual review* ("the annual review") shall be concluded by the preparation of the Annual Design and Work Program Memorandum ("ADWPM"), which document ("the annual design memo") shall control further project development, operation and maintenance procedures that may be affected by design changes, and fiscal/water budget and work load requirements for the subsequent calendar year. The Parties commit to documenting implementation of the Annual Design Memo with supporting evidence in a variety of media, including without limitation and by way of example only, the following: photographic images, engineering schematics, and other graphical maps and exhibits, in the format of a specifically time-designated photo journal and log. This initial, and each subsequent, annual ADWPM shall be adopted after consultation with the NRCS, and will include evaluation of the delivery system already improved, the portion of the system requiring additional improvements, availability of federal funding/credits, the water delivery requirements for continued service to irrigators and BexarMet, documentation of the project activities for the year, and any opportunity to reduce non-federal and federal costs by the application of improved technology, monitoring, metering, and other water management techniques that will allow greater water storage and water efficiency at reduced capital and/or reduced operating costs. If NRCS approves substantive planned project development, or amendments which composes the ADWPM, the ADWPM shall control implementation of the work project, consistent with Section 3.1.H. below. Both Parties commit to incorporating into this ADWPM process the mandates of Texas Water Code §49.199(a)(6), by adopting and actively implementing policies for their respective districts, including but not limited to budgeting for use in planning and cost control. Annual budgets shall be binding on the parties unless modified in writing.

3.1.G. ADWPM Joint Committee. The Parties hereby agree to constitute a Joint Committee to perform the annual review, establish the annual water and program financial budget, and establish the ADWPM for presentation to each Party's Board of Directors. Not later than August of each calendar year, each Party shall appoint that district's Manager and two Board Members to the ADWPM Joint Committee, thereby comprising a joint ADWPM Committee of six members. The ADWPM chair shall alternate, with a BMA Committee member designated as the chair in even numbered years, and a BexarMet Committee Member designated to chair the ADWPM in odd numbered years, unless members of the ADWPM shall otherwise agree and reflect in writing. The ADWPM shall utilize professional engineering and other technical services available to the respective Parties, or select the professionals that ADWPM deems necessary to assist in the annual review. Engineering or other professional costs occasioned by the annual review process

to accomplish the ADWPM annual design memo will be split equally, if initially authorized to be conducted by the ADWPM Committee, and each Party will be responsible for its own engineering or other professional costs for services requested at that Party's discretion, relating to costs which are not approved by the ADWPM Committee. Proceedings of the ADWPM will be posted pursuant to the Texas Open Meetings Act ("TOMA"), minutes will be maintained and routinely approved, and decisions will be controlled by General Henry M. Robert, Robert's Rules of Order Newly Revised (1990 Edition, Ninth Edition [Paperback July 1997 ISBN: 0-06-276051-3]), for purposes of establishing a quorum, voting, and other procedural requirements necessary to govern the ADWPM and annual work budget.

3.1.H. Annual Design Memo. The Parties covenant and agree that in the preparation of the ADWPM each Party will collaborate with the other to arrive at the annual design memo and related annual water budget, with related annual fiscal work budgets for the forthcoming calendar year's work, and that any Board approvals for plan modification, annual water budget, and annual work budgets shall be formally docketed by the respective Boards for formal Board approval at either the regularly scheduled December Board Meeting, or a specially called Board Meeting, for the purpose of approving the ADWPM. Each Party agrees that it has an affirmative obligation to review the P.L. 83-566 project annually, assure proper documentary records and photographs are maintained whether federal funding is authorized and provided, unavailable, or the P.L. 83-566 project has been substantially completed, as applicable, and that each Party has an affirmative duty to cooperate and take steps that will assure improved water storage and improved delivered water efficiency to be accomplished at the lowest capital cost consistent with prudent system operation employing the latest water efficiency technology and best practices, as these terms may be used within the water industry (American Water Works Association or similar industry trade groups relevant to this provision) and applicable to irrigation districts in particular.

3.1.I. BexarMet Matching. BexarMet's payment of matching funds to meet the BMA P.L. 83-566 obligation in any Contract Year (to meet NRCS program requirements) shall be deemed to be an affirmative action in support of actual conservation of water, and such annual payments shall be deemed further and sufficient consideration to secure conversion of Excess Water to Priority Water under this 1999 Agreement and the Existing Agreements merged herein.

3.1.J. Maintenance of Records. Both Parties shall maintain reliable and permanent district records that reflect project activities and that are acceptable to USDA/NRCS for program qualification and audit purposes, including but not limited to all activities for which in-kind credit is required. Each Party shall designate a person within that organization that shall be responsible for maintaining on-going and permanent P.L. 83-566 records including photo progress sequences, as well as records that evidence activities pursuant to this 1999 Agreement. The Party's designated person, for maintenance of records, shall assist in performing reporting requirements relating to water efficiency for purposes of USDA/NRCS, TNRCC, or other regulatory agencies with jurisdiction over the Parties or the project dealing with water quality, water quantity delivered, or water efficiency. Unless otherwise agreed to by the Parties, project records will not be destroyed in accordance

with state laws retention requirements but shall be maintained as permanent records prudently preserved and maintained for future use, study and reference.

3.1.K. On-going Project Activities. For calendar years 1999-2000 BMA has applied for and received approval for NRCS funding of Emergency Work Program ("EWP") funds in the approximate sum of \$186,000.00 canal repairs which benefit implementation of the P.L. 83-566 project.

3.2 Water Conservation.

3.2.A. On-going Water Conservation. The Parties agree to further develop and implement an ongoing water conservation program to the extent existing conservation programs require review and submission to TNRCC, to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency and the use of water, or increase the recycling and reuse of tail water so that additional water supplies are made available for the parties and contract water requirements. The parties further agree to monitor tailwater quality and to develop a water quality assurance program that complies with all applicable law with regard to use of tailwater. This requirement shall be an affirmative duty of both Parties, and shall include practices enumerated as acceptable conservation measures adopted or recommended by the Texas Water Development Board, TNRCC, or any other regulatory agency with jurisdiction, and shall include annually the obligation to consider state-of-the-art review of literature used within the water industry to improve water efficiency. In any contracts for resale of the water diverted under this 1999 Agreement, the Parties shall specify conservation measures required for any water purchaser to be undertaken which relate to the water sold. The Parties shall establish specific, detailed strategies and annual, measurable objectives for specific, reportable water efficiency work program efforts that contemplate written reports to both Boards, NRCS, and TNRCC, to be produced as part of the ADWPM processes, that comply with Senate Bill 1 water planning requirements for 50 year water horizon projections, that spell out objectives, accomplishments, and remaining activities for the subsequent year's work program to increase water efficiency.

3.2.B. BexarMet Local Obligation. BexarMet shall have the right and obligation to make local match improvements pursuant to P.L. 83-566, absent federal matching funds, to qualify for incremental increases to secure the full 9,974 acre-feet of water allocated under BMA's COA 19-2130 for municipal use available for conversion to Priority Water, in the same manner as conversion is allowed under 3.1.B. and C. (See Exhibit "E" scheduling conversion to priority water).

3.2.C. Prior Agreements. The term "Excess Water" is referenced in this 1999 Agreement only for purposes of definition and consistency with Prior Agreements. It is stipulated, however, that the term Excess Water is incorporated here for transition and definition purposes only, it being the intention of the parties that the Excess Water concept shall be eliminated through transition.

3.3. BMA Shall Manage Canal System.

3.3.A. BMA Ownership. BMA retains ownership and managerial control of all BMA property (real and/or personal), including BMA's water rights evidenced by Certificates of Adjudication Nos. 19-2130 and 19-2131. BMA retains the exclusive right and control over such system subject only to duties provided in this 1999 Agreement. This 1999 Agreement shall not constitute a general lease, or license for the use by BexarMet, or any other party, of any BMA owned or controlled facilities, equipment, or real property. BMA shall retain the exclusive right to set the annual per acre assessment commonly referred to as the "Flat Rate Tax," and the water rate for irrigation water charged to BMA irrigators.

3.3.B. Reciprocal Balanced Budget. As a condition of this 1999 Agreement, the Parties shall be contractually obligated to balance their respective annual budgets to provide the funds that relate to obligations herein, and to separately account for all such funds required to be separately accounted for under this 1999 Agreement.

3.3.C. Access. BMA agrees, as part of this 1999 Agreement, to grant BexarMet reasonable access on and across BMA's publicly-owned property in the vicinity of BexarMet's Delivery Point(s) in the form of recorded easements, as needed, to cooperate with installation and maintenance of pumping facilities, transportation facilities, water meters and/or related works of improvements necessary to performance of BexarMet's obligations under this 1999 Agreement, and for the delivery and beneficial use of water purchased under this 1999 Agreement. BexarMet covenants to maintain such land governed by said easements in a reasonable condition, and to make reasonable repairs periodically, as necessary, to maintain the easements in safe condition.

3.3.D. Compensation and Selection. Monthly, throughout each year, of the five year period including calendar years, 2000, 2001, 2002, 2003 and 2004, BexarMet agrees to fund by the 10th calendar day of each month a separate account in the amount of \$4166.67, standing in the name of BMA, related to compensation of BMA's manager, in the amount of \$50,000.00 per year. The funds shall be used by BMA to supplement the compensation to be paid by BMA to a qualified BMA manager, selected, after due consideration, based on not less than 5 years of water industry professional background, including experience or certifications in running a water supply or irrigation district in Texas permitted by or subject to the jurisdiction of the Texas Natural Resource Conservation Commission (or similar out of state authority). Such qualification shall include some or all hours necessary to obtain a baccalaureate degree, demonstrated knowledge, or experience in water efficiency, and a demonstrated job history of performance in like or related water industry experience. BMA agrees to solicit applications for this position through trade publications including but not limited to the Texas Water Conservation Association, to interview in a systematic manner against objective review criteria, and to hire the most qualified applicant available at the sole discretion of the BMA Board, as part of a comprehensive compensation package designed to secure a manager of qualified competence and credentials useful for upgrading system operations in an orderly manner with full reporting to and involvement with the Board and irrigators.

3.3.E. Easements. BMA agrees to grant, from time to time as needed, recordable easement(s) necessary for BexarMet to secure access to the BMA's Medina Dam, Diversion Dam, Chacon Dam, or other storage facilities and meter sites in the canal system, and any other location for which it may be necessary for BexarMet to have access to for the performance of BexarMet's obligations set forth in this 1999 Agreement. A copy of the form of the easement to be used is attached as Exhibit "C." A separate easement provides access and governs use of facilities, operations and stored water under the relationship of the Parties with respect to Pearson Junction Lake, and is attached as Exhibit "D" [in draft form].

3.4 Office of Contract Comptroller. Starting with January year 2000, BMA commits to retain an accountant, or contract accounting service, to perform the function of contract comptroller, separate and distinct from BMA's annual TNRCC's audit obligations. Such Contract Comptroller is to provide quarterly reports concerning BMA's annual budget and financial condition as it relates to obligations under this 1999 Agreement and the Existing Agreements, and other duties as may be determined appropriate by the ADWPM Joint Committee.

3.4.A. Quarterly Reports. The Contract Comptroller's quarterly Contract Comptroller reports shall include, without limitation and by way of example only, a summary of water use and sales and shall provide an accounting for each of the contract obligations under this 1999 Agreement and the Existing Agreements. This Comptroller's Report shall be provided to the BMA and BexarMet Board of Directors quarterly, and shall be filed at the BMA Headquarters office and be available to the public.

3.4.B. BexarMet Contribution to Office of Contract Comptroller. BexarMet shall annually fund the sum of \$20,000.00, providing incrementally, \$5,000.00 per quarter, toward the cost of the Office of the Contract Comptroller.

3.4.C. Obligations of Parties. The obligations of the Parties and function of the Contract Comptroller are in addition to those annual TNRCC audit obligations imposed on the respective Parties by Texas Water Code Chapter 49, Subchapter G, other contractual or lawful obligations the Parties may have, or audit requirements that the separate Boards may deem appropriate for their respective districts (over and above and beyond the specific contract requirements imposed here on the Contract Comptroller).

3.5. Prepaid Credit for Excess Water Delivery. The Parties recognize and agree that BexarMet has accrued a credit for water heretofore defined as Excess Water based upon BexarMet's actual payment under the Existing Agreements in the amount of \$1,791,000 (one million seven hundred ninety-one thousand dollars). The Parties recognize and agree that the 1992 and 1995 Agreements provide the mechanism for BexarMet to receive credit for this prepayment, specifically, that until such credit is applied toward the purchase of Excess Water, the credit shall remain available to BexarMet. However, this 1999 Agreement supersedes all Existing Agreements with regard to the term of delivery and/or recoupment of said prepaid water credits, as provided in Exhibit "E" in tabular form, included here by reference, which Exhibit sets out the terms, duration and schedule that is

controlling. The Parties agree that the Application of Prepaid Credits Schedule attached as Exhibit "E" for application of BexarMet's prepaid credit extends the period over which BexarMet would receive prepaid water and that BexarMet waives any claim for interest on said prepaid water credit to the benefit of BMA as further consideration for the performance of the terms and conditions herein provided.

3.6. Water Storage.

3.6.A. Water Storage Generally. Water storage development provided here below is to be governed by the ADWPM process in Section 3.1.G. The Parties agree that the expansion and development of additional storage capacity is in the mutual interests of the Parties, that added storage will complement the Parties' conservation initiatives, including the Small Watershed Act Program and that stored water capacity is an essential requirement to provide sustainability and reliability for water used by the parties and that made available for contract and pursuant to S.B. 1 requirements. Accordingly, both Parties hereby agree to cooperate to secure full credit for such storage initiatives regarding NRCS, TNRCC, which and regulatory programs that recognize such benefits and obligations. To the extent possible, the Parties agree to cooperate to build additional storage within the framework of P.L. 83-566 funding. The Parties further agree that any expansion of storage, whether at the sole expense of BexarMet or funded by joint endeavor, should be accomplished in a manner that is consistent with the NRCS requirements for Local Sponsor Share Credit pursuant to P.L. 83-566. In the event BMA or BexarMet contributes funds or in-kind services as consideration for development of additional storage, the other Party agrees to support securing a credit against any required matching funds under P.L. 83-566 or any other program designed to support or encourage such initiatives and each party covenants to cooperate in providing necessary approval. These covenants regarding water storage development are in addition to specific contract commitments set forth below.

3.6.B. Pearson Junction Lake.

3.6.B.1. BMA Payment of Closing. As consideration for executing the Pearson Junction Lake easement, as contemplated by this 1999 Agreement, BexarMet agrees to pay the sum of \$150,000.00, which may, in part, be satisfied by the assumption of the existing outstanding debt and/or payment of the balance due and owing Hondo National Bank pursuant to that certain note in the principal amount of \$90,000.00 dated July 1, 1999, in cash, at the time of executing this 1999 Agreement [or payment of the entire amount at closing in cash], at BexarMet's election.

3.6.B.2. Pearson Expansion. The Parties agree that any expansion of Pearson Junction Lake, or any other storage facility, shall be accomplished, to the extent possible, in a manner that is consistent with the NRCS requirements for Local Sponsor Share Credit pursuant to Public Law 83-566, for the purpose of assuring eligibility for in-kind federal fund credits under P.L. 83-566.

3.6.B.3. BexarMet's Expense. BexarMet agrees to design, permit and build, at its sole expense (with applicable benefits under this 1999 Agreement evidenced by the Easement attached hereto as Exhibit "D"), the expansion of Pearson Junction Lake as a regulating storage reservoir with a design storage capacity of not to exceed 3,600 acre-feet, to assure compliance with TNRCC Dam Safety Regulations, and to pursue NRCS requirements for Local Sponsor Share Credit pursuant to Public Law 83-566, and provide BexarMet with not less than 1,800 ac. ft. of pro-rata storage with parity access to such stored water. The Parties agree to share equally the final designed and built-out storage capacity in Pearson Lake. BexarMet's responsibility for payment of any design professional fees shall attach for such fees as result from actual work commenced and performed from and after the Effective Date of this 1999 Agreement.

3.6.B.4. Engineer's Seal. In consideration of such undertaking by BexarMet concerning expansion of Pearson Lake in accordance with this 1999 Agreement, at the time the expansion design is completed and BexarMet presents to BMA an Engineer's Sealed Certificate for Design, BMA agrees to deliver to BexarMet an easement agreement in recordable form (Exhibit "D") authorizing storage on a parity and pro-rata basis in Pearson Junction Lake of not less than 1,800 acre-feet of surface water, which easement shall be recorded by BexarMet upon inception of construction. TNRCC and other approvals for the project may be sought before or after the easement is requested, provided, the Parties agree to cooperate fully in requesting, supporting, advancing and advocating necessary approvals for any regulatory agency with jurisdiction over this or any other storage project.

3.6.B.5. Storage Easement and Operating Agreement. In connection with delivery of the Engineer's Certificate and the preparation of the storage easement, the Parties shall prepare an "Operating Agreement" for Pearson Junction Lake that will become an annex, integral to the easement, said operating Agreement to address, among other matters, accounting for water storage, water releases and allocation of evaporation losses from storage in connection with the form of the easement Exhibit "D" attached.

3.6.C. Chacon Reservoir.

3.6.C.1. Feasibility Study: BexarMet agrees, at its expense, upon consultation with BMA's Board, to conduct a feasibility study to determine the costs and benefits of improving water storage capacity and to include an analysis of the costs and benefit of the general utility of Chacon Reservoir, and any expansion thereof, with respect to the costs and benefits to BMA concerning multiple purposes for which the Reservoir may be further used, including but not limited to storage. If the Chacon Reservoir feasibility study, funded by BexarMet, provides an opportunity for additional storage or other P.L. 83-566 benefits, the Parties agree, pursuant to the ADWPM, to include Chacon Reservoir as a project, and BexarMet shall be afforded an easement for storage similar in content to that provided above with respect to Pearson Junction Reservoir (Para. 3.6.B.). Such feasibility study shall be a part of the Annual Design memo by the ADWPM.

3.6.C.2. Canal Maintenance: In consideration for the mutual benefits that accrue to BMA and BexarMet, irrespective of the date of performance of the provisions of Paragraph

3.6.C.1 above, BexarMet shall commence performance on February 1, 2000, maintenance of the canal system from Chacon Reservoir south, in conformity with Section 3.1.B., et seq., (ADWPM Provisions), so as to minimize waste and maximize efficient water delivery consistent with P.L. 83-566, and to provide maximum beneficial use of said water. In consideration of the maintenance obligation assumed by BexarMet, for the purpose of assuring maximum water efficiency and delivery to irrigators, BexarMet shall be entitled to make use of any tailwaters at the end of said canal systems below Chacon Reservoir which are not captured and used by BMA, now or in the future. BexarMet shall be entitled to seek any lawful credit associated with delivery of said water to the receiving watershed or basin. Notwithstanding anything in this Section 3.6.C.2. to the contrary, BMA reserves the right to improve its system and reduce, recapture, and/or recirculate these tailwaters.

3.6.D. Medina Lake.

3.6.D.1. Operating Policies. The Parties agree that both will benefit through the maximum storage and maintenance of stored water available in Medina Lake for diversion and beneficial use by the Parties at all times possible. The Parties further recognize that the opportunity for detention of flood waters caused by rain events requires operation of the lake to allow storage capacity to be maintained at Medina Lake to capture said flood and rainfall waters. Further, the Parties have provided certain storage within the BMA system, at Pearson Junction Reservoir, for certain regulating and storage purposes and contemplate further storage projects. Finally, the Parties recognize that storage at Medina Lake has the potential to provide certain recharge benefits to the surrounding underground aquifer formations, including the Trinity and Edwards formations for which the Parties are entitled to seek and/or claim credit for facilitating, and that the Parties have previously contracted for and expended, in cooperation with the Texas Water Development Board and USGS, for execution of a Water Balance Study, now in draft review but incomplete status at a cost of nearly \$1,000,000.00. The Parties hereby commit to cooperate in the completion of that cooperative USGS study and to pursue the water resource benefits that accrue to each and the region as the result of further analysis and participation in the S.B. 1 Region L planning process, as well as recharge studies conducted by the Edwards Aquifer Authority or other governmental entities.

3.6.D.2. Stored Water. Consistent with the principles stated above in 3.6.D.1, to the extent such water is not needed by either Party for beneficial use consistent with this 1999 Agreement, the Parties agree to maintain stored water behind Medina Lake Dam, to the maximum extent possible for the Parties' future use and enjoyment, and, as a joint effort, agree to make application to the Edwards Aquifer Authority, and any other authority with jurisdiction, to seek historical and prospective operational recharge credits, and to the extent such credits may be recognized, pursuant to application to be jointly made, by efforts of both parties to share such benefits equally. Pursuant to the principles stated herein, notwithstanding the take or pay provisions of this 1999 Agreement, BexarMet agrees to utilize its surface water resources as stated in Section 3.6.D.3. below. Provided further, that to the extent BexarMet honors the principles in this Section and Section

3.6.D.3., BexarMet's affirmative obligations to market water to third parties pursuant to Section 3.9 of this 1999 Agreement shall be reduced.

3.6.D.3. Conjunctive Use. Both Parties recognize the opportunity for conjunctive use of water set forth in Senate Bill 1 (1997), and that management of Medina Lake and the entire remainder of the BMA system requires consideration of all facets of water efficiency, storage, delivery, evaporation, and priorities agreed to by the Parties, including prior contract obligations and permit requirements, affecting in-stream flow requirements, as evidenced by BexarMet's commitment in Section 3.6.D.2. above. Provided, however, BexarMet, by the terms of this 1999 Agreement, including the commitment in Section 3.6.D.2., shall not be foreclosed from beneficially using, leasing, or selling existing BexarMet's surface water rights within the Medina Valley, upstream from the BexarMet water processing facility take out point, by reason of BexarMet's above stated commitment to improved management of the Medina Valley water as set forth above, for the purpose of annual water budget management and to maintain an optimal quantity of water stored behind the Medina Dam. Notwithstanding the foregoing, BexarMet does, however, agree to manage its available Medina Valley water resources in accord with each year's ADWPM process. Finally, the Parties recognize that storage and retention of water to meet availability requirements at some future date is consistent with water efficiency, drought management, and beneficial use requirements under law. The Parties hereby establish these general objectives, which are stipulated to be consistent with the more particularized obligations set forth within this 1999 Agreement.

3.6.D.4. Dam Safety. In consideration of BexarMet's commitment in Section 2.7. above to repair at least two of the gates at the main dam at Medina Lake, BMA agrees to furnish BexarMet its annual TNRCC Dam Safety Reports, copies of inquiries and responses by the TNRCC regarding dam safety and to keep BexarMet fully and timely apprised of compliance with regulations of the TNRCC or any other agency with jurisdiction over dam safety. The Parties further agree, pursuant to TNRCC's Executive Directors Task Force on Dam Safety: Final Report, September 8, 1998, to pursue any funding available from the TNRCC or any other agency that provides assistance for monitoring, maintenance, and compliance respecting Dam Safety.

3.6.D.5. Anti-Degradation Policy. BexarMet has responded to existing TNRCC Stream Standards classification of the upper Medina (contact recreation and potable water use) by adopting and supporting the TNRCC's anti-degradation policy (30 TAC § 307.10) on the Medina River from confluence with Leon Creek through the Medina Diversion Lake, Medina Lake and including the headwater. Both Parties agree to cooperate in the maintenance and enforcement of the existing water quality standards that protect the high quality of the water in the upper Medina River system including Stream Segments 1903, 1904, 1905 and 1909.

3.6.D.6. Spillway Investigation: BexarMet agrees, at its expense, with full cooperation of the BMA, to further investigate (a) real estate interests required for the purpose of raising the spillway and in review of aerial photography previously taken by both parties and (b) investigate the costs and benefits of increasing the spillway level to increase water

storage capacity in Medina Lake, and to make such reports and proposals to BMA within five (5) calendar years.

3.6.D.7. Gate Repairs. BexarMet, consistent with applicable TNRCC dam safety standards and professional engineering practices, shall make the necessary gate repairs for operation of at least two (2) gates described in Section 2.7. of this 1999 Agreement within three (3) years of execution of this 1999 Agreement irrespective of the determination of the feasibility of any proposed "hydro facility" to be located at the base of Medina Dam.

3.6.D.8. Water Development Opportunities. Pursuant to the principles stated herein, in addition to water conservation, conjunctive use, and seeking credit for recharge, the Parties agree to investigate the feasibility of (i) raising the spillway at Medina Dam to increase storage capacity in Medina lake; and (ii) diverting "floodwaters" from the Guadalupe River for transfer into the Medina River Basin.

3.6.D.9 Initial Project Prioritization. As of the Effective Date of this 1999 Agreement the Parties, pursuant to the USDA/NRCS Report entitled "Final Bexar-Medina-Atascosa Counties Water Conservation Plan and Environmental Impact Statement (September 1997)" (herein after the "NRCS Report"), agree that the two most important projects related to improving the efficiency of BMA's canal system and the reduction of water losses during transportation are (i) the expansion of Pearson Lake, and (ii) the repair of that portion of the main canal beginning at Diversion Dam which is designated as "Sub Unit 1" of "Evaluation Unit 1" in the NRCS Report and reflected in Figure 3 of the NRCS Report. A copy of said Figure 3 reflecting Evaluation Unit 1, including the affected Sub Unit 1, is attached hereto as Exhibit "F" and incorporated herein by reference. Accordingly, in recognition of the mutual benefits to be received and enjoyed by the Parties upon completion of these two projects the Parties agree, subject to the availability of financial resources and completion of any necessary regulatory and/or permitting approvals, as follows:

- I. BMA will, as part of its annual budget process, dedicate funds not required for ongoing operation of the District to the repair, refurbishing and/or improvement of that portion of the main canal beginning at Diversion Dam which is designated as "Sub Unit 1" of "Evaluation Unit 1" in the NRCS Report;
- II. The Parties agree that the \$500,000 annual contributions made on and after 2001 by BexarMet reflected on Exhibit "E", as well as any additional funds contributed by BexarMet after 2001 for purposes of accomplishing the improvement to BMA's canal system contemplated by the P.L. 83-566 Project, shall be used first to repair, refurbish and/or improve that portion of the main canal beginning at Diversion Dam which is designated as "Sub Unit 1" of "Evaluation Unit 1" in the NRCS Report; and

- III. The Parties agree that, as part of the "Joint Annual Design and Work Program Memorandum" process, and depending upon the availability of Federal matching grant funds, they will evaluate and recommend as priorities the expenditure of available funds to complete both the repair, refurbishing and/or improvement of that portion of the main canal beginning at Diversion Dam which is designated as "Sub Unit 1" of "Evaluation Unit 1" in the NRCS Report and the expansion of Pearson Lake expeditiously and, to the extent feasible, on concurrent and/or simultaneous schedules.

3.7. Payment for BexarMet's Purchase of BMA Water under Part Two.

3.7.A. Take or Pay. See Section 2.8.A. for more details.

3.7.A.1. Priority Water. All water converted to Priority Water under this 1999 Agreement shall be paid by BexarMet on a take or pay basis, paid in equal monthly installments during any Contract Year.

3.7.A.2. Excess Water. The Parties, under the Existing Agreements, provides for a declaration of Excess Water, which shall no longer be applicable.

3.7.A.3. Prior Agreements. This 1999 Agreement supersedes and merges into this 1999 Agreement prior existing agreements with respect to periodic payments for water, regardless of water classification.

3.7.B. Pricing. The Parties understand, agree, and stipulate that the stated price of water under this 1999 Agreement does not necessarily reflect the present actual cost of water, but is based upon consideration stated herein and set forth within the Existing Agreements. All provisions of the Existing Agreements which set the price of delivered water are hereby terminated, and the following provisions apply:

3.7.B.1. Priority and Excess Water & Municipal Use. Priority Water converted from previously defined Excess Water, governed by this 1999 Agreement, and used for municipal purposes, shall be charged by BMA to BexarMet at \$69.00 per metered acre-foot as the Effective Date and subject to adjustments as prescribed herein.

3.7.B.2. Priority Water and Surplus Water Sold to Third Parties. BexarMet agrees to share equally with BMA net revenues, after cost of delivery, from the sale of untreated raw water sold to third Parties.

3.7.C. Basin-Wide Benchmark Water. It is further provided that in the event the GBRA discontinues the establishment of "basin-wide benchmark water" rate adjustments contemplated by Section 2.8.C. above, or the GBRA's function or agency is discontinued or not useful for the basin wide price function, the Parties covenant to establish a substitute mechanism for establishing a reasonable prevailing market barometer suitable for use as a benchmark price under this 1999 Agreement. By way of example only, the

parties contemplate considering the possible use of a Consumer Price Index mechanism related to water as a commodity, a commodity index or other pricing mechanism may be agreed upon or a mediated mechanism may be established by each entity appointing a representative mediator that will select a third mediator. Upon such selection the group of three mediators, the group shall prepare a report for adoption of a mechanism by both Boards. Upon failure of a consensual agreement, the parties may apply to an administrative agency or seek a Declaratory Judgment or other appropriate judicial remedy to secure a remedy for pricing.

3.7.D. Water Cost Adjustment Mechanism/Market Rate. Subject to the provisions stated herein at Section 3.7.B., BMA may elect to adjust BexarMet's cost of Priority Water, and applicable solely to this Agreement, notwithstanding any other provision of law. For purposes of calculating and applying this 1999 Agreement water cost adjustment mechanism, the Parties agree that the Market Rate shall be defined by and established as the Guadalupe Blanco River Authority ("GBRA") benchmark water sales price per acre foot of untreated water then existing on January 1st of any year following the period scheduled on Exhibit "E."

3.8 Part Two / Metering Program.

3.8.A. Individual Irrigation Meters Installation Program.

3.8.A.1. 200 Meters. Not less than 200 meters or meters for 25% of active irrigators, whichever figure is greater, shall be purchased and permanently installed by BMA at BexarMet's cost by the end of the three (3) year period 2000, 2001, 2002. These meter locations shall be selected based upon the largest-volume active irrigators, including for consideration all turn out locations per irrigator, based on the most recent five years of active historical use or other criteria that will focus on water efficiency, unaccounted water, location of delivery or other factors that assist in measuring sales, delivery and efficient use within the system. For purpose of this section, irrigators are defined as those irrigators that have been continuously active BMA irrigators over the historical period of 1995, 1996, 1997, 1998, and 1999 inclusive.

3.8.A.2. Consistent with TNRCC. This individual metering program shall comply with and be consistent with any water efficiency program(s) of the Texas Natural Resource Conservation Commission ("TNRCC"), Texas Water Development Board ("TWDB"), USDA/NRCS or other agency with jurisdiction.

3.8.A.3. BexarMet's Obligation to Reimburse. BexarMet shall reimburse BMA by the 10th calendar day of the month following the month in which BexarMet receives documentation of the expenses incurred by BMA related to the purchase and installation of the individual meters contemplated by Section 3.8.A.4. BexarMet's obligation to reimburse BMA for this metering program, pursuant to Section 3.8.A.4. below, is conditioned upon compliance with TNRCC and TWDB program requirements, and is to be enforced by periodic inspections by TNRCC or TWDB or qualified private inspectors under contract to the BMA or BexarMet for such installation, maintenance, inspection, or supervision.

3.8.A.4. Cost of Individual Irrigation Meters. BMA will act reasonably in its selection of meter type and meter location, but will provide BexarMet with an opportunity to disagree with and modify BMA's initial selection of meters. Upon written notice of installation and proof of expense of such installation, provided to BexarMet regarding each meter installed by BMA under this Section, BexarMet agrees to reimburse BMA for purchase and installation of the individual meter within 30 days of BMA's invoicing BexarMet and including with the invoice the identification of the permanent location of the meter for which reimbursement is sought. Both Parties will support a request for P.L. 83-566 credit for any and all expenditures for this individual metering program.

3.9. BexarMet's Marketing Obligations. BexarMet shall be obligated, as fiduciary and agent for both parties, to market, sell, and deliver any untreated raw water that may legally be sold to any willing third party purchaser when such water is available for sale based on the fact that it is not required by either party to this 1999 Agreement. BexarMet's duty to market is an affirmative duty to market for the benefit of both parties. Any sales, short or long term, shall be made by BexarMet at prices that allow cost of delivery to be recovered, or, alternatively, cost of delivery paid directly by such third party purchaser. BexarMet shall account for and report to BMA BexarMet's marketing expenses, delivery costs, and sales receipts monthly during any term of time wherein BexarMet is performing duties under this provision of the 1999 Agreement. All proposed sales pursuant to this section shall be conditioned on BMA's declaration of availability of water. Any such raw water sales shall be executed and water delivered, unless either Party, as a contracting Party to this Agreement, interposes a Board-authorized written objection to such sale within fifteen (15) days of being notified in writing of such proposed sale.

3.10. Contractual Obligations. With respect to the terms, provisions, and obligations of the Parties, contractual obligation for performance shall be as provided herein, where limited in time, and continuing during the term of this contract where not otherwise limited.

PART THREE
GENERALLY APPLICABLE PROVISIONS

4.0. Title Company. A title company or other mutually agreed to location in Medina County is to be selected by the Parties to provide for signing, ceremony, approval of easements, establishment of accounts and all other administrative actions necessary to give effect to this Agreement s of closing.

4.1. Indemnification. To the greatest extent allowed by law, the Parties agree to defend, indemnify and hold harmless each other, their respective directors, officers, employees and agents, against and from any and all claims, demands, causes of action, indemnifications, suits, or litigation (including all costs, expenses and attorneys' fees incurred in respect of any such matters) of every kind and character, brought or asserted for injuries or death of any persons, or for damaged property, or for any other damage, fine or penalty whatsoever, arising out of, resulting from, or in connection with this 1999 Agreement. This covenant to defend, indemnify and hold harmless includes without limitation any injury, death, damage, fine or penalty which in any part arises out of, results from, occurs in connection with the negligence or fault of Buyer, its directors, officers, employees or agents. The term "fault" as used herein includes, among other matters, a condition or event that gives rise to strict liability, or to a breach of warranty. However, if the respective Party, its officers, employees, agents or contractors did not cause the injury, death, damage, fine or penalty, in whole or in part, and are not otherwise responsible for such death, injury, damage, fine or penalty, then the Party shall have no liability under this indemnity. This indemnity is hereby limited and shall be interpreted (including the severance of invalid provisions) as may be required to make the indemnity valid and enforceable under existing law. The Parties agree to take such actions as may be necessary or required to cause this indemnity to be enforceable and valid to its fullest permitted scope under law.

4.2 Non-Monetary Support of Regulatory or Financing Application(s). When the consent, approval or cooperation of either Party is needed with regard to any regulatory or financing initiatives which support or implement the obligations under this 1999 Agreement or the Existing Agreements, the other Party agrees that its consent and non-monetary support will not be unreasonably withheld or delayed.

4.3. Assignments; No Third Party Beneficiary.

4.3.A. No Assignments. Without the consent of the other Party, this 1999 Agreement may not be assigned, sold, or delegated in whole or in part for any purpose by either Party. Provided, however, that BMA may assign this 1999 Agreement and delegate its performance obligations to any successor in interest in the ownership and/or operation of Medina Lake.

4.3.B. Benefit of Parties. The Parties are entering into this 1999 Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the Parties hereto.

4.3.C. Professional Services. From and after the date this 1999 Agreement is executed, any professional services provided to or contracted for a Party to this Agreement shall be the sole and exclusive responsibility of the Party incurring such obligation or benefiting therefrom. This 1999 Agreement specifically excludes, by specific declaration, any ratification, affirmation or other approval of any claim or assertion of contract or entitlement which arose as a result of any work performed prior to the Effective Date of this 1999 Agreement by any design professional relating to any terms of this 1999 Agreement whatsoever.

4.4. Annual Budget. With respect to this 1999 Agreement, each Party shall, as part of its required budget process, allocate necessary funds within the Party's respective adopted budget to perform the duties and obligations set forth in this 1999 Agreement. Unless otherwise provided by amendment to this Agreement, a Party to this Agreement shall have no obligation to fund a budget obligation of the other Party existing under this Agreement.

4.5 Attorneys' Fees.

4.5.A. Party Defaults. In the event either Party defaults under this 1999 Agreement and, as a result of such default, the other Party employs an attorney to enforce the provisions of this Agreement, then the non-defaulting party can recover from the defaulting party reasonable attorneys' fees and expenses, irrespective of whether suit is filed. In the event of litigation between the Parties concerning this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and litigation expenses from the other Party.

4.5.B. Obligations for Fees. Except as provided in Section 4.5.A. above, or otherwise agreed to by the parties, the parties shall be responsible for the payment of their respective attorneys' fees incurred in the development and/or implementation of this 1999 Agreement.

4.6. Entire Agreement. This 1999 Agreement and the Exhibits and Appendices attached hereto contain the entire agreement between BMA and BexarMet, and both Parties agree that this 1999 Agreement cannot be altered or varied by any prior, contemporaneous, or subsequent oral agreement, stipulation, representation, or understanding.

4.7. Headings. The headings contained in this 1999 Agreement are for convenience only and shall not enlarge or limit the scope or meaning of the various sections hereof. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise clearly requires.

4.8. Compliance with Filing Requirements and Regulatory Approvals. The Parties agree to file a copy of this agreement with the Executive Director, TNRCC, P.O. Box 13087, Capitol Station, Austin, Texas, 78711. The Parties further acknowledge that the

enforceability of this 1999 Agreement is dependent upon compliance with the rules of TNRCC.

4.9. Force Majeure. If either Party shall be rendered unable, in whole or in part, to carry out its obligations under this 1999 Agreement, then the obligations, to the extent they are affected by such force majeure, shall be suspended during the continuance of the inability therein claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts as the public enemy, order of any kind of the government, of the United States or of any state thereof, or of any agency of the United States or any state, other similar or military authority, insurrections, riots, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals or dams, shortages of labor, materials, supplies or transportation, or any other cause not reasonably within the control of the Party affected. The Party claiming "force majeure" shall use reasonable efforts to remove the cause of any force majeure. The requirement that any force majeure shall be reasonably beyond the control of the Party affected shall be deemed to be fulfilled even though the existing or impending strike, lockout, or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons.

4.10. Texas Utility Code. Notwithstanding any force majeure, both parties stipulate and agree that the services that are provided under the terms of this 1999 Agreement are required to be provided pursuant to Chapter 186, Subchapter A of the Texas Utility Code. Accordingly, the Parties acknowledge the primary duty of a public utility to provide and maintain continuous and adequate service at all times and therefore to develop, establish and maintain procedures, financial capacity and budgetary resources and infrastructure reliability to service the irrigators and customers of both Parties to minimize the impact of any force majeure.

4.11. Governing Law and Venue. This 1999 Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the state of Texas. If and to the extent a lawsuit involving this 1999 Agreement is brought by either Party, the lawsuit may be brought in any county in which either district provides service.

4.12. Remedies. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be sought of by either Party hereto and none shall be exclusive. Recognizing that, even if failure in the performance of either Party's obligations hereunder could be adequately compensated in money damages alone, each Party agrees that in the event of any default on its part that each Party shall have available to it the equitable remedy of mandamus and specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available. In the event that any payment(s) required under this 1999 Agreement are not received by the due date, the payment obligee shall immediately advise the payment

obligor of the non-payment, in writing. If the payment obligor does not deliver payment within 15 (fifteen) calendar days of receipt of written notice of non-payment, then all past due payment(s) shall bear interest at the rate of six percent (6%) per annum from the due date until paid; provided, however, that interest on such payment(s) shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount shall be credited on the payment due or, if that has been paid, refunded. The immediately preceding two sentences shall override any other provisions in this 1999 Agreement that are in conflict with them.

4.13. Prior to Suit. Prior to instituting any suit, the Parties shall have a duty to provide written notice of any claims or demands for performance of any obligation hereunder and to allow a reasonable period for discussion, consultation and conference between the Boards' agents/managers and the Boards of Directors before any suit may be filed. Unless a matter of public utility import governed by the TNRCC or the Public Utility Code is involved, thirty (30) days notice shall be required before suit is filed, in addition to the requirement that the Managers and Presidents of the respective Boards shall confer before such suit is initiated.

4.14. Facilitated Mediation. Further, it is specifically agreed, as an essential remedy precedent to suit, that the parties invoke facilitated mediation, appointment of mediators, Court annexed mediation and any other lawful alternative dispute resolution and/or settlement process that will serve to avoid litigation, reduce delay and forego the extensive costs and fees associated with administrative or court based litigation. The parties, therefore, shall have an affirmative duty to:

- A. provide written notice of claims or allegations;
- B. each appoint a board member and manager to represent the party;
- C. each shall cooperate with the other to select a neutral third party to conduct negotiations in good faith to resolve any conflict;
- D. if the conflict cannot be resolved, appoint a mediator / facilitator to assist in the conflict's resolution before, or in connection with, initiating legal proceedings; and
- E. The Parties further agree that methods of conflict resolution shall be invoked within the context of administrative or judicial proceedings to reduce costs of litigation and facilitate prompt resolution of any controversy requiring interim or emergency orders for the necessity of providing continuous and adequate service to any or all of the customers affected in any controversy.

4.15. Waiver. Any waiver at any time by either Party with respect to a default or other matter arising in connection with this 1999 Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

4.16. Severability. In the event that any clause or provision of this 1999 Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions of this 1999 Agreement.

4.17. Approvals. All approvals and agreements by either Party that are required or contemplated under the 1999 Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for the Party. Persons authorized to give such approvals and make such agreements for the Parties shall, until changed as hereafter provided, be as follows:

4.17.A. BMA Approval. The President of the Board of Directors of BMA acting with consent and approval of the Board pursuant to TOMA.

4.17.B. BMWD Approval. The President of the Board of Directors of BexarMet acting with consent and approval of the Board of Directors pursuant to TOMA.

4.17.C. Change of Notice. Each Party shall have the right at any time to change the person authorized to give such approvals and make such agreements by giving at least 15 calendar days written notice to the other Party.

4.18. Modification. This 1999 Agreement may be modified, amended or supplemented only by an instrument signed by the duly authorized representatives of each Party, the same having been approved and authorized by the Board of Directors in a public, duly noticed open meeting that is required under the Texas Open Meetings Law. It is contemplated that the P.L. 83-566 Project may require periodic memoranda implementing the NRCS Program and that such collateral agreements will become a part of this 1999 Agreement to document and advance the mutual interests of the Parties.

4.19. Notices. Any "Notice" required to be given to any other Party under this Agreement may be accomplished by mailing the same, postage prepaid, courier service, or other means, including electronic means, calculated to and which accomplishes actual delivery of same, to the respective Party as the following address:

4.19.A. ADDRESS TO BMA:

1. Bexar-Medina-Atascosa Counties WCID No. 1
Attn: President, Board of Directors
P.O. Box 170
Natalia, Texas 78059
2. With a copy to the General Manager at the same address.

4.19.B. ADDRESS TO BexarMet:

1. Bexar Metropolitan Water District
Attn: President, Board of Directors
P.O. Box 3577
San Antonio, Texas 78211-0577
2. With a copy to the General Manager at the same address.
3. Law Offices of Louis T. Rosenberg, P.C.
Attn: Louis T. Rosenberg, Esq.
322 Martinez Street
San Antonio, Texas 78205

4.19.C. The Parties are entitled to rely upon the addresses set forth in this notice section paragraph until such time as a Party provides written notice of any changes.

4.19.D. Exhibits. Exhibits "B," "C," "D," and "E" are integral and controlling in this 1999 Agreement, as set forth here; and included by reference. Exhibit "A," which will be developed by the Parties after closing, and Exhibit "F" are for the convenience of the Parties.

EXHIBITS:

Exhibit A	Disposition Table;
Exhibit B	Kelly Road Delivery Point;
Exhibit C	System easement form;
Exhibit D	Pearson Junction Lake easement;
Exhibit E	Prepaid Water Credit Schedule; and
Exhibit F	Figure 3 - USDA/NRCS Report entitled "Final Bexar-Medina-Atascosa Counties Water Conservation Plan and Environmental Impact Statement (September 1997)."

Executed in six (6) duplicate originals on the dates set forth below to be effective the 1st day of November, 1999.

**BEXAR MEDINA ATASCOSA COUNTIES
WCID NO. 1**

Attest:

A.V. Thurman
A.V. Thurman
President, Board of Directors
Date: Nov. 22, 1999

Jeanette F. Williams
JEANETTE F. WILLIAMS
Secretary-Treasurer, Board of Directors
Date: November 31, 1999

**BEXAR METROPOLITAN WATER
DISTRICT**

Attest:

Ronald C. Williamson
RONALD C. WILLIAMSON
President, Board of Directors
Date: November 30, 1999

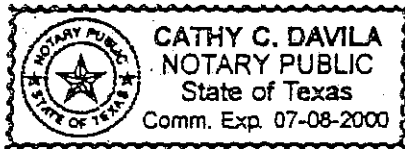
Marvin Sueltenfuss
MARVIN SUELTFENFUSS
Secretary, Board of Directors
Date: November 30, 1999

STATE OF TEXAS

§
§
§

COUNTY OF MEDINA

This instrument was acknowledged before me on November 22, 1999, by A.V. Thurman, in his capacity as President, Board of Directors, Bexar-Medina-Atascosa Counties WCID No. 1, on behalf of the Bexar-Medina-Atascosa Counties WCID No. 1, a reclamation and conservation district and political subdivision of the State of Texas.



Cathy C. Davila
Notary Public, State of Texas

CATHY C. DAVILA
(Printed or Stamped Name of Notary)

My Commission Expires: 07-08-2000

STATE OF TEXAS

COUNTY OF MEDINA

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This instrument was acknowledged before me on November 30, 1999, by Jeanette F. Williams, in her capacity as Secretary, Board of Directors, Bexar-Medina-Atascosa Counties WCID No. 1, attesting to the Agreement on behalf of the Bexar-Medina-Atascosa Counties WCID No. 1, a reclamation and conservation district and political subdivision of the State of Texas.

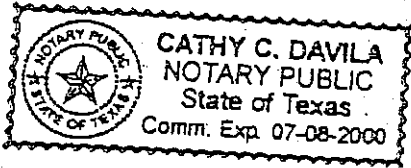
Cathy C. Davila

Notary Public, State of Texas

CATHY C. DAVILA

(Printed or Stamped Name of Notary)

My Commission Expires: 07-08-2000



STATE OF TEXAS

COUNTY OF BEXAR

50
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This instrument was acknowledged before me on November 30, 1999, by Ronald C. Williamson, in his capacity as President, Board of Directors, Bexar Metropolitan Water District, on behalf of the Bexar Metropolitan Water District, a reclamation and conservation district and political subdivision of the State of Texas.

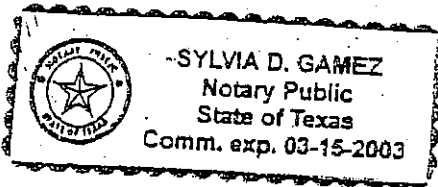
Sylvia D. Gamez

Notary Public, State of Texas

SYLVIA D. GAMEZ

(Printed or Stamped Name of Notary)

My Commission Expires: 03-15-03

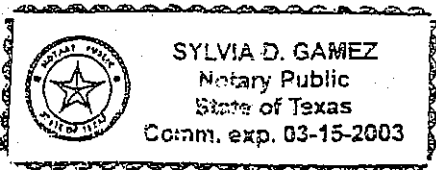


STATE OF TEXAS

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COUNTY OF BEXAR

This instrument was acknowledged before me on November 30, 1999, by Marvin Sueltenfuss, in his capacity as Secretary, Board of Directors, Bexar Metropolitan Water District, attesting to the Agreement on behalf of the Bexar Metropolitan Water District, a reclamation and conservation district and political subdivision of the State of Texas.



Sylvia D. Gamez
Notary Public, State of Texas

SYLVIA D. GAMEZ
(Printed or Stamped Name of Notary)

My Commission Expires: 03-15-03

Agreement Exhibits "A" through "F," inclusive, and Appendices 1 through 7, inclusive, follow this page 37.

EXHIBITS

<u>Exhibit</u>	<u>Tab</u>
Disposition Table	A
Kelly Road Delivery Point	B
System Easement Form	C
Pearson Junction Lake Easement Form	D
Prepaid Water Credit Schedule	E
Figure 3 - USDA/NRCS Report entitled "Final Bexar-Medina-Atascosa Counties Water Conservation Plan and Environmental Impact Statement (September 1997)."	F

Reorder No. F1186-26R
JULIUS BLUMBERG, INC.
NYC 10013
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EXHIBIT A

Exhibit "A"
Disposition Table

[Post-Closing the Parties will develop a "Disposition Table" to reflect the changes to the 1991, 1992 and 1995 Agreements resulting from the 1999 Agreement. This Table will serve as a "guide" to the Parties for future reference as the 1999 Agreement is implemented]

Reorder No. F118-Z
JULIUS BLUMBERG,
NYC 10013
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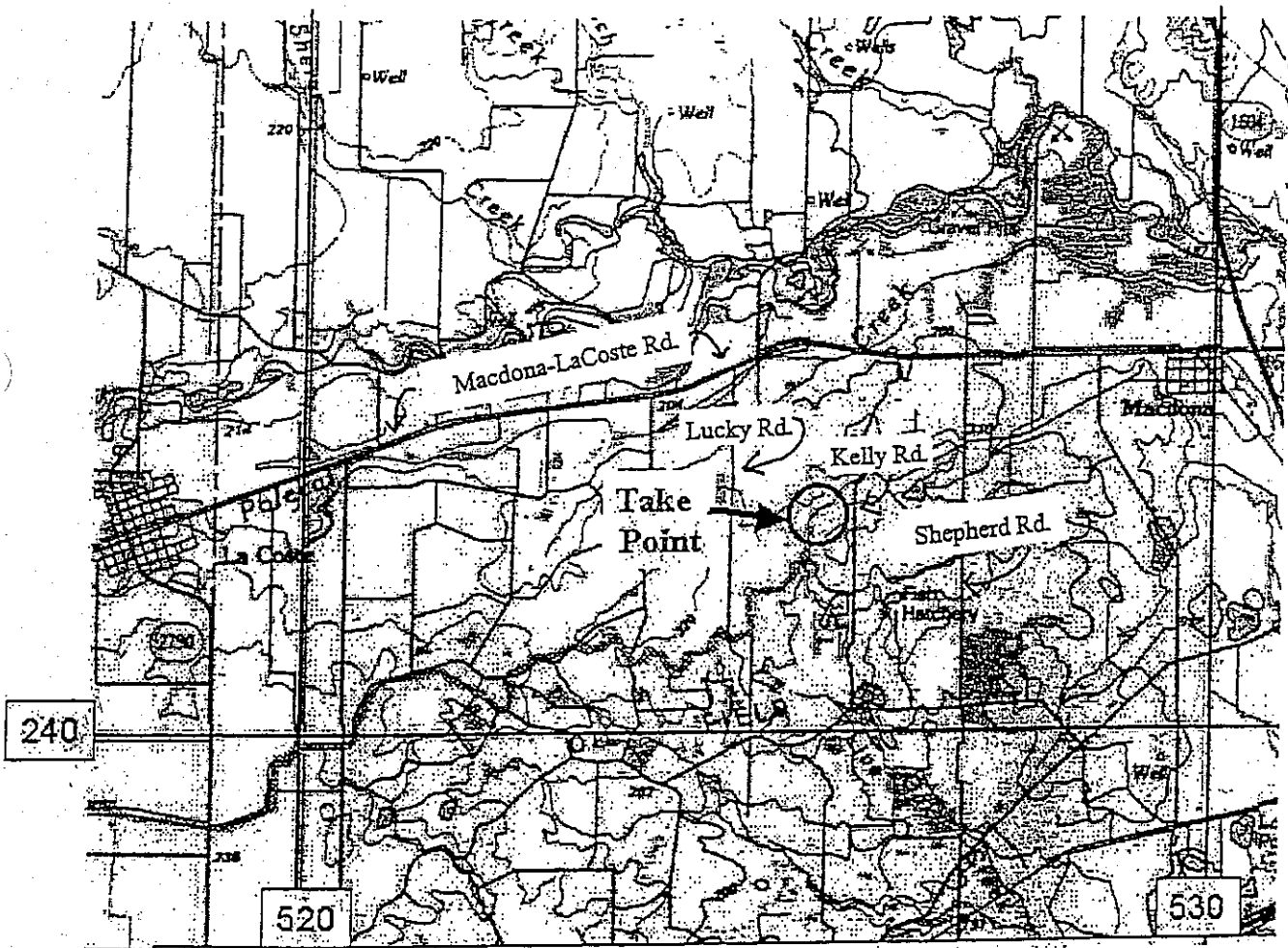
10

EXHIBIT B

EXHIBIT "B"

KELLY ROAD TAKE OUT POINT

(GENERAL LOCATION MAP)



Order No. F118-25R
JULIUS BLUMBERG, INC
NYC 10013
©1977 P.C.M.

EXHIBIT C

EXHIBIT " C"

LIMITED PURPOSE EASEMENT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MEDINA §

THAT, THE BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, (herein referred to as Grantor), does hereby grant an easement for limited purposes to Bexar Metropolitan Water District, (herein referred to as Grantee), subject to the following terms and conditions, upon and across the following real properties of the Grantor, more particularly described in Exhibit "A" attached hereto and incorporated by reference (hereinafter the "Property").

This Easement is granted for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration and in fulfillment of a the mutual contractual commitments of the Grantee to the Grantor and Grantor to Grantee arising out of that "1999 Agreement, Amending the 1991 Water Supply Agreement, 1992 Water Conservation Agreement, and 1995 Agreement Related to Water Availability Agreement Between Bexar-Medina-Atascosa Counties W.C.I.D. No. 1 and BexarMetropolitan Water District," which necessitates this Easement for the purposes described in Exhibit "B" attached hereto and incorporated by reference (hereinafter the "Purposes").

This Easement is further made under the following terms and conditions, to-wit:

1. The Grantee acknowledges that the above described property of the Grantor is either owned, operated, or controlled by the Grantor for specific uses by the Grantor which shall continue simultaneously with any authorized use of Grantee pursuant to this Easement.
2. This Easement was made and shall remain secondary and inferior to any and all functions, operations, and uses of the above described property by the Grantor, and the Grantee acknowledges that the Grantor relinquishes none of the superiority or uses of said property.
3. Grantor does hereby grant only the above one (1) Easement across the Property as specifically described in Exhibit "A" and shall not extend to, nor affect any other or additional property of the Grantor.
4. Grantor does hereby grant only the Easement for the limited purposes set forth in and particularly described in Exhibit "B" and shall not be expanded beyond said purposes.
5. The Grantee hereby accepts this grant with full knowledge that any facility constructed by the Grantee may be temporarily removed from time to time by the Grantor, its employees, agents, or successors for the purposes of carrying out the functions and business and Grantor.
6. The Grantee agrees in the exercise of its rights granted herein not to impair or obstruct the use or unreasonably obstruct the property of Grantor or its functions.

7. The Grantee acknowledges that the grant of this Easement is made exclusively for the purposes expressly stated herein. No other Easement or use shall be made of the above-described property without the prior written consent and approval of Grantor.

8. Grantee shall have, and by this Easement has no right, authority or power to grant, assign, lease or otherwise convey, encumber or hypothecate this Easement or the Property to any third party, for any purpose, without the express prior written consent and approval of Grantor.

9. The parties agree that the terms of this document including Exhibits "A" through "B," inclusive, shall be binding on them and their successors.

10. This Limited Purposes Easement, and all rights and privileges attendant thereto, shall without the necessity of further action by either Grantor or Grantee lapse and be of no further force or effect upon the termination or cancellation of the 1999 Agreement; PROVIDED HOWEVER, that upon such event either Party shall be entitled to file of record a "Notice of Cancellation" in the appropriate official public records of the County in the Property is located.

AGREED, GRANTED AND ACKNOWLEDGED this ____ day of _____, 200__.

GRANTOR:

BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1

By: _____

President, Board of Directors

ATTEST:

By: _____

Secretary, Board of Directors

GRANTEE:

BEXAR METROPOLITAN WATER DISTRICT

By: _____

President, Board of Directors

ATTEST:

By: _____
_____ Secretary, Board of Directors

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as President of the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1. on behalf of said District.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as Secretary of the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1. on behalf of said District.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS

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§
§

COUNTY OF BEXAR

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as President of the BEXAR METROPOLITAN WATER DISTRICT.

Notary Public, State of Texas

My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS

§
§
§

COUNTY OF BEXAR

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as Secretary of the BEXAR METROPOLITAN WATER DISTRICT.

Notary Public, State of Texas

My Commission Expires: _____

Exhibit "A"
Property Description

[Property Description and/or Deed recordation information to be attached here].

Exhibit "B"
Purposes and Authorized Uses of Easement

[The specific limited purposes for which the Easement is granted, including any expanded grants for construction, maintenance, repair and/or replacement will enumerated in Exhibit "B."]

Reorder No. F185-25R
JULIUS BLUMBERG, INC.
NYC 10013
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EXHIBIT D

EXHIBIT "D"

EASEMENT FOR EXPANSION, CONSTRUCTION
OF PEARSON JUNCTION LAKE AND WATER STORAGE

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MEDINA §

THAT, the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, (herein referred to as Grantor), does hereby grant an easement to Bexar Metropolitan Water District, (herein referred to as Grantee), subject to the following terms and conditions, upon and across the following real properties of the Grantor (known as the Pearson Junction Lake property), more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property").

This easement is granted for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, and in fulfillment of the reciprocal contractual commitment of the Grantee and Grantor arising out of that "1999 Agreement, Amending the 1991 Water Supply Agreement, 1992 Water Conservation Agreement, and 1995 Agreement Related to Water Availability Between Bexar-Medina-Atascosa Counties W.C.I.D. No. 1 and Bexar Metropolitan Water District," which necessitates this Easement for the purposes of construction of a water holding facility to be known as Pearson Junction Lake and, thereafter, for storage and holding water therein, and any collateral purposes more particular described in Exhibit "B" attached hereto and incorporated by reference (hereinafter the "Purposes").

This Easement is further made under the following terms and conditions, to-wit:

1. The Grantee acknowledges that the above described Property of the Grantor is either owned, operated, or controlled by the Grantor for specific uses by the Grantor which shall continue simultaneously with any authorized use of Grantee pursuant to this Easement.

2. This Easement is made, and shall remain consistent and equivalent to any and all functions, operations, and uses of the above described property by the Grantor, and the Parties hereto agree that this Easement is made for the purposes of enhancing the operations of the Grantor and the Grantee.

3. Grantor does hereby grant only the above one (1) Easement across the Property as specifically described in Exhibit "A" and this Easement specifically excludes the canals and appurtenant structures adjacent to the holding and storage facility to be known as Pearson Junction Lake.

4. The Grantor hereby grants this Easement for the limited purposes set forth in and particularly described in Exhibit "B" and shall not be expanded beyond said purposes.

5. The Parties agree that the holding and storage facility known as Pearson Junction Lake shall be maintained by the Grantee as an obligation under this Easement; however, Grantor retains ownership and title to the Property subject only to the enumerated grants of this Easement.

6. The Grantee agrees in the exercise of its rights granted herein in a manner not to impair or obstruct the use, or unreasonably obstruct the property, of Grantor or its functions.

7. The Grantee acknowledges that the grant of this Easement is made exclusively for the purposes expressly stated herein. No other Easement or use shall be made of the above described property without the prior written consent and approval of Grantor.

8. Grantee acknowledges it has no right, authority or power to grant, assign, lease or otherwise convey, encumber or hypothecate this Easement or the Property to any third party, for any purpose, without the express prior written consent and approval of Grantor.

9. This Easement shall be subject to an "Operating Agreement" for Pearson Junction Lake to be developed by the Parties, which shall be annexed to and become an integral and functional part of this Easement, said Operating Agreement between the Grantee and the Grantor shall address accounting for water storage, water releases and allocation of evaporation and seepage losses from storage in connection with the form of this Easement and other matters appropriate to fulfill the terms of the 1999 Agreement between the Grantee and the Grantor.

10. The Parties agree that the terms of this Easement, including Exhibits "A" through "B," inclusive, shall be binding on them and their successors.

AGREED, GRANTED AND ACKNOWLEDGED this ____ day of _____, 200__.

GRANTOR:

BEXAR-MEDINA-ATASCOSA COUNTIES WATER
CONTROL AND IMPROVEMENT DISTRICT NO. 1

By: _____

President, Board of Directors

ATTEST:

By: _____
Secretary, Board of Directors

GRANTEE:
BEXAR METROPOLITAN WATER DISTRICT

By: _____
President, Board of Directors

ATTEST:

By: _____
Secretary, Board of Directors

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as President of the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1. on behalf of said District.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__ by _____, in his/her capacity as Secretary of the BEXAR-

MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT
NO. 1. on behalf of said District.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____,
200__ by _____, in his/her capacity as President of the BEXAR
METROPOLITAN WATER DISTRICT.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____,
200__ by _____, in his/her capacity as Secretary of the BEXAR
METROPOLITAN WATER DISTRICT.

Notary Public, State of Texas
My Commission Expires: _____

Exhibit "A"

GROSS PROPERTY DESCRIPTION OF PEARSON JUNCTION LAKE PROPERTY

TRACT ONE:

97.281 acre tract of land out of Survey No. 39, W.H. Hewit, Abstract No. 1399, Medina County, Texas and being more particularly described by a metes and bounds field note description attached in a Warranty Deed executed on the 3rd day of October by Philip S.H. Hughes and wife, Jane B. Hughes conveying said property to the Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1; recorded in Volume 281, Pages 699-705 of the Official Public Records of Medina County, Texas.

TRACT TWO:

The property previously owned by the Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 known as the Pearson Junction Lake property adjacent on three sides to the above described 97.281 acre tract, which shall be more particularly described by an on the ground survey.

1. Description of Pearson Junction Lake during this construction phase:

[A metes and bounds field note description is to be added based upon a survey to be conducted by a Texas Registered Professional Surveyor after Closing, but before construction commences.]

2. Description of Pearson Junction Lake property after the construction phase shall be described by a metes and bounds field note description derived at by an on the ground survey by a Texas Registered Professional Surveyor, which shall include that portion of the above gross description of Pearson Junction Lake property necessary to describe the lake as a holding or water storage facility necessary to carry on the business of the Grantor and the Grantee.

Exhibit "B"
PURPOSES

1. This Easement is granted by the Grantor to the Grantee for the expansion of Pearson Junction Lake, which shall be accomplished to the extent possible, in a manner that is consistent with the NRCS requirements for Local Sponsor Share Credit pursuant to Public Law 83-566, for the purpose of assuring eligibility for in-kind federal fund credits under P.L. 83-566.

2. This Easement is granted to the Grantee to fulfill the mutual performance obligations of Grantor and Grantee pursuant to the 1999 Agreement, including Grantee's obligation to Grantor to design, permit and build, at Grantee's sole expense (with applicable benefits under the 1999 Agreement between the Grantee and the Grantor) the expansion of Pearson Junction Lake as a regulating storage reservoir with a design storage capacity for the mutual use and benefit of the Grantee and the Grantor on an equal basis; provided, however, the final constructed storage capacity shall allow for the exclusive use by the Grantor, BMA Water District, of not less than 1,800 acre feet of storage capacity.

3. It is agreed that this Easement shall expand over the whole of the above described Property during the construction phase of the expansion of Pearson Junction Lake to its completion; thereafter, this Easement shall be restricted only to that portion of the Property, to be later described, necessary to contain the holding and storage capacity of Pearson Junction Lake for the mutual benefit of the Grantee and the Grantor.

4. (Other purposes consistent with the 1999 Agreement between the Grantor and the Grantee may be added as the construction phase of Pearson Junction Lake develops and/or this Easement and the 1999 Agreement are implemented).

Recorder No. F1196-25R
JULIUS BLUMBERG, INC
NYC 10013
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EXHIBIT E

EXHIBIT "E"

WATER SALES BY BMA TO BEXARMET
 BASE RATE "NET REVENUE" TABLE
 (\$69.00/AC-FT)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Calendar Year	Payment to BMA for 10,000 ac-ft	PL 83-566 Payments	Add'l \$69 ac-ft for Add'l 1000(s) of ac-ft	Total \$ Revenue to BMA	Prepaid Water Credits 1992/1995 Contracts	Net \$ Revenue To BMA
1999	\$ 57,500	\$0	\$0	\$ 57,500	(\$0)	\$ 57,500
2000	\$690,000	\$500,000 ¹	\$0	\$1,190,000	(\$0)	\$1,190,000
2001	\$690,000	\$500,000 ²	\$ 69,000	\$1,259,000	(\$135,504) ³	\$1,123,496
2002	\$690,000	\$500,000	\$138,000	\$1,328,000	(\$,135,504)	\$1,192,496
2003	\$690,000	\$500,000	\$207,000	\$1,397,000	(\$135,504)	\$1,261,496
2004	\$690,000	\$500,000	\$276,000	\$1,466,000	(\$135,504)	\$1,330,496
2005	\$690,000	\$500,000	\$345,000	\$1,535,000	(\$135,504)	\$1,399,496
2006	\$690,000	\$500,000	\$414,000	\$1,604,000	(\$135,504)	\$1,468.496
2007	\$690,000	\$500,000	\$483,000	\$1,673,000	(\$135,504)	\$1,537,496
2008	\$690,000	\$500,000	\$552,000	\$1,742,000	(\$135,504)	\$1,606,496
2009	\$690,000	\$500,000	\$621,000	\$1,811,000	(\$135,504)	\$1,675,496
2010	\$690,000	\$500,000	\$690,000	\$1,880,000	(\$135,504)	\$1,744,496
2011	\$690,000	See Ftnt 2	\$690,000	\$1,380,000	(\$135,504)	\$1,244,496
2012	\$690,000	See Ftnt 2	\$690,000	\$1,380,000	(\$135,504)	\$1,244,496

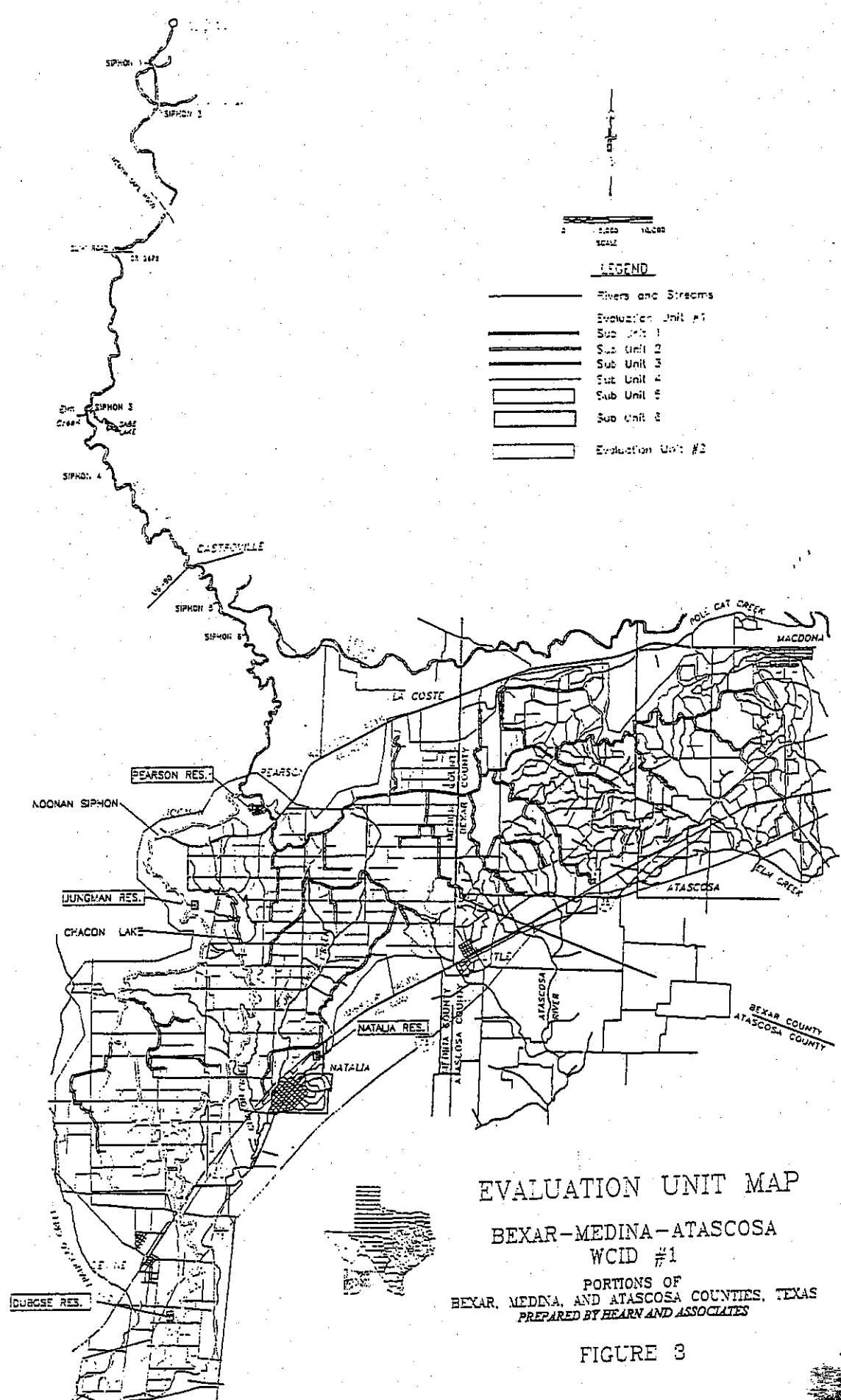
¹ BexarMet will invest an estimated \$1,000,000.00 to be able to take water at Kelley Road location beginning in December 1999. Of that amount at least \$500,000.00 will be used to construct an off-channel reservoir that is intended to be eligible for Local Sponsor Credit under P.L. 83-566, which would entitle BMA to receive \$500,000 in matching federal grant monies. For this reason it is shown as "additional" income to BMA in this year. **BMA WILL NOT ACTUALLY RECEIVE THE \$500,000.00, HOWEVER, it will be an "in-kind" contribution to the BMA District in the form of improvements to the system.**

² This payment is an "investment" by BexarMet to facilitate improvements to the BMA System. BexarMet does not receive any credit toward the purchase of water from BMA. BexarMet does, however, get the price per acre-foot for the first 10,000 acre-feet of priority water frozen at \$69.00/acre-foot through the year 2012. Each year, beginning in 2001, an additional 1000 ac-ft of the 19,974 ac-ft of municipal water is converted to "Priority Water" under the Agreement. For years beyond 2010, BexarMet has the option, not the obligation to make contributions to the P.L. 83-566 Project. Beyond 2012, the per ac-ft price will be adjusted to reflect the "market price" for water.

³ Under the 1992 Agreement BexarMet has a credit in the amount of \$1,455,000, and under the 1995 Agreement a credit in the amount of \$336,000. The total credit of \$1,791,000 has been reduced by sales of water to BexarMet since 1997 for resale to ColorSpot. For the period June 1997 through October 1999 BMA delivered 2945.403 ac-ft to BexarMet which generated a reduction in the 1992 credit in the amount of \$164,942.57. That leaves a credit balance (as of October 31, 1999) of \$1,626,057. That amount will be recouped under the 1999 Agreement in equal annual installments of \$135,504 spread over twelve (12) years beginning in 2001. The actual recoupment will occur as an estimated monthly offset of \$11,292 against the payments due BMA from BexarMet. Additional water was sold to BexarMet between November 1, 1999 and Closing. Those amounts will be calculated as of "Closing" of the 1999 Agreement, and a supplemental chart will be created and incorporated into the agreement reflecting the effect of those sales to reduce the amount of the total credit and how it will be recouped using the formula set forth herein.

Reader No. F1188-26
JULIUS BLUMBERG, II
NYC 10013
@10% P.C.M.

EXHIBIT F



0 5,000 10,000
SCALE

LEGEND

- Rivers and Streams
- Evaluation Unit #1
- Sub Unit 1
- Sub Unit 2
- Sub Unit 3
- Sub Unit 4
- Sub Unit 5
- Sub Unit 6
- Evaluation Unit #2

EVALUATION UNIT MAP

**BEXAR-MEDINA-ATASCOSA
WCID #1**

PORTIONS OF
BEXAR, MEDINA, AND ATASCOSA COUNTIES, TEXAS
PREPARED BY HEARN AND ASSOCIATES

FIGURE 3