

**RESOLUTION NO. 23-R-89**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS APPROVING THE WATER SUPPLY CONTRACT BETWEEN SCHERTZ SEGUIN LOCAL GOVERNMENT CORPORATION AND SPRINGS HILL WATER SUPPLY CORPORATION, AND OTHER MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, Schertz Seguin Local Government Corporation (SSLGC), the City of Schertz (Schertz), the City of Seguin (Seguin), and the Springs Hill Water Supply Corporation (Spring Hill WSC) have previously entered into a Water Supply Contract, dated August 29, 2003, contemplating the sale of 840 acre-feet of water per year to Springs Hill WSC, for a period of 20 years; and

**WHEREAS**, the Springs Hill WSC desires to continue to obtain water from SSLGC and has requested to replace the existing Water Supply Contract with this new Water Supply Contract (Exhibit A); and

**WHEREAS**, the SSLGC has approved the proposed Water Supply Contract on August 17, 2023; and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to approve the Water Supply Contract to ensure that the citizens and businesses of Schertz continue to receive excellent and vital water service at a more favorable rate.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:**

Section 1. The City Council hereby authorizes the approval of the Water Supply Contract between the Schertz Seguin Local Corporation and Springs Hill Water Supply Corporation as substantially proposed in Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be

valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ, TEXAS

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Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, City Secretary

Exhibit A

Water Supply Contract between SSLGC and Spring Hill WSC

**WATER SUPPLY CONTRACT  
SPRINGS HILL WATER SUPPLY CORPORATION (840 Acre-Feet)**

THIS WATER SUPPLY CONTRACT (the "Contract") is dated and entered into as of the 30th day of August, 2023 (the "Effective Date"), by and among the Schertz/Seguin Local Government Corporation (the "Corporation"), a non-profit corporation of the State of Texas, created and existing under the laws of the State, including the Texas Transportation Corporation Act, as amended, Texas Transportation Code Section 431.001 et. seq., the City of Schertz, Texas, a home-rule city ("Schertz"); the City of Seguin, Texas, a home-rule city ("Seguin"); and the Springs Hill Water Supply Corporation, a non-profit water supply corporation under Texas Water Code, chapter 67 (the "Customer").

**RECITALS**

WHEREAS, Seguin and Schertz (collectively, the "Cities") have previously determined to authorize and approve the creation of the Corporation as their constituted authority and instrumentality to accomplish the specific public purpose of acquiring, constructing, improving, enlarging, extending, repairing, maintaining, and operating a water utility system, pursuant to the provisions of Chapter 552 of the Texas Local Government Code, as amended, and other applicable law; and

WHEREAS, the Cities, pursuant to Subchapter D of Chapter 431 (Sections 431.101-431.109) of the Texas Transportation Code and other applicable law, have authorized the creation of the Corporation for the purposes set forth in the Corporation's Articles of Incorporation, including the issuance of bonds to finance the costs of the water utility system; and

WHEREAS, each of the Cities and the Corporation have entered into a contract entitled "Regional Water Supply Contract," dated November 15, 1999 (the "Corporation/City Contract") which unconditionally obligates each of the Cities to pay one-half of the debt service on the Corporation's bonds and entitles each of the Cities to one-half of the water provided by the Corporation; and

WHEREAS, each of the Cities and the Corporation have entered into a Cost Allocation Agreement dated August 30, 2016 Relating to the Guadalupe Project, a copy of which has been provided to Customer; and

WHEREAS, each of the Cities and the Corporation have entered into a Tri-Lateral Agreement dated March 20, 2018 Relating to the Water Sales, a copy of which has been provided to Customer; and

WHEREAS, in order to deliver the water to which the Cities are entitled under the Corporation/City Contract and to other potential purchasers on a regional basis, the Corporation has constructed facilities, lines, booster pumps, treatment facilities, and

other appurtenances, acquired interests in property, and acquired regulatory approvals for the production of groundwater, and subject to regulatory approvals and financing plans to construct additional facilities and acquire additional rights to produce groundwater (the "Water System"); and

WHEREAS, the Cities and the Corporation have determined that the Corporation's Water System capacity can be increased by developing additional sources of water, along with related production, treatment, and transportation facilities; and

WHEREAS, the Corporation, Schertz, Seguin, and Customer (collectively called the "Parties") previously entered into a regional water supply contract, dated August 29, 2003, contemplating the sale of 840 acre-feet of water per year to Customer (the "Regional Water Supply Contract"); and

WHEREAS, Customer desires to continue to obtain water from the Corporation and has requested to replace the Regional Water Supply Contract with this Contract; and the Corporation desires to replace the Regional Water Supply Contract with this Contract; and

WHEREAS, the "Contract Point of Delivery" as defined in the Regional Water Supply Contract is the Corporation's 30-inch main located on the south side of the Guadalupe River on \_Gamecock Road (the "Point of Delivery"); and the Corporation and Customer desire to continue use the same Point of Delivery;

WHEREAS, Customer has other options to obtain supplemental water to increase its water supply, and Customer has determined that obtaining water from Corporation and with the written consent of the Cities, is in Customer's best interest and that the terms and conditions of this Contract are fair and reasonable and that there is no disparate bargaining power between the Parties to this Contract; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, the Corporation, the Cities, and the Customer mutually undertake, promise, and agree as follows:

**ARTICLE I  
DEFINITIONS; INTERPRETATIONS; AND EXISTING CONTRACTS**

Section 1.01. Definitions. Capitalized words and phrases shall have the meanings assigned to them in the Corporation/City Contract, unless the context clearly requires otherwise.

Section 1.02. Interpretation. The caption headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. This Contract and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Contract.

Section 1.03. Corporation/City Contract. Customer acknowledges receipt of the Corporation/City Contract and the Corporation/City Contract is incorporated by reference into this Contract as if set forth verbatim herein. Customer acknowledges the following: (i) that Customer has read the Corporation/City Contract and is familiar with all of its terms, (ii) that this Contract is subject and subordinate in all respects to the Corporation/City Contract. Customer agrees that nothing contained in this Contract will be deemed to grant to Customer any rights that would conflict with any of the covenants, terms, and conditions of the Corporation/City Contract, except as set forth in Section 1.04 of this Contract, relating to the subordination of the Cities' rights to receive water. In the event of any inconsistencies between the terms of the Corporation/City Contract and this Contract, the terms of the Corporation/City Contract will control. To the extent applicable and except as expressly provided by this Contract or inconsistent with this Contract, the Customer shall have the same duties to the Corporation, the Trustee, and the holders of the Bonds relating to the Bonds as the Cities have to the Corporation, the Trustee, and the holders of the Bonds under the Corporation/City Contracts, but Customer shall not be obligated to pay the Annual Payment except as to the part of the rate paid to Corporation as provided by this Contract. Customer expressly acknowledges that it will take no action to adversely affect the tax-exempt status of the Corporation's bonds; and Corporation agrees that the quantity of water to be sold to Customer under this Contract does not adversely affect the tax-exempt status of the Corporation's bonds.

Section 1.04. Subordination of Cities' Rights. Under the Corporation/City Contract, Schertz and Seguin each have a right to receive fifty percent (50%) of the water produced by the Corporation from the Corporation's Water System. Subject to the terms and conditions of this Contract, Schertz and Seguin each subordinate their right to receive water in equal amounts from Corporation so that Corporation may supply water to Customer in accordance with this Contract. Schertz and Seguin shall each remain unconditionally obligated to pay Corporation the amount due under the Corporation/City Contracts, but the Corporation, Schertz, and Seguin acknowledge and agree that the amounts payable by Schertz and Seguin should be reduced by the Corporation's actual receipt of the amounts paid by Customer under this Contract, so as between Corporation, Schertz, and Seguin and for the purposes of Section 3.05 of the Corporation/City Contract, the amounts paid by Customer to Corporation shall be considered to be proportionate payments of the Annual Payments required to be paid by Schertz and Seguin under the Corporation/City Contract.

Section 1.05. Source of Water. Customer agrees that the source of the water supplied by the Corporation will be from the Corporation's wells and water treatment plant located in Guadalupe County, once those wells and treatment plant are functional and acknowledges and agrees that the rate for water from those facilities may be higher than the rates for water from the Corporation's facilities located in Gonzales County. Corporation may, but shall not have any obligation under this Contract or otherwise, to supply water to Customer from the Corporation's wells and treatment plant located in Gonzales County, Texas and existing as of the Effective Date of this

Contract, unless (i) the Corporation is unable to fulfill its responsibilities and obligations to supply water to Customer from the Corporation's then-existing alternative sources of supply and (ii) the Corporation has water then-available that is projected to be in excess of the demands of customers under contracts with the Corporation entered into before the Effective Date of this Contract.

## **ARTICLE II SPECIAL PROVISIONS**

Section 2.01. Mutual Cancellation of Regional Water Supply Contract. Beginning on the Effective Date of this Contract, this Contract shall supersede and replace the Regional Water Supply Contract, as amended and extended. Amounts owed by Customer to the Corporation, Seguin, or Schertz pursuant to the Regional Water Supply Contract shall continue to be due and payable under the terms of this Contract. As partial consideration for this Contract, Customer waives all claims and causes of action, if any, that Customer may have under the Regional Water Supply Contract against the Corporation, Seguin, or Schertz. As partial consideration for this Contract, Corporation, Seguin, and Schertz each waive all claims and causes of action, if any, that Corporation, Seguin, and/or Schertz may have under the Regional Water Supply Contract against the Customer, save and except for any payments due and owed by Customer under the Regional Water Supply Contract, if any.

Section 2.02. Required Improvements at Point of Delivery. Corporation acknowledges Customer's recently added booster pump station at the Point of Delivery but Corporation requires, in accordance with recognized engineering practices and the applicable regulatory guidance, that Customer construct and install, at Customer's sole expense, a ground storage tank at the Point of Delivery with an airgap.

A. The ground storage tank with an air gap shall be constructed in accordance with plans and specifications submitted to, and approved by the Corporation, which approval shall not be unreasonably withheld or delayed.

B. Customer must complete the construction of the ground storage tank with air gap as soon as practical, which shall be no later than three (3) years from the Effective Date of this Contract. If Customer does not timely complete the ground storage tank with air gap by that date, Customer shall be in breach of this Contract and Corporation may suspend delivery of water.

C. All delivery of water from Corporation to Customer under this Contract shall be through an approved back-flow prevention method at the Point of Delivery prior to completion of the ground storage tank with air gap; and, then after the completion of the ground storage tank with air gap, only through the ground storage tank with air gap at

the Point of Delivery.

### **ARTICLE III DELIVERY OF WATER**

Section 3.01. Connection. Subject to the terms and conditions of this Contract, the Corporation will allow Customer to continue the existing connection of Customer's water system to the Corporation's Water System at the Point of Delivery.

Section 3.02. Delivery. The Corporation will deliver to Customer the water that is subject to the terms and conditions of this Contract at (or through) the Point of Delivery.

Section 3.03. Volume. The volume of water actually delivered by Corporation to the Customer under this Contract depends upon Customer's demand, but the amount of water delivered and the rate of delivery shall not exceed any of the following maximums:

Annual Maximum not to exceed 840 acre-feet (273,714,840 gallons);

Monthly Maximum not to exceed 70 acre-feet (22,809,570 gallons);

Daily Maximum not to exceed 750,000 gallons; and

Maximum Instantaneous not to exceed 782 gallons per minute (1.5 times the rate of 750,000 gallons per twenty-four hours.

Corporation will deliver the water to the Customer at the Point of Delivery at a minimum pressure of twenty pounds per square inch, except during those times when repairs, maintenance, or improvements are being performed on Corporation's water system or as a result force majeure. Corporation shall not be obligated to deliver water to the Customer at the Point of Delivery at a pressure exceeding twenty pounds per square inch, regardless of the maximum instantaneous flow allowed by this Contract.

The SCADA for the flow meter needs to be owned and controlled by Corporation and if Customer wants its own meter with SCADA or to monitor the Corporation's meter via SCADA, Customer may do so at its sole cost, but the Corporation will control the flow and bill on Corporation's meter and SCADA.

Section 3.04. Notice of Projected Requirements. By April 1 of each year, Customer shall notify Corporation of how much water Customer expects to take each month for the twelve months beginning on the next October 1 (such twelve month period beginning on October 1 and ending on the subsequent September 30 is a "Contract Year"). If Customer fails to provide Corporation with notice of the expected quantity of water to be taken in the upcoming Contract Year by April 1, then the Parties agree that Customer has agreed that the expected quantity of water to be taken in the upcoming Contract Year is the maximum amount of water allowed under this Contract.

Corporation shall not be obligated to deliver water to Customer in excess of the monthly amount unless Corporation has an additional supply available to deliver to Customer. To the extent that Customer's projected monthly demand for the upcoming Contract Year is less than the monthly maximum stated in Section 3.03 above, the Corporation may supply the excess to other persons for such upcoming Contract Year, provided such other person pays Corporation the Customer's portion of the debt service and fixed operation and maintenance charges allocated to the excess water, in which case Customer shall not be obligated to make such payment for such portion of water. Corporation shall have no duty to Customer, either express or implied, to market the excess water. For the Contract Year commencing on October 1, 2023, the Customer expects to take the maximum amount of water allowed under this Contract each month.

Section 3.05. Metering Station. At the Point of Delivery, the Customer at its own expense will maintain a site of sufficient size and configuration to install, operate, and maintain a valve, measuring, metering and recording devices, and other equipment or devices required by the Corporation (the "Metering Station"), together with a right of unrestricted ingress and egress between the site and a public road (the "Access Road"), electric power supply, and communication access. The location, size, and boundaries of the Metering Station and its location shall be subject to approval of the Corporation's Engineer. If the Metering Station is not located adjacent to a public street or road, then the Customer will construct, at its sole expense, an all-weather access road between the Metering Station and a public road and an intruder-resistant fence along the perimeter of the Metering Station that meets or exceeds Texas Commission of Environmental Quality standards.

Section 3.06. Metering Equipment. In accordance with this Section, at the Point of Delivery, the Customer at its own expense shall maintain all facilities and equipment required to receive water at the Point of Delivery. The materials and equipment required will be reasonably determined by the Corporation's Engineer. Corporation shall at its own expense review and approve the design, equipment and materials submitted by the Corporation's Engineer. All such piping and equipment that are not on the Customer's side of the meter will become the property of the Corporation. All such piping and equipment on the Customer's side of the meter shall remain the sole property of the Customer.

Section 3.07. Water Conservation, Drought Contingency, and other Required Plans. Customer shall cooperate with and assist Corporation in its efforts to develop and implement plans, programs, and rules to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in use of water. Corporation's obligations under this Contract shall be subject to water conservation plans, drought contingency plans, or any other plan adopted by Corporation and required or approved by the Texas Commission on Environmental Quality (the "TCEQ"), the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans. As required by rules of

the TCEQ in effect on the Effective Date of this Contract, Customer shall develop and implement a water conservation plan or water conservation measures using the standards established by the TCEQ. If required by order of the TCEQ, Corporation may be required to implement water conservation strategies and, if Corporation is so ordered, then Customer will cooperate and consent to Corporation's implementation of such water conservation strategies required by the TCEQ. As required by TCEQ rules in effect on the Effective Date of this Contract, in case of a shortage of water resulting from drought, the water to be distributed by Corporation to its Customers will be distributed in accordance with the provisions of this Contract, or to the extent required by law.

Section 3.08. Water Quality. The water that Corporation delivers to Customer shall be of the same quality of water that Corporation delivers to the Cities. Customer has satisfied itself that such water is suitable for its needs. The quality of water to be supplied and delivered by the Corporation must meet the quality criteria prescribed by the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems, 30 TAC Chapter 290, subchapter F.

Section 3.09. Title. The title to the water shall transfer from the Corporation to the Customer on the discharge side of the meter located at the Point of Delivery. To the extent permitted by law, each of the Parties hereto hereby agrees to save and hold each other Party hereto harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such Party.

Section 3.10. Approvals. Unless otherwise required by law, each consent, approval, or other official action required of the Customer, either of the Cities, or the Corporation by any provision of this Contract shall be deemed in compliance with this Contract when written evidence of such action, signed by the respective Authorized Representative (as defined in the Corporation/City Contract), is delivered to the Party who is to receive evidence of such action. The Customer and Cities will cooperate with the Corporation in the design, financing, acquisition, and construction of the Point of Delivery and related facilities, and will not take any action or fail to take any action (including, without limitation, any exercise or denial of its consent or approval of any action proposed to be taken by the Corporation or any of its agents hereunder), if taking or failing to take such action, respectively, would unreasonably delay or obstruct the completion of the Point of Delivery by the Corporation.

Section 3.11. Retail Use. Customer will not construct facilities for providing retail service or supply water to persons (as defined by state law) who will use the water outside Customer's service area as shown by the CCN maps on file with the TCEQ as of the Effective Date of this Contract. Customer will not supply water received under this Contract, directly or indirectly, to any other person (as defined by state law) who resells the water.

Section 3.12. Air Gap. The water delivered by the Corporation to the Customer will be delivered through an air gap into Customer's ground storage tank as required by Section 2.02.

Section 3.13. Additional Facilities. To the extent it is necessary for Corporation to modify the Corporation System to deliver water to Customer under this Contract, as determined by Corporation in its sole discretion, then Corporation will notify Customer in writing. Upon receipt of such notice, Customer may (i) make any such necessary modification(s) at Customer's sole cost, (ii) reduce the amount of Water delivered to Customer under this Contract in order to mitigate the need for such modification(s), (iii) coordinate with other water suppliers to find an alternative to which Corporation is also agreeable; or (iv) terminate this Contract for convenience in its sole discretion. Upon receipt of such notice from Corporation and until Customer either resolves the issue under the four options, above, or terminates this Contract, Corporation's obligation to provide water to Customer under this Contract shall be reduced to the maximum amount that Corporation, as determined in its sole discretion, can deliver to Customer without risk to the Corporation's Water System.

Section 3.14. Right of Access. During the term of this Contract, Customer grants Corporation a right of access upon Customer's property at or adjacent to the Point of Delivery for the purpose of observing compliance with this Contract. Corporation may exercise such right only during normal business hours after notice to Customer and Corporation will comply with Customer's customary safety requirements for access to the site.

## **ARTICLE IV CUSTOMER PAYMENTS**

Section 4.01. Connection Fee. Customer shall not be obligated to pay a connection fee.

Section 4.02. Monthly Payments.

A. **Service Availability Charge.** As consideration for the service to be provided to Customer under this Contract, beginning with the month after the Effective Date, Customer agrees to pay Corporation, on take or pay basis, monthly charges calculated by multiplying the rate specified in section 4.03 below, expressed in a rate per thousand gallons, by the number equal to 22,809,570 thousands of gallons, whether or not Customer demands or receives any water from Corporation under this Contract during the prior month.

B. **Surcharge.** Customer acknowledges that (i) Section 3.03 of this Contract specifies certain maximum rates of delivery; (ii) if Customer exceeds any of those specified maximum rates of delivery, then Corporation may not be able to satisfy the needs of its other Customers who are receiving water within their stated maximum rates of delivery; and (iii) the surcharge specified herein, depending upon the nature of the

exceedance, may not allow the Corporation to recover its costs. For those reasons, Customer agrees that Corporation may, upon an exceedance the maximum rates of delivery and with prior written notice, restrict the rate of flow at the Point of Delivery to the maximum allowed by this Contract by means of restrictors or other physical means, or by controlling the rate of flow at the delivery point by using SCADA or other controls, unless the Parties agree otherwise or in the event of an emergency. Notwithstanding the foregoing, if at any time, the rate of withdrawal exceeds the allowed maximum quantity specified in Section 3.03 of this Contract, then the charge for the water taken shall be two times the then-applicable rate per thousand gallons, plus any charge or penalty imposed by any groundwater conservation district, unless the Parties agree otherwise.

C. **SSLGC Impact Fee.** Customer shall be obligated by this Contract to pay Corporation monthly, beginning on the first day of the calendar month occurring after the Effective Date of this Contract and continuing each calendar month during the term of this Contract, a charge equal to the product of multiplying the number of new service connections made to within Zone 1 of the Customer's water system (Zone 1 is described below) during each prior calendar month (which shall be self-reported by Customer) multiplied by the Corporation's "Treatment Impact Fee," that is effective on the Effective Date, in order to pay for capital improvements described in Corporation's capital improvements plan, as that plan is reviewed and modified from time to time; provided, however, SHWSC shall not be required to pay Treatment Impact Fees for more than the number of 1,132 LUEs of water service, which is based upon SHWSC's alternative capacity requirement factor of 0.46 gallons per minute per connection; and provided further, that if such factor changes during the term of this Contract, then (i) this maximum number of LUEs shall be recalculated based upon the new factor and (ii) if the number of allowable LUEs is lowered, then Customer shall receive a refund from Corporation for the number of Treatment Impact Fees paid in excess of the then-current allowable number of LUEs. The source of the funds used by the Customer to pay the monthly fee is within Customer's discretion, other than the monthly charge shall not be payable from property taxes, but Customer may, if it chooses to do so, without Corporation's objection, collect the fee from service applicants and label the charge as "SSLGC Impact Fee pass-through." The "Treatment Impact Fee" assessed within Customer's Zone 1 of the Customer's water system will not exceed the "Treatment Impact Fee" assessed by the Corporation upon new development within the City of Schertz. The boundaries of Customer's Zone 1, as of the Effective Date is shown on a map provided by Customer to Corporation, which map shall be incorporated by reference into this Contract. Customer may not restrict the territory within the boundaries of Zone 1 as of the Effective Date without the prior consent of the Corporation.

#### Section 4.03. Rate.

A. The initial rate paid by Customer to Corporation shall equal the rate, including monthly debt service payments paid by Customer beginning October 1, 2022 and that initial rate shall increase on October 1, 2023 to \$1.675 per thousand gallons for

Operation & Maintenance and lease payment expenses, plus an annual debt service charge of \$343,414 payable on a monthly basis depending upon the number of days in the month. Corporation reserves the right to modify the rate from time to time. The rate will recover the costs of having the water available for use as Customer may require, up to the maximums stated in this Contract, specifically including but not limited to a proportionate share of the debt service and other deposits and transfers on the basis that the 840 acre feet per year bears to the total amount of water that Corporation is permitted to produce and transport during the same billing period, plus a risk premium as described in 4.03(B), below. Such costs shall not include any costs of the capital improvements are paid for by the Treatment Impact Fees.

B. Customer acknowledges that Corporation may include Customer in a separate Customer class from Schertz and Seguin because Schertz and Seguin are unconditionally obligated to pay the debt service on the Corporation's Bonds outstanding on the Effective Date of this Contract. **Customer specifically acknowledges that for the services and water obtained by Customer from Corporation under this Contract, the rate methodology allows the Corporation to recover an amount based upon a percentage of the net capital cost of the project from which the water supplied to Customer is obtained, characterized and referred to in this Contract as a risk premium payable by the Customer to the Corporation that is remitted or credited to the Cities in equal amounts, and to recover as a cost of service an amount to be used as a capital outlay for future water supply is fair and reasonable.**

Section 4.04. Due Date. The monthly charges for a month shall be paid in full on or before the twentieth day of the next month.

Section 4.05. Other Charges. In the event any sales or use taxes, or taxes, assessments, production fees or charges of any similar nature are imposed on production, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by Customer from the Corporation, the amount of tax, assessment, or charge shall be borne by Customer, in addition to all other charges, and whenever Corporation shall be required to pay, collect, or remit any tax, assessment, or charge on water received by Customer, then Customer shall promptly pay or reimburse Corporation for the tax, assessment, or charge in the manner directed by Corporation.

Section 4.06. Default in Payments. All amounts due and owing to Corporation by Customer shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law as set forth in Chapter 1204, as amended, Texas Government Code. If any amount due and owing by Customer to Corporation is placed with an attorney for collection, Customer shall pay to Corporation, in addition to all other payments provided by this Contract, including interest, Corporation's collection expenses, including court costs and reasonable attorneys' fees. Corporation shall, to the extent permitted by law, suspend delivery of water to Customer if Customer remains delinquent in any payments due hereunder for a

period of sixty (60) days, and shall not resume delivery of water while Customer is so delinquent. Corporation may pursue all legal remedies against Customer to enforce and protect the rights of Corporation, the other Parties, and the holders of Corporation's bonds. It is understood that the foregoing provisions are for the benefit of the holders of Corporation's bonds.

Section 4.07. Pledge of Gross Revenue. Unless Customer has caused this contract to be approved and authorized by an election conducted by Customer pursuant to Texas Local Government Code, section 552.018(d) or other applicable law, Customer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its utility system, and that all such payments will be made from the gross revenues of its utility system. Customer represents and has determined that the water supply to be obtained from Corporation is absolutely necessary and essential to the present and future operation of its utility system, and, accordingly all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of Customer's utility system as described above with the effect that the obligation to make such payments from gross revenues of such utility system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds or other obligations heretofore or hereafter issued by Customer. Customer agrees throughout the term of this Contract to continuously operate and maintain its utility system and to fix and collect such rates and charges for utility services to be supplied by its utility system as will produce gross revenues in an amount equal to at least all of its payments under this Contract.

Section 4.08. Payment under Protest. If Customer at any time disputes the amount to be paid by it to Corporation, Customer shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Customer should have been less, or more, Corporation shall promptly revise the monthly payment in a manner that Customer, or Corporation, will recover the amount due.

Section 4.09. Customer Acknowledgments. By signing this Contract, Customer stipulates and agrees that Corporation and its other customers will be prejudiced if Customer avoids the obligation to pay the rates for water specified in this Contract while accepting the benefits of obtaining water from Corporation. Nothing in this Contract shall be construed as constituting an undertaking by Corporation to furnish water to Customer except pursuant to the terms of this Contract.

## **ARTICLE V TERM OF CONTRACT, REMEDIES, AND INDEMNITY**

Section 5.01. Term. This Contract shall be effective as of the Effective Date and shall continue in effect for a period of twenty (20) years from the Effective Date. This Contract may continue past such initial term for successive terms of one year each

unless at least sixty (60) days prior to the beginning of each such one-year term, including the first such one-year term, the Corporation, Customer, Schertz, or Seguin gives written notice to not extend this Contract.

Section 5.02. No Surviving Obligations. Upon termination, neither Customer nor Corporation will have any obligation to the other, except for payments due by the Customer to the Corporation at the time of termination.

Customer hereby acknowledges and agrees that it is obligated to develop alternate or replacement supplies of water prior to the expiration of the Term or any mutually agreed upon additional one-year period(s). Customer acknowledges that the supply of water pursuant to this Contract is for a specified term of years and that SSLGC will need the water provided hereunder to meet the Cities' future water supply needs. Neither Party shall be obligated to extend this Contract or enter into another water agreement for the benefit of the other Party.

Upon expiration of this Contract, SSLGC may close the valve at the Point of Delivery and after the valve is closed, it may not be reopened without the agreement of SSLGC, except as necessary to disconnect the Parties' Systems.

Section 5.03. Remedies. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination and damages) existing at law or in equity may be availed of by any Party hereto and shall be cumulative. Recognizing, however, that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees 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 and damages) which also may be available to each Party.

Section 5.04. Notice of Default Required. In the event a Party breaches any of its material obligations under this Contract, the other Party may provide the defaulting Party with written notice of the breach specifying the breach relied upon. The breaching Party will have the opportunity to cure the breach within (i) ten (10) business days from receipt of notice, if the breach is a monetary breach, or (ii) thirty (30) days after receipt of notice, if the breach is non-monetary; provided, however, if the breach results in a Party not being able to obtain water pursuant to this Contract, then the breaching Party shall cure the breach as soon as practical but no longer than twenty-four (24) hours. However if a non-monetary breach that does not result in the non-breaching Party being unable to take delivery of Water under this Contract cannot reasonably be cured within the 30-day period, the breaching Party will have a longer period of time, as reasonably necessary, to cure the breach, so long as the breaching Party commences to cure within the 30-day period and prosecutes the cure to completion with commercially reasonable diligence, and in any event, within ninety (90) days following receipt of the original notice. In addition to the other provisions of this Section 7.01, in the event Springs Hill has failed to timely pay Corporation in full as required under this Contract, then Corporation shall have the right, at its sole option,

and without liability to Springs Hill, to cease providing water to Springs Hill at the Point of Delivery until Springs Hill makes the payment to Corporation in full.

Section 5.05. Non-Binding Dispute Resolution. If any dispute between the Parties cannot be resolved to the mutual satisfaction of the Parties after meeting to resolve the dispute, then within three (3) business days following the notice to the other Party of the dispute, each Party to the dispute shall appoint an engineer with a minimum of ten (10) years' experience in designing or operating water systems in the greater San Antonio metropolitan area who shall confer and attempt to mutually agree upon a resolution of the disputed matter within ten (10) business days following their appointment. If the appointed engineers mutually agree on a resolution of the matter, the Parties agree to bring the agreed resolution to their governing bodies for approval. In the event that the appointed engineers cannot mutually agree on a resolution of the dispute, then within three (3) business days following the expiration of such ten-business-day resolution period, the engineers shall mutually appoint a disinterested engineer with a minimum of ten (10) years' experience in designing or operating water systems in the greater San Antonio metropolitan area that is not then employed by any Party to determine such matter within seven (7) business days following appointment. If the appointed engineers mutually agree on a resolution of the matter, the Parties agree to bring the agreed resolution to their governing bodies for approval. In the event of disputes relating to the appropriate amount of any cost, other than the rate adopted pursuant to this Contract, the dispute will be resolved with respect to comparable costs for comparable labor, materials or services rendered in connection with projects of comparable size. The Parties agree to implement the non-binding dispute resolution procedures provided for in this Section 5.05 prior to any Party exercising any of the applicable remedies provided for in Section 5.03 or 5.04, unless the dispute involves an emergency.

## **ARTICLE VI METERING AND MEASUREMENT**

Section 6.01. Unit of Measurement. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

Section 6.02. Measuring Equipment. In accordance with Sections 3.05 and 3.06 of this Contract, the Customer shall, at Customer's expense, furnish, install, operate and maintain the necessary electronic or other equipment and devices of standard type for measuring properly the quantity of water delivered at the Point of Delivery under this Contract. Such meter or meters and other equipment so installed shall remain the property of the Corporation. The Customer shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be done only by the employees or agents of the Corporation. For the purpose of this Contract, the original record or reading of the meter or meters shall be the journal or other record book of Corporation in its office in which the records of the employees or agents of the Corporation who take readings are or may be transcribed. Upon written request of Customer, the Corporation will give the

Customer a copy of such journal or record book, or permit the Customer to have access to the same in the office of the Corporation during reasonable business hours.

The Corporation shall test its meters annually, and if requested in writing by Customer to do so, in the presence of a representative of the Customer. The Parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if the check meters hereinafter provided for have been installed, the same shall also be calibrated by the Customer in the presence of a representative of Corporation and the Parties shall jointly observe any adjustment in case any adjustment is necessary. If the Customer shall in writing request Corporation to calibrate its meters and Corporation shall give the Customer notice of the time when any such calibration is to be made and a representative of the Customer is not present at the time set, the Corporation may proceed with calibration and adjustment in the absence of any representative of the Customer.

If either Party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such Party will promptly notify the other Party, and the Parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the said meter or meters shall then be adjusted to accuracy. Each Party shall give the other Parties forty-eight (48) hours' notice of the time of all tests of meters so that the other Parties may conveniently have a representative present.

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of accuracy limits as established in AVWVA Manual 6 – Testing of Meters, registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half ( $\frac{1}{2}$ ) of the time elapsed since the last date of calibration. If for any reason any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the Parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

The Customer may, at Customer's option and expense, install and operate a check meter to check each meter installed by Corporation, but the measurement of water for the purpose of this Contract shall be solely by the Corporation's meters, except in the cases hereinabove specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Corporation, but the

reading, calibration and adjustment thereof shall be made only by the Customer, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by Corporation with like effect as if such check meter or meters had been furnished or installed by Corporation.

If Customer requests Corporation to test the Corporation's meter, either more frequently than once every year required by this Section or because the Corporation's meter and the Customer's check meter show different readings, the Customer will pay the cost of the test if the test shows that the meter is accurate (within accuracy limits as established in AWWA Manual 6 – Testing of Meters), but if the test shows that the meter is not accurate (in excess of accuracy limits as established in AWWA Manual 6 – Testing of Meters), then Corporation will pay the costs for conducting the test.

## **ARTICLE VII GENERAL PROVISIONS**

Section 7.01. Participation by the Parties. The Parties to this Contract each represent to the others that it is empowered by law to execute this Contract and other agreements and documents as are or may hereafter be required to accomplish the same; and that its execution of this Contract have been duly authorized by action of its governing body.

Section 7.02. Force Majeure. If by reason of Force Majeure any Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, blue northers, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, inability on the part of the Corporation to deliver water for any reason, or on account of any other causes not reasonably within the control of the Party claiming such inability.

Section 7.03. Modification. No change, amendment, or modification of this Contract shall be made or be effective that will affect adversely the prompt payment when due of all money required to be paid by the Customer under the terms of this Contract.

Section 7.04. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any Party to the other parties must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the Corporation:

Manager  
Schertz/Seguin Local Government Corporation  
108 W. Mountain  
Seguin, Texas 78155

If to the Customer:

Manager  
Springs Hill Water Supply Corporation  
P.O. Box 29  
Seguin, Texas 78156

If to the Cities:

City Manager  
City of Schertz, Texas  
1400 Schertz Parkway  
Schertz, Texas 78154

City Manager  
City of Seguin, Texas  
210 East Gonzales  
Seguin, Texas 78155

The Corporation, the Customer, and the Cities hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other Parties.

Section 7.05. State or Federal Laws, Rules, Orders, or Regulations. This Contract is subject to all applicable federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction. The Customer, the Cities, and the Corporation represent that, to the best of their knowledge, no provisions of any applicable federal or State law, nor any permit, ordinance, rule, order, or regulation of either Party will limit or restrict the ability of either Party to carry out their respective obligations under or contemplated by this Contract.

Section 7.06. Severability. The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Contract or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

Section 7.07. Waiver. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the Corporation to receive the payments from the Customer, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any Party hereto or of the performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 7.08. Venue. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Guadalupe County, Texas, which is the County in which the principal administrative offices of the Corporation are located. It is specifically agreed among the parties to this Contract that Guadalupe County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Guadalupe County, Texas.

Section 7.09. Succession and Assignment. This Contract is binding on and inures to the benefit of the Parties hereto and their respective successors, representatives, and assigns. This Contract may not be assigned by any Party hereto without prior written notice to and approval by the other parties, which consent may be withheld without cause. The provisions of this Section do not affect the assignment of the Corporation's rights under this Contract to the Trustee.

Section 7.10. Entire Contract. This Contract constitutes the entire agreement among the Parties with respect to the matters described herein.

Section 7.11. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of Texas, and the obligations, rights, and remedies of the Parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 7.12. Counterparts. This Contract may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 7.13. Officers and Agents. No officer or agent of Corporation and the Cities, or Customer is authorized to waive or modify any provision of the Contract. No modifications to or rescission of this Contract may be made except by a written document signed by Corporation's, the Cities', and Customer's authorized representatives.

Section 7.14. Recitals. The Cities, the Customer, and the Corporation agree that the recitals in this Contract are true and correct and are incorporated into the terms of this Contract.

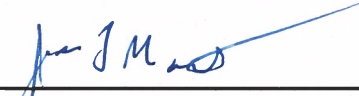
Section 7.15. Approval by Parties. Attached as Exhibit "A" are the official actions of Schertz, Seguin, and the Corporation evidencing approval of and consent to this Contract as required by the terms of the Corporation/City Contract.

Section 7.16. Condition Precedents. The Corporation's, Schertz', and Seguin's obligations in this Contract are contingent upon approval of this Contract by the Corporation, Schertz, and Seguin.

Section 7.18. No Third-Party Beneficiary. No Partnership. This Contract is not intended to confer any rights, privileges or causes of action upon any third party. The relationship of the Parties under this Contract is not and shall not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties shall be an independent contractor relationship. No Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Parties.

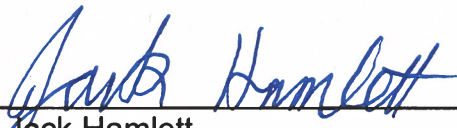
IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly effective as of the day and year first above written, regardless if any Party's governing body approves this Contract after the stated Effective Date or whether a Party's representatives signs this Contract after the stated Effective Date.

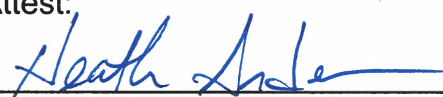
SPRINGS HILL WATER SUPPLY CORPORATION

By:   
James Martin  
President, Board of Directors

Attest:  
  
Bernie Mueller  
Secretary, Board of Directors

SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION

By:   
Jack Hamlett  
President, Board of Directors

Attest:  
  
Heath Anders  
Secretary, Board of Directors

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Additional Signature Pages to Follow

CITY OF SCHERTZ, TEXAS

By: \_\_\_\_\_  
Ralph Gutierrez  
Mayor

Attest:

\_\_\_\_\_  
Sheila Edmondson  
City Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney

CITY OF SEGUIN, TEXAS

By: \_\_\_\_\_  
Donna Dodgen  
Mayor

Attest:

\_\_\_\_\_  
Naomi Manski  
City Secretary

Approved as to form:

\_\_\_\_\_  
City Attorney