

RESOLUTION 24-R-112

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE TEMPORARY WATER SUPPLY CONTRACT BETWEEN THE 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, which expires August 30, 2043, contemplating the sale of 840 acre-feet of water per year to Springs Hill WSC; and

WHEREAS, the Springs Hill WSC has requested additional temporary water supply from SSLGC in addition to the existing Water Supply Contract with this new Temporary Water Supply Contract (Exhibit A); and,

WHEREAS, the City staff of the City of Schertz has recommended that the City approve the agreement as adopted by the SSLGC Board of Directors on August 15, 2024; and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve the Temporary 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 Temporary Water Supply Contract between the Schertz Seguin Local Government 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit A

“TEMPORARY WATER SUPPLY CONTRACT”

**TEMPORARY WATER SUPPLY CONTRACT
SPRINGS HILL WATER SUPPLY CORPORATION (1,250 Acre-Feet)**

THIS TEMPORARY WATER SUPPLY CONTRACT (the "Contract") is dated and entered into as of the ____ day of _____, 2024 (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 Texas 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, Customer desires to obtain water from the Corporation for a temporary, five year period while it develops additional water supplies from other sources; and

WHEREAS, Customer has other options to obtain supplemental water to increase its water supply for the term of this Contract, 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.

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ARTICLE II SPECIAL PROVISIONS

Section 2.01. Point of Delivery. The Point of Delivery will be at a location mutually acceptable to the Corporation and Customer. If said Point of Delivery is approved to be at the current Point of Delivery locale, this contracted volume of water will only become available after the completion of one or more new Ground Storage Tanks (GSTs).

Section 2.02. Required Improvements at Point of Delivery. Customer is required to construct, at its sole cost, all facilities and equipment to receive water from Corporation at the Point of Delivery. The design and construction of all facilities and equipment shall be subject to review and approval by Corporation's consulting engineer. Customer shall not start the construction or installation of any of the facilities or equipment until Corporation's consulting engineer has approved the plans and specifications for all of the facilities and equipment. Customer shall not approve any change order relating to the facilities and equipment unless and until Corporation's consulting engineer has reviewed and approved the change order. All facilities and equipment shall be designed in a new delivery point to SSLGC design standards, which comport with nationally recognized standards.

A. The facilities and equipment to be installed by Customer at the Point of Delivery must include the piping to the top of the Customer's existing ground storage tank so that the water flows through an air gap of at least the spacing required by the TCEQ or Corporation's consulting engineer. Customer shall not install any bypass or in-line booster pump between the connection to Corporation's transmission main and the air gap. The elevation of the top of the piping into Customer's ground storage tank shall not exceed forty (40) feet above an established ground surface elevation datum at that site and as specified by the Corporation's engineer.

B. Customer must complete the construction of the facilities and equipment at the Point of Delivery as a condition precedent to the Corporation's obligation to supply water to Customer pursuant to this Contract, but Customer is obligated to pay Corporation as described in this Contract beginning on the Effective Date of this Contract. If Customer receives water from Corporation without the required air gap, Customer shall be in breach of this Contract and Corporation may suspend delivery of water.

C. The required facilities and equipment shall specifically include, but not be limited to the facilities and equipment described in Sections 3.05 and 3.06, together with SCADA receiving and transmitting devices compatible with Corporation's SCADA system.

Section 2.04. Temporary Supply. This Contract is temporary, only for a five-year period of time. During the term of this Contract, Customer shall diligently develop alternative water supplies to replace the water that will be supplied under this Contract. Corporation shall have no duty under this Contract to continue to supply water to Customer when this Contract expires. Customers waives any right that Customer may have under the law to require Corporation to continue to supply water to Customer or to seek an order from a court or administrative agency requiring Corporation to continue to supply water to Customer after this Contract expires.

ARTICLE III DELIVERY OF WATER

Section 3.01. Connection. Subject to the terms and conditions of this Contract, the Corporation will allow Customer to establish a 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 1,250 acre-feet (407,313,750 gallons);

Monthly Maximum:

April 1 thru September 30: not to exceed 67.4acre-feet (21,960,000 gallons)

October 1 thru March 31: not to exceed 161 acre-feet (52,416,000 gallons);

Daily Maximum:

April 1 thru September 30: not to exceed 720,000 gallons;

October 1 thru March 31: not to exceed 1,728,000 gallons;

and

Maximum Instantaneous:

April 1 thru September 30: not to exceed 500 gallons per minute.

October 1 thru March 31: not to exceed 1,200 gallons per minute.

Corporation will deliver the water to the Customer at the Point of Delivery at a minimum pressure of twenty pounds (20) 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 (20) 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 obtain and 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 to the Metering Station from the adjacent public roadways, 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.

Section 3.06. Metering Equipment. In accordance with this Section, at the Point of Delivery, the Customer at its own expense shall install and 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 Customer's Engineer. The valve(s) and meter(s), piping and equipment that are on the Corporation'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 Customer.

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, a monthly service availability charge consisting of the following components:

1. one twelfth (1/12th) of the annual charge based upon the rate specified in section 4.03 below, as periodically adjusted, expressed in a rate per thousand gallons, based upon 325,851 gallons per acre foot multiplied by the annual maximum of acre-feet stated in section 3.03 of this Agreement, whether or not Customer demands or receives any water from Corporation under this Contract; and

2. one twelfth (1/12th) of the Customer's proportionate share (as described below) of the debt service on the Corporation's bonds issued to finance the Corporation's facilities located in Guadalupe County as follows: the water treatment plant, water production wells, and the pipelines, roads, and utility lines connecting the wells to the treatment plant;

Customer's proportionate share of the debt service shall be determined as follows: 1,250 acre-feet divided by the total number of acre-feet committed by Corporation from Corporation's Guadalupe water treatment plant to Customer and others. Corporation shall have no duty to market water from the Guadalupe water treatment plant to others or to shift production of water from Corporation's Gonzales water treatment plant to the Guadalupe water treatment plant.

Customer's monthly payments shall begin the first calendar month after the effective date of this Contract. Customer's proportionate share of annual debt service shall be pro-rated for the number of calendar months remaining in Corporation's fiscal year after the effective date.

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. **Water Acquisition Fee.** In order to compensate Corporation for reserving the 1,250 acre-feet per year for Customer, Customer shall pay Corporation an annual water acquisition fee, payable in monthly installments, the Corporation's projected, estimated, annual cost of procuring 1,250 acre-feet of water. The annual fee shall equal the total amount that Corporation paid landowners under water leases for 1,250-acre feet of water during the Corporation's prior fiscal year and that sum will be divided by twelve. During the Corporation's 2022-2023 fiscal year ending on September 30, 2023, Corporation paid approximately \$ 161.95 per acre foot of water under all of its water leases. From the Effective Date of this Contract until September 30, 2024, Customer shall pay Corporation \$ 16,869.79 per month. Beginning October 1, 2024, the amount of the water acquisition fee will be adjusted based upon the total water lease payments from October 1, 2023 until September 30, 2024. The same calculation shall be performed during each successive fiscal year during the term of the Contract.

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 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. Corporation reserves the right to modify the rate and debt service amount 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 1,250 acre feet per year bears to the total amount of water that Corporation is contractually committed to Customers and others, other than the City of Schertz and the City of Seguin to produce from Corporation's water treatment plant located in Guadalupe County. Such costs shall not include any costs of the capital improvements that are paid for by the Treatment Impact Fees.

B. The Corporation will use its best efforts to adjust rates once per year effective beginning October 1, but the Corporation reserves the right to adjust rates from time to time and at any time the Corporation deems necessary to address costs that were not expected at the time the rates were set, such as an unexpected significant increase for electric power and chemicals, production, transportation, or other fees assessed by local groundwater districts or the State, or water lease payments. The Corporation will provide Customer with as much notice of a rate change as may be practical under the circumstances.

C. 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 or credit the overpayments by Customer.

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 five (5) years from the Effective Date. This Contract may continue past such initial term for successive terms of one year each unless at least one hundred-twenty (120) 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 AWWA 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 (½) 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:

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

If to the Customer:

General 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; provided however, the Customer may assign all of its rights under this Contract to the Springs Hill Special Utility District. 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

[Remainder of Page Intentionally Left Blank]
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:

Kristin Mueller
City Secretary

Approved as to form:

City Attorney