

DOCKET NO. \_\_\_\_\_

APPEAL OF SANTO SPECIAL UTILITY	§	BEFORE THE
DISTRICT AND STURDIVANT	§	
PROGRESS WATER SUPPLY	§	PUBLIC UTILITY COMMISSION
CORPORATION OF THE WATER RATE	§	
INCREASE OF THE CITY OF MINERAL	§	OF TEXAS
WELLS	§	

**JOINT PETITION OF SANTO SPECIAL UTILITY DISTRICT AND  
STURDIVANT PROGRESS WATER SUPPLY CORPORATION APPEALING THE  
WHOLESALE WATER RATE INCREASE OF THE CITY OF MINERAL WELLS**

NOW COMES Santo Special Utility District (“Santo SUD”) and Sturdivant Progress Water Supply Corporation (“Sturdivant WSC”) (collectively, “Petitioners”), and file this joint Petition challenging the wholesale water rate increase of the City of Mineral Wells, Texas (“City”) pursuant to Texas Water Code § 13.043(f) and 16 Texas Administrative Code § 24.305. The applicable rate and issues are identical as to Petitioners, and Petitioners therefore file this joint Petition in the interest of efficiency.

Petitioners respectfully provide the following information in support of this joint Petition:

**I. PARTIES**

1. Santo SUD is a special utility district operating under Chapters 49 and 65 of the Texas Water Code. Santo SUD purchases wholesale water from the City to provide retail water service to approximately 1,150 customers. Santo SUD is a “retail public utility” pursuant to Texas Water Code §§ 13.002(19) and 13.043(f).

2. Sturdivant WSC is a non-profit water supply corporation operating under Chapters 49 and 67 of the Texas Water Code, and Chapter 22 of the Texas Business Organizations Code. Sturdivant WSC purchases wholesale water from the City to provide retail water service to approximately 1,048 customers. Sturdivant WSC is a “retail public utility” pursuant to Texas Water Code §§ 13.002(19) and 13.043(f).

3. The City is a Texas municipal corporation. The City is a “retail public utility” providing wholesale water service to Petitioners pursuant to Texas Water Code §§ 13.002(19) and 13.043(f).

## **II. FACTS SUPPORTING PETITION**

4. Santo SUD and the City entered into a wholesale water supply contract effective on August 2, 2011, a copy of which is attached to this joint Petition as **Exhibit A**.

5. Sturdivant WSC and the City entered into a wholesale water supply contract effective on August 10, 2023, a copy of which is attached to this joint Petition as **Exhibit B**.

6. The City Council voted on September 12, 2023, to increase its wholesale water rate from \$7.79 per each 1,000 gallons to \$19.17 per each 1,000 gallons, effective on invoices received from the City on/after November 1, 2023.

7. Sturdivant WSC received official notice of the City’s rate increase by mail on October 2, 2023, a copy of which is attached to this joint Petition as **Exhibit C**. Santo SUD did not receive official notice of the City’s rate increase. Santo SUD received a bill dated November 30, 2023 that reflects the City’s new rate, a copy of which is attached to this joint Petition as **Exhibit D**. As a result, the earliest deadline applicable to Petitioners under Texas Water Code § 13.043(f) is January 2, 2024, and this joint Petition is therefore timely filed.

## **III. RELIEF REQUESTED**

8. The City’s 146% increase in its water rate to Petitioners does not meet the “just and reasonable” standard set forth in Texas Water Code § 13.043(j). Petitioners received limited information from the City related to the rate increase. In reviewing a partial copy of the rate model that Petitioners received, however, Petitioners were able to determine that the City did not perform the industry standard cost of service analysis in the City’s rate study.

9. The contracts that Petitioners have with the City both provide that the rate can be increased by the City once per year. The contracts do not provide for a set rate and also do not provide a specific methodology that rate increases must follow. Although both contracts provide parameters for rate adjustments generally, such as the frequency of a rate increase, the rate is set by the City through a process that is outside of the contracts. The rate is therefore not charged pursuant to a contract as set forth in Texas Water Code § 13.0431, and Petitioners respectfully request a referral to the State Office of Administrative Hearings pursuant to 16 Texas Administrative Code § 24.307(c) for an evidentiary hearing on the new rate.

10. In the alternative, if a public interest hearing is required under Texas Water Code § 13.0431, Petitioners would be able to demonstrate that the new rate harms the public interest. The new rate violates at least one of the public interest criteria set forth in 16 Texas Administrative Code § 24.311(a).

11. Petitioners further respectfully request the establishment of an interim rate pursuant to Texas Water Code § 13.043(h) and 16 Texas Administrative Code §§ 24.37 and 24.101(h). The substantial rate increase imposed by the City was done without a cost of service analysis, and Petitioners file this joint Petition and request an interim rate in the best interests of their customers. Petitioners submit that an interim rate during the pendency of this case is necessary to avoid unreasonable economic hardship to Petitioners and their respective customers. Petitioners respectfully request that the Commission establish an interim rate at that equivalent to the rate in effect prior to the new rate increase, at \$7.79 per each 1,000 gallons.

#### **IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that the Commission find this joint Petition administratively complete, establish an interim rate until a final decision is made, and establish a just and reasonable wholesale water rate to be charged by the City as requested herein. Further, Petitioners pray for any such other and further relief to which they may show to be legally or equitably entitled.

Respectfully submitted,

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**ATTORNEY FOR PETITIONERS SANTO  
SPECIAL UTILITY DISTRICT AND  
STURDIVANT PROGRESS WATER SUPPLY  
CORPORATION**



## **CERTIFICATE OF SERVICE**

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on December 27, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



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Kristen O. Fancher

# **EXHIBIT A**

Santo SUD Contract with City

# COPY

## WHOLESALE WATER SUPPLY AGREEMENT

**THIS WHOLESALE WATER SUPPLY AGREEMENT** is made and entered into by and between the City of Mineral Wells, Texas (hereinafter called "Seller"), a municipal corporation, and Santo Special Utility District (hereinafter called "Purchaser"), a political subdivision of the State of Texas, organized and operating under the laws of the State of Texas.

### WITNESSETH:

**WHEREAS**, Purchaser owns and operates a water supply distribution system serving water users within Erath, Hood, Palo Pinto and Parker Counties, Texas; and

**WHEREAS**, Seller owns and operates a wholesale water supply distribution system with the capacity currently capable of providing water to the Purchaser; and

**WHEREAS**, Seller owns and operates a retail public water utility system within the state-certificated boundaries of water CCN No. 11213; and

**WHEREAS**, Purchaser owns and operates a retail public water utility system within the state-certificated boundaries of water CCN No. 11388; and

**WHEREAS**, Seller has not financed any portion of its water distribution system for the principal purpose of specifically providing Purchaser with water; and

**WHEREAS**, Seller obtains its water supply under its water purchase contract with the Palo Pinto County Municipal Water District No. 1; and

**WHEREAS**, the District obtains its water supply principally from Lake Palo Pinto; and

**WHEREAS**, Seller has received authorization from the District to resell water to Purchaser; and

**WHEREAS**, Purchaser is under no obligation to purchase water from Seller, and Seller is under no obligation to sell water to Purchaser; and

**WHEREAS**, Seller and Purchaser wish to enter into an agreement whereby Seller will provide water to Purchaser at rates that are generally applicable and uniformly applied to similarly situated customers; and

**WHEREAS**, Seller has agreed to sell to Purchaser, and Purchaser has agreed to buy from Seller, potable water on a take or pay basis, for use by Purchaser's retail customers, all in accordance with the terms and conditions as provided in this Agreement; and

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

### **1. DEFINITIONS AND CONSTRUCTION OF AGREEMENT**

1.1 The following capitalized terms used in this Agreement and in any exhibit or attachment that is or is made a part of this Agreement, and not otherwise defined herein, shall have the following meanings:

*Agreement.* The Parties' mutual promises, covenants and considerations as contained in this Wholesale Water Supply Agreement and any written amendments thereto.

*Business Day.* This term means any Day other than Saturdays, Sundays and Days on which banks in the City of Mineral Wells, Texas are required or permitted to be closed for all or part of their customary hours of operation.

*Calendar Year.* This term shall mean January 1 through December 31 of any given year.

*CCN.* A certificate of convenience and necessity, issued by the TCEQ.

*Claim.* Any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

*Day.* This term means a 24-hour period commencing at 0:00:00 hours each day and ending at 23:59:59 hours on the same day, determined by reference to prevailing Central time.

*District.* The Palo Pinto County Municipal Water District No. 1.

*Effective Date.* The last date on which this Agreement has been executed by the Parties.

*Force Majeure.* This term means and shall be limited to any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "Affected Party"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts, floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; and (iv) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority which shall in any circumstances under this Subsection impact a Party's ability to perform its obligations of the Agreement; provided, a "Force Majeure" shall not include economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic, or the inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

*Governmental Authority.* This term includes any federal, state, local or other governmental body; any governmental or quasi-governmental, regulatory or administrative agency commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

*Loss(es).* This term includes any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).



*Master Meter(s).* The necessary metering equipment, including a meter house or pit, rate of flow control device, and any other required devices of standard type, for properly measuring the quantity of water traveling through the Seller's Water supply distribution system to the Point(s) of Delivery.

*Maximum Diversion Rate.* The maximum rate at which Seller is obligated to deliver Water to Purchaser and Purchaser is authorized to take under this Agreement. The Maximum Diversion Rate is 510 gallons per minute.

*Maximum Annual Quantity.* The maximum quantity of Water which Seller is obligated to deliver to Purchaser and Purchaser is authorized to take under this Agreement during the twelve (12) month period commencing on the Effective Date and any subsequent twelve (12) month periods beginning on the anniversary of the Effective Date. The Maximum Annual Quantity is 108,000,000 gallons.

*Maximum Daily Quantity.* The maximum quantity of Water which Seller is obligated to deliver to Purchaser and Purchaser is authorized to take under this Agreement during any 24-hour period, based on meter readings taken by Purchaser on a consistent 24-hour basis. The Maximum Daily Quantity is 734,400 gallons.

*Maximum Monthly Quantity.* The maximum quantity of Water which Seller is obligated to deliver to Purchaser and Purchaser is authorized to take under this Agreement during any calendar month. The Maximum Monthly Quantity is 14,000,000 gallons.

*Monthly Demand Charge.* The minimum monthly charge which Purchaser is obligated to pay Seller, whether or not Water is actually taken as determined by Seller in accordance with this Agreement. For the purposes of this Agreement, the initial Monthly Demand Charge shall be \$256.42 per month, subject to adjustments provided for in this Agreement, beginning on the Effective Date.

*Monthly Volumetric Charge.* The amount to be paid by Purchaser to Seller for the monthly quantity of Water taken. For the purposes of this Agreement, the initial monthly

Volumetric Charge shall be \$3.60 per one thousand (1,000) gallons for all Water taken up to the Maximum Monthly Quantity, subject to adjustments provided for in this Agreement.

*Parties.* The Purchaser and Seller, collectively.

*Point(s) of Delivery.* The location(s) where Water is provided to Purchaser under this Agreement, as provided in Article 7 herein.

*Rates.* The price to be paid by Purchaser to Seller for Water taken under this Agreement, which shall be initially based upon this Agreement, and thereafter based upon the rate schedule contained in the most recent ordinance adopted by the City Council of Seller.

*Requirement of Law.* This term means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit or any other binding determination of any Governmental Authority.

*Seller Indemnified Party.* The Seller, its officials, employees, contractors, agents and representatives.

*Tax Equalization Charge.* A charge applied to customers who are not subject to an *ad-valorem* tax imposed by the District for the repayment of debt related to the supply of Water.

*TCEQ.* This term shall mean the Texas Commission on Environmental Quality, and its predecessor and successor agencies.

*Term.* This term shall mean the term of this Agreement, as more fully defined in Article 19 of this Agreement.

*Water.* Treated water meeting the standards of treatment established by the Texas Department of Health or the TCEQ and the provisions of the Safe Drinking Water Act, Title 42, Section 300F, U.S.C.A., as administered by the United States Environmental Protection Agency.

1.2 In this Agreement:

- a. unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural, (ii) the words "include," "includes," and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation," (iii) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement, (iv) "or" is used in the inclusive sense of "and/or," (v) unless otherwise specified, the terms "year" and "years" mean and refer to year(s);
- b. unless otherwise specified, any reference to any document, instrument or agreement (i) includes and incorporates all exhibits, schedules and other attachments thereto, (ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time; and
- c. unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

## **2. SALE TO PURCHASER**

As of the first day of the month following the Effective Date, Seller agrees to annually supply Water to Purchaser, at the Point of Delivery, in an amount not to exceed the Maximum Annual Quantity, where (i) any single monthly amount of Water furnished by Seller shall not exceed the Maximum Monthly Quantity and (ii) for any 24-hour period, the amount of Water furnished by Seller shall not exceed the Maximum Daily Quantity. Purchaser agrees that Seller is under no obligation to provide Purchaser with a sufficient amount of Water for Purchaser to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Purchaser under 30 Texas Administrative Code, Chapters 290 or 291, or any other Requirement of Law. Purchaser also agrees that Seller is under no obligation to



increase any of its Water utility infrastructure or capacity in order to satisfy any of the provisions of this Agreement.

### **3. SELLER'S APPROVAL**

3.1 In the event that Purchaser desires to make any improvements to Purchaser's pumping or distribution facilities or any other portion of its Water system equipment that could impact the Seller's Water system after the Effective Date, Purchaser shall provide written notice to Seller of its proposed improvements. This notice requirement shall not apply to temporary modifications to Purchaser's pumping or distribution facilities occasioned by equipment failure or emergency repairs.

3.2 Purchaser shall not commence final design or construction of any of the proposed improvements identified in any notice provided to Seller in accordance with this Section 3.1 unless and until Seller provides Purchaser with written approval of such improvements.

3.3 Purchaser acknowledges and agrees that Purchaser is solely responsible for all of the costs to design, construct, install, or otherwise complete any improvements identified by Purchaser in this Section 3.1 and approved by Seller in this Section 3.2. Purchaser further acknowledges and agrees that Seller has no obligation to design and/or construct additional infrastructure to its or Purchaser's Water utility system for the Water supply service afforded under this Agreement. If Purchaser's proposed improvements as identified in the notice provided under this Section 3.1 and approved by Seller require Seller to upgrade or otherwise modify its Water infrastructure, then Purchaser shall pay for all of Seller's actual costs for (i) the planning, siting, development, design, engineering, procurement, construction and testing; (ii) all pipes, pumps, mains, trunk lines, junctions, extensions, and other infrastructure, improvements and facilities; and (iii) easements and rights-of-way acquisitions for such improvements; provided, Seller includes an estimate of such costs in its written approval to Purchaser as contemplated by this Section 3.2.

3.4 Any action taken by Purchaser to begin the final design and/or construction of Purchaser's improvements after Seller provides Purchaser with its written approval, as

contemplated by this Section 3.2, constitutes Purchaser's acceptance of the actual costs for Seller's improvements as estimated in such written approval under this Section 3.2, if any. Any action taken by Purchaser to begin the final design and/or construction of Purchaser's improvements identified in this Section 3.1 without the prior approval of Seller under this Section 3.2 shall constitute a material breach of this Agreement.

#### **4. RATES AND COMPENSATION**

4.1 Subject to the adjustments provided for in Articles 5 and 6 of this Agreement, Purchaser shall pay to Seller, at the times and in the manner prescribed in Article 13 of this Agreement, the Monthly Demand Charge. In the event that Purchaser shall take Water in any calendar month, Purchaser shall pay to Seller a Monthly Volumetric Charge, multiplied by every 1,000 gallons of Water taken or portion thereof, as measured by the Master Meter(s).

4.2 Purchaser agrees that the Rates initially charged to Purchaser by Seller are just and reasonable and do not adversely affect the public interest, and that Purchaser's acceptance of such Rates was a significant inducement for Seller to enter into this Agreement. Purchaser also agrees that if Purchaser opposes, protests or seeks to overturn the initial Rates charged to Purchaser under this Agreement, then Seller may immediately terminate this Agreement without liability to Purchaser. Purchaser's rights to challenge future changes to these Rates as prescribed by law shall not be limited or abridged by any provision of this Agreement. Purchaser agrees to set and collect rates charged to its customers in a manner sufficient for Purchaser to make full and timely payment to Seller for Water provided under this Agreement.

#### **5. ADJUSTMENT**

5.1 Except as otherwise provided in this Section 5.1, the Rates to be paid by Purchaser for Water under this Agreement are subject to adjustment by the Seller during or after each September of each Calendar Year following the Effective Date. Any adjustment made by Seller shall remain in effect until the next adjustment of Rates, which shall occur no earlier than the September following the Day of the last adjustment to Rates. Any increase or decrease in the Rates shall be based on the cost of service to Seller. In determining the cost of service to the



Seller hereunder and in setting the Rates, the Seller may, but need not, consider, but shall not be limited to considering the following factors: operation and maintenance expenses, fixed costs, debt service requirements, costs of Water, contractual obligations, capital improvements attributable to Seller's entire Water system, administrative overhead, supplies, personnel services, utility services, demands on the Seller's Water system, wholesale tax equalization charge, if any, and all other costs or expenses directly related to Seller's ability to supply Water to its retail and wholesale customers, including Purchaser, and to meet the conditions of this Agreement, all as may be determined by the Seller to relate to performance hereunder. Further, the Rates may be adjusted, at any time, for an amount equivalent to any governmental restrictions, imposition, rental fee or charge levied, assessed or imposed by any new or amended federal or state law or regulation.

5.2 All books and records upon which such adjustment is based shall be made available to the Purchaser at the office of Seller during the regular business hours of the Seller, upon request by Purchaser.

#### **6. TAKING EXCESS WATER**

Purchaser shall monitor the amount of Water taken under this Agreement and shall immediately provide written notice to Seller in the event that it takes Water in excess of the Maximum Daily Quantity. In the event Purchaser takes more Water than the Maximum Monthly Quantity, as determined by the Master Meter(s), in any given month, Seller may charge Purchaser an amount equal to twice the Rate then prevailing for the purchase of Water under the terms of this Agreement for each one thousand (1,000) gallons of Water or portion thereof taken by Purchaser in excess of the Maximum Monthly Quantity. In the event that Purchaser takes Water in excess of the Maximum Annual Quantity, Purchaser shall correct the condition causing water to be taken in excess of the Maximum Annual Quantity, and Seller may charge Purchaser an amount equal to twice the Rate then prevailing for the purchase of Water under the terms of this Agreement for each one thousand (1,000) gallons of Water or portion thereof taken by Purchaser in excess of the Maximum Annual Quantity.

## **7. POINT(S) OF DELIVERY & PRESSURE**

The Point(s) of Delivery for Water delivered and taken under this Agreement is generally located at Hilltop Water Treatment Plant. Water will be furnished at the prevailing pressure of the District's Hilltop Water Treatment Plant, or its water transmission line, or the Sellers' Water distribution system at the Point(s) of Delivery, whichever is appropriate in the sole discretion of the Seller. Purchaser agrees to take Water at the Point(s) of Delivery at a rate not to exceed the Maximum Diversion Rate. If a greater pressure is requested by the Purchaser and the Seller agrees to provide the Water at such greater pressure, the entire cost of providing such greater pressure shall be borne by Purchaser. Emergency failure of Water pressure or Water supply shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service. The Parties may agree in writing to relocate Point(s) of Delivery or to add additional Point(s) of Delivery.

## **8. OWNERSHIP OF WATER**

As between the Parties, Seller shall own and shall be in exclusive control and possession of the Water until the Water is delivered to Purchaser at the Point(s) of Delivery, at which point Purchaser, as between the Parties, shall own and be in exclusive control and possession of the Water.

## **9. INSPECTION OF DISTRIBUTION FACILITIES**

Purchaser shall provide Seller with evidence of the number of service connections installed in any twelve month period within ten (10) days following receipt of a request from Seller, and shall permit Seller to inspect Purchaser's Water distribution facilities accompanied by Purchaser's licensed operator. Purchaser agrees to provide Seller with copies of all reports filed with state or federal agencies or departments having jurisdiction over the installation and operation of public water distribution systems within ten (10) days following receipt of a request from Seller.

#### **10. PURPOSE AND PLACE OF USE; RESALE OF WATER**

Purchaser shall use Water purchased from Seller under this Agreement only for municipal purposes, as that term is defined at Title 30 Texas Administrative Code § 297.1 (32). Purchaser may resell the Water to its own retail customers within its CCN service area, and Purchaser shall not permit the use of any of the Water furnished by Seller under this Agreement for any of the following purposes:

- a. resale by Purchaser to another retail public utility without prior written authorization from Seller; or
- b. resale by Purchaser to any customer inside the corporate limits or extraterritorial jurisdiction of Seller, the boundaries of which may be adjusted from time to time, without prior written authorization from Seller.

#### **11. WATER QUALITY**

Seller will exercise due diligence and follow best management practices to meet the applicable quality standards and any Requirement of Law for water furnished to Purchaser pursuant to this Agreement.

#### **12. METERING FACILITIES**

12.1 Purchaser shall, at its sole cost, furnish, install, test, operate and maintain at the Point(s) of Delivery the necessary Water tap and Master Meter(s) for properly measuring and recording the quantity of Water taken by Purchaser at the Point(s) of Delivery and the rate at which it is taken; provided, Purchaser's selection of such equipment shall be subject to Seller's approval. The measuring and recording devices and appurtenances shall be sufficient to prevent Purchaser from taking Water at a rate greater than the Maximum Diversion Rate. All maintenance and/or repairs to the Master Meter(s) shall be made by the Purchaser or a contractor on behalf of the Purchaser, at Purchaser's sole expense. Purchaser shall provide repairs to the Master Meter(s) in a prompt and timely manner. If Purchaser cannot make such repairs in a timely manner, then Seller shall have the option of making such repairs, and Purchaser shall pay Seller for all costs of



such repairs, which shall be included in the subsequent invoice that Seller delivers to Purchaser as provided under Article 13 of this Agreement.

12.2 The properly authorized officers, agents and representatives of Seller shall have access to the Master Meter(s), other metering equipment, and all other facilities of Purchaser associated with this Agreement during regular business hours when accompanied by, or with the permission of Purchaser's licensed operator. All facilities required for Purchaser to take Water under this Agreement, including but not limited to the Master Meters, shall be appropriately marked and lighted in the interest of the safety of Seller's officers, agents, and representatives.

12.3 Purchaser shall test the Master Meter(s) for accuracy once each twelve (12) month period, with such periods commencing on the Effective Date and each anniversary of the Effective Date thereafter. In the event that the percentage of accuracy of such metering equipment is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of Water taken under this Agreement. Purchaser shall give Seller five (5) days notice of its intent to test metering equipment and Seller shall have the right to be present when such testing is conducted. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then such meter shall be adjusted at once to register correctly and accurately, and the amount paid by Purchaser to Seller for the three (3) month period immediately preceding such test shall be adjusted in accordance with the percentage of inaccuracies found by such test. Purchaser shall afford Seller at least five (5) days notice of its intent to make any adjustments to the Master Meter(s) such that Seller is afforded the opportunity to observe any adjustments that are made to the Master Meter(s) in case any adjustments shall be necessary; provided, either Party can waive such right to observe such adjustments.

12.4 Seller shall have the right to request Purchaser to test any Master Meter(s) more frequently than once per twelve (12) month period as contemplated by Section 12.3 herein, but no more frequently than once per month. Upon any such request, Purchaser agrees to perform its testing and calibration of such Master Meter(s) following notice to Seller, and if a representative of Seller is present at such testing and calibration, the Parties shall jointly observe any

adjustments that are made to the Master Meter(s) in the event any adjustments shall be necessary. For such additional testing requests, the Purchaser shall give Seller notice forty-eight (48) hours in advance of the time when any such testing shall occur. Purchaser may proceed with such testing and adjustment, if necessary, in the absence of any representative of Seller. Seller shall pay the additional cost for any Master Meter tested if such test shows that the Master Meter is accurate to within two percent (2%) registration, but Purchaser shall pay the costs of the additional test and maintenance for each Master Meter where the results indicate that any Master Meter is not accurate to within two percent (2%) registration.

12.5 In the event such metering equipment is out of service or out of repair and the amount of Water taken cannot be ascertained or computed by reading the Master Meter(s), the amount of Water taken during this period shall be estimated by Seller based upon the amount of Water sold in the corresponding period in the year immediately prior to such failure, and adjusted for current conditions at the Seller's sole discretion.

### **13. BILLING AND PAYMENT**

13.1 For the purposes of this Agreement, Purchaser shall be billed for (i) the Monthly Demand Charge, (ii) the Monthly Volumetric Charge, based upon all the Water accepted at the Point(s) of Delivery as recorded by the Master Meter(s), and (iii) other fees and charges contemplated by this Agreement, including, but not limited to, the charge for taking excess Water. Payments for all charges arising under this Agreement shall be due and payable at Seller's address as shown in Article 23 of this Agreement (or at such other place as designated by Seller).

13.2 For purposes of billing, Seller shall read the Master Meter(s) on or about the last Business Day of each month (or more frequently if necessary as determined by Seller) and shall report the total quantity of Water taken for that month to Purchaser on or before the 10<sup>th</sup> day of the next calendar month.

13.3 Seller shall render to Purchaser at the address shown in Article 23 herein (or such other place as designated by Purchaser), on or before the tenth (10<sup>th</sup>) day of each calendar month, an itemized statement (each statement, an invoice), showing the charges for the quantity of Water



provided to Purchaser during the previous month in accordance with the then prevailing Rates and any other charges and fees incurred in accordance with this Agreement. Payments for each invoice rendered under this Agreement shall be due and payable in full at Seller's address shown in Article 23 herein (or at such other place as designated by Seller) on or before the twentieth (20<sup>th</sup>) day of each calendar month.

13.4 Should Purchaser fail to tender payment for each invoice in full when due, interest on the outstanding balance shall accrue at the rate of twelve percent (12%) per annum from the due date until payment is received by Seller.

13.5 Should Purchaser fail to tender payment in full to Seller within twenty (20) days of the due date, Purchaser will be in breach of a material term and/or condition of this Agreement and Seller may terminate this Agreement as provided in Article 14 of this Agreement.

13.6 If Purchaser at any time disputes the amount to be paid to Seller, Purchaser shall nevertheless timely make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Purchaser should have been less, or more, Seller shall promptly revise the next invoice amount in a manner that Purchaser or Seller will recover such amount due.

#### **14. DEFAULT AND TERMINATION**

14.1 Except as otherwise provided in this Agreement, in the event Purchaser breaches any of the material terms and/or conditions of this Agreement and upon written notice of such breach of material term(s) and/or condition(s) by Seller to Purchaser, Purchaser shall have thirty (30) days to cure any default(s) after notice is provided as provided by Article 23 of this Agreement. If such breach(es) is not corrected within the allotted time, or this Agreement is terminated in accordance with Articles 4 or 17, Seller shall have one or all of the rights, in addition to any other remedy available to it by law, as follows:

- a. suspension of delivery of Water hereunder; and



- b. termination of this Agreement without prejudice to any other remedy available to Seller.

14.2 In the event Seller breaches any of the material terms and/or conditions of this Agreement and upon written notice of such breach of material term(s) and/or condition(s) by Purchaser to Seller, Seller shall have thirty (30) days after notice is made as provided by Article 23 of this Agreement to cure any default(s). If such breach(es) is not corrected within the allotted time, Purchaser shall have the right to seek specific performance of this Agreement to insure continued water supplies for its retail customers and/or such other remedies as Purchaser may have at law or in equity.

14.3 Seller shall have the right, for its sole convenience and without cause, to terminate or suspend, in whole or in part, Seller's performance of any of its duties or obligations under this Agreement, upon thirty (30) days prior written notice to Purchaser, in the event that Purchaser does not purchase any Water during a twelve (12) month period.

14.4 Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 14.4 if it has met its obligations under Section 18.1, as limited by Section 18.3. The Party not claiming Force Majeure may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

14.5 Upon receipt of any notice of termination delivered pursuant to this Article 4, 14, or 17, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to (a) rights and obligations of the Parties arising during or relating to any period prior to termination, and (b) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this

Agreement, or if no express survival period is provided for, then until such obligations have been satisfied, or, if later, pursuant to any applicable statute of limitations.

#### **15. INDEMNITY BY PURCHASER**

15.1 In addition to the other remedies afforded to the Seller in this Agreement, Purchaser shall release, indemnify, defend and hold harmless every Seller Indemnified Party for, from and against any and all Losses, liens, causes of action, suits, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from, or related to (in whole or in part):

- a any environmental conditions caused by or contributed by Purchaser; or
- b. any act or omission of Purchaser's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.

15.2 Seller shall promptly notify Purchaser of any indemnified Losses or Claim for indemnified Losses in respect of which a Seller Indemnified Party may be entitled to indemnification under this Article 15. Such notice shall be given as soon as reasonably practicable after the Seller becomes aware of the Loss or Claim for Losses.

15.3 The amount owing to Seller will be the amount of Seller's Losses net of any insurance proceeds received by Seller following a reasonable effort by Seller to obtain such insurance proceeds.

15.4 Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other under any theory of tort, contract, strict liability or other legal or equitable theory, whether by way of indemnity or otherwise, for any lost profits, exemplary, punitive, special, incidental, indirect or consequential damages of the other Party; provided that the

foregoing is not intended to limit the indemnities which shall be recoverable for Claims by a non-Party.

## **16. PURCHASER'S OBLIGATIONS AND REPRESENTATIONS OF THE PARTIES**

16.1 Purchaser hereby agrees:

- a. To maintain careful inspection of its Water main pipes and Water distribution facilities, and to construct adequate system infrastructure sufficient to maintain adequate pressure to meet any Requirement of Law, independent of Seller's operating pressure.
- b. To exercise diligence and care in the maintenance of its Water lines, Water mains and distribution facilities and in the installation of connections and laterals that may be connected with its Water distribution system.
- c. To comply with any Requirement of Law and all applicable rules and regulations of the Texas Department of Health, TCEQ, and any other agency or department that has jurisdiction over the installation or operation of public water systems.
- d. To adopt and comply with the provisions of any water conservation and drought contingency plan adopted by Seller which is prescribed or approved by the TCEQ and/or Texas Water Development Board, including implementation of any necessary rationing plan or program which the Seller adopts and implements. In lieu of adopting the Seller's water conservation and drought contingency plans, Purchaser may implement alternative water conservation and drought contingency plans, provided those plans comply with Title 30 Texas Administrative Code, Chapter 288, will conserve the same or a greater amount of Water as under the plans implemented by Seller, and have been approved by Seller within thirty (30) days after the Effective Date, or for subsequently adopted plans, within thirty (30) days of their adoption by Purchaser. Such water conservation and/or drought contingency plans shall be applicable to Water taken by Purchaser from Seller.



- e. Purchaser shall notify Seller as promptly as possible of all emergency and other conditions of which it becomes aware which may directly or indirectly affect the quality of the Water provided by Seller and to provide Seller a copy, upon receipt, of all notices received from state or federal agencies or departments having jurisdiction over the installation and operation of public water systems.

16.2 Purchaser represents and warrants to Seller, as of the date of this Agreement, as follows:

- a. Purchaser is a special utility district and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.
- b. This Agreement has been duly executed and delivered on behalf of Purchaser, and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.

16.3 Seller makes no guarantee that the District will provide Seller with an adequate supply of water pursuant to the water supply contract between Seller and District. In the event Seller is unable to provide Purchaser with an adequate water supply because Seller does not receive all of the Water from the District that Seller is entitled to under such contract, Seller shall not be in breach or default of this Agreement and Purchaser shall not be relieved of its obligations thereunder if Seller continues to deliver Water to Purchaser at the point(s) of Delivery and the reduction in Water delivery to Purchaser is in direct proportion to the reduction in Water delivery by Seller to its own retail customers.

## **17. SUSPENSION OR CURTAILMENT OF DELIVERY OF WATER**

17.1 Seller shall have the right to conduct inspections and require tests of the Purchaser's Water distribution system. In the event Seller determines that Water from Purchaser's distribution system is flowing back into Seller's pipes or other delivery facilities or that the

condition of Purchaser's distribution system or other facilities could create a hazard to the health, safety or welfare of Seller's Water customers, or constitute a waste of the Water furnished under this Agreement, Seller shall have the immediate right to suspend delivery of Water and to disconnect any connections with Purchaser's Water distribution system until Seller is satisfied that such conditions have been corrected. Purchaser shall at Seller's request and at Purchaser's own cost, install back flow prevention devices at the Point(s) of Delivery. Any suspensions under this Section shall not impact Purchaser's obligations under this Agreement, and shall not constitute a breach of this Agreement by Seller.

17.2 Seller may, without liability, curtail the amount of Water delivered to Purchaser, during times of (i) drought, in accordance with Seller's water conservation and drought contingency plans; (ii) total or partial reduction in the amount of water provided to Seller by District; or (iii) under other conditions when it is necessary to curtail deliveries for the Seller, such as to maintain the operational stability of its Water supply and/or distribution system or comply with applicable federal, state, and local laws, rules, and ordinances. In the event of such curtailment, and when reasonably possible, Seller agrees to give Purchaser notice of such curtailment. Any curtailments by Seller under this Article shall not impact Purchaser's obligations under this Agreement, and shall not constitute a breach of this Agreement by Seller, so long as such curtailments are in direct proportion to the curtailment by Seller to its own retail municipal water customers.

17.3 Purchaser acknowledges that granting Seller authority to curtail the amount of Water delivered to Purchaser was a significant inducement for Seller to enter into this Agreement. Purchaser agrees that if Purchaser opposes, protests or seeks to overturn Seller's ability to curtail the amount of Water delivered to Purchaser under this Agreement, then Seller may immediately terminate this Agreement without liability to Purchaser.

## **18. FORCE MAJEURE**

### **18.1 Procedure for Calling Force Majeure**

- a. Notice of Force Majeure. The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Subsection 18.1.a. shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Subsection 18.1.a. shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies, and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.
- b. Obligations During Pendency of Force Majeure. The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under this Subsection 18.1.a.:
  - i. use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;
  - ii. furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and
  - iii. resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.
- c. Resumption of Performance. When the Affected Party is able, or would have been able if it had complied with its obligations under this Article 18.1, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then the period of



Force Majeure relating to such event or circumstance shall be deemed to have ended.

## 18.2 Effects of Force Majeure

- a. Relief From Obligation of Performance. Except as provided in Section 18.3 of this Agreement, provided it has complied with its obligations under Article 18.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.
- b. Relief From Obligation of Counterperformance. Except as provided in Section 18.3 of this Agreement, the non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

## 18.3 Limitations on Force Majeure

- a. Scope and Duration. No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure.
- b. No Extension of Term. Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.
- c. Continuing Responsibility to Make Payments. Regardless of the occurrence or continuation of an event or circumstance of Force Majeure, Purchaser shall not be relieved of its responsibility to make payments as required under this Agreement.

#### **19. TERM**

This Agreement shall extend for a term of twenty (20) years, from the date of the initial delivery of Water as shown by the first invoice submitted by Seller to Purchaser, unless this Agreement is terminated beforehand as provided in this Agreement. Purchaser agrees that Seller has no obligation to provide it with Water or any other type of water after the termination of this Agreement.

#### **20. PLEDGE OF REVENUE**

Purchaser represents and has determined that the Water supply to be obtained under this Agreement is absolutely necessary and essential to the present and future operation of its Water system. All payments required by this Agreement to be made by Purchaser shall constitute reasonable and necessary operating expenses of Purchaser's Water system with the effect that the obligation to make such payments from revenues of such system shall have priority over any obligation to make any payments by Purchaser. Purchaser agrees throughout the term of this Agreement to continuously operate and maintain its Water system and to fix and collect such rates and charges for water services to be supplied by its water system as will produce revenues in an amount equal to at least all of its payments under this Agreement.

#### **21. ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors, but the Agreement shall not be otherwise assignable in whole or in part by either Seller or Purchaser without first obtaining the written consent of the other Party.

#### **22. APPLICABLE LAW**

The Constitution and the laws of the State of Texas and the decisions of its Courts shall govern with respect to any question or controversy which may arise hereunder. Venue for any actions arising under this Agreement shall lie exclusively in the courts of Palo Pinto County, Texas.



### **23. NOTICES**

23.1 Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given to the other Party upon either of the following dates:

- a. the date of the mailing thereof, as shown by a post office receipt, if mailed to the party by registered or certified mail at the latest address specified for such other party in writing; or
- b. the date of the receipt thereof by such other party if not so mailed by registered or certified mail.

23.2 Notice shall be made as follows:

If to Seller: City of Mineral Wells, attn: City Manager, P.O. Box 460, Mineral Wells, Texas 76068

If to Purchaser: Santo Special Utility District, P. O. Box 248, Santo, Texas 76472

23.3 Each Party may change its address as shown above by written notice to the other Party.

### **24. NONIMPAIRMENT OF SELLER'S RIGHTS**

Purchaser agrees that it will provide Seller written notice of any request by Purchaser for financing to construct, improve, or expand its water utility system and that before closing on any such financing Purchaser will provide Seller with written confirmation from Purchaser and its lender that such financing will not limit or impair the Sellers rights under this Agreement.

### **25. MISCELLANEOUS**

25.1 All headings of the Articles and particular Sections of this Agreement have been inserted for the convenience of reference only and are not to be considered as part of this Agreement and in no way shall they affect the interpretation of any provisions of this Agreement.

25.2 A waiver by either party of any default by the other party shall not be deemed a waiver by such party of a subsequent default of the other party.

25.3 In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable or unconstitutional, except for the provisions in Articles 4, 5, and 17 of this Agreement, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein. If any of the provisions in Articles 4, 5, and 17 of this Agreement are held to be invalid, unenforceable or unconstitutional, then Seller may immediately terminate this Agreement without liability to Purchaser.

25.4 This Agreement contains all of the agreements between the Parties. As of the Effective Date of this Agreement, this Agreement shall replace any and all prior agreements between the Parties, both oral and written, with regard to the subject matter.

25.5 Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the Parties, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreements of any Party with any third Party.

25.6 This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of Seller and Purchaser. No change or modification shall be made to this Agreement which will affect adversely the prompt payment, when due, of all monies to be paid by Purchaser under the terms of the Agreement.

25.7 Seller shall be entitled to recover court costs and reasonable attorneys fees from Purchaser in any legal proceeding brought in relation to this Agreement if it prevails in such proceeding.

25.8 The Seller will file a copy of this Agreement with the TCEQ within thirty (30) days after it is executed by both Parties.

25.9 All of the above recitals of this Agreement are incorporated and made a part of this Agreement.

25.10 This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

25.11 This Agreement is subject to the rules, regulations or laws as may be applicable to similar agreements in this State, and Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like as may be required to comply herewith. All acts performable under the terms of this Agreement are performed in Palo Pinto County, Texas.

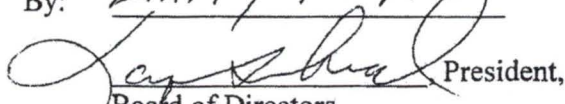
25.12 This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as indicated below.

CITY OF MINERAL WELLS


SANTO SPECIAL UTILITY DISTRICT


By:   
Mike Allen, Mayor

By: LARRY P. ARNOLD  
 President,  
Board of Directors

Date: August 2, 2011

Date: 7-14-11

ATTEST:  
By:   
City Clerk

By:   
Secretary, Board of Directors

Date: August 2, 2011

Date: 7-14-11

Seal

(Corporation Seal)



# **EXHIBIT B**

Sturdivant WSC Contract with City

**AMENDED AND RESTATED WHOLESALE WATER SUPPLY AGREEMENT  
BETWEEN  
THE CITY OF MINERAL WELLS AND  
STURDIVANT PROGRESS WATER SUPPLY CORPORATION**

-

**THIS AMENDED AND RESTATED WHOLESALE WATER SUPPLY AGREEMENT (“Agreement”)** is made and entered into by and between **THE CITY OF MINERAL WELLS** (hereinafter called “*Seller*”), a Texas home-rule municipality, and **STURDIVANT PROGRESS WATER SUPPLY CORPORATION** (hereinafter called “*Purchaser*”), a Texas non-profit water supply corporation, organized and operating under the laws of the State of Texas.

**WITNESSETH:**

**WHEREAS**, Seller owns and operates a water supply distribution system, registered with the Texas Commission on Environmental Quality (“*TCEQ*”) as Public Water System (“*PWS*”) No. TX1820001 serving wholesale and retail water users in Palo Pinto and Parker Counties, Texas;

**WHEREAS**, Purchaser owns and operates a water supply distribution system registered with the TCEQ as PWS No. TX1820011 and serves its water customers within the state-certified boundaries of water CCN No. 10256 in Parker and Palo Pinto Counties, Texas;

**WHEREAS**, Seller has financed a portion of its water distribution system with the proceeds of tax-exempt obligations;

**WHEREAS**, Seller has not financed any portion of its water distribution system for the principal purpose of specifically providing Purchaser with water;

**WHEREAS**, Seller obtains its water supply under its water purchase contract with the Palo Pinto County Municipal Water District No. 1 (the “*District*”), as may be amended from time to time;

**WHEREAS**, the District obtains its water supply principally from Lake Palo Pinto;

**WHEREAS**, Seller has received authorization from the District to resell water to Purchaser;

**WHEREAS**, Seller and Purchaser are currently parties to that certain “Agreement,” entered into on August 29, 1991 (the “*1991 Contract*”), and the Parties desire to amend and restate the terms of the 1991 Contract in its entirety, replacing the 1991 Contract with this Agreement;

**WHEREAS**, pursuant to Chapter 791, Texas Government Code, and the general and special laws of the State of Texas, the Parties are authorized to enter into this Agreement providing for the undertaking, administration and implementation of the Agreement; and



**WHEREAS**, Seller has agreed to sell to Purchaser, and Purchaser has agreed to buy from Seller, water for use by Purchaser's retail customers, all in accordance with the terms and conditions as provided in this Agreement.

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

**1. DEFINITIONS AND CONSTRUCTION OF AGREEMENT**

1.1 The following capitalized terms used in this Agreement and in any exhibit or attachment that is or is made a part of this Agreement, and not otherwise defined herein, shall have the following meanings:

**Agreement.** The Parties' mutual promises, covenants and considerations as contained in this Wholesale Water Supply Agreement and any written amendments thereto.

**Alternate Source.** This term means any additional water supply(s) from a source other than the Seller or the Purchaser's own or develop water supply within the Purchaser's defined Certificate of Convenience and Necessity area.

**Assessment Period.** Has the same meaning as provided in Section 2.6 herein.

**Average Monthly Quantity.** The average quantity of Water that Purchaser takes in 30 days, calculated using the average quantity of Water that Purchaser takes each calendar month within a 12-month period.

**Business Day.** This term means any Day other than Saturdays, Sundays, and Days on which banks in the City of Mineral Wells, Texas are required or permitted to be closed for all or part of their customary hours of operation.

**Calendar Year.** This term shall mean January 1 through December 31 of any given year.

**CCN.** A certificate of convenience and necessity, issued by the PUC or its predecessor and/or successor agencies.

**Claim.** Any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

**Day.** This term means a 24-hour period commencing at 0:00:00 hours each day and ending at 23:59:59 hours on the same day, determined by reference to prevailing Central time.

**District.** The Palo Pinto County Municipal Water District No. 1.

**Effective Date.** The last date on which this Agreement has been executed by the Parties.

**Engineer's Report.** The report from Purchaser's Texas-licensed professional engineer regarding whether Purchaser's PWS can back-feed into Seller's PWS. A copy of the Engineer's Report is attached hereto as Exhibit "C".

**Force Majeure.** This term means and shall be limited to any event or circumstance which is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "**Affected Party**"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts (above Stage II of Seller's then-current approved drought contingency plan), floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; (iv) when Seller is unable to provide Purchaser with an adequate Water supply because Seller does not receive all of the Water from the District that Seller is entitled to under Seller's water supply contract with the District; and (v) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority which shall in any circumstances under this Subsection impact a Party's ability to perform its obligations of the Agreement; provided, a "Force Majeure" shall not include economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomical, or the inability of Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

**Governmental Authority.** This term includes any federal, state, local or other governmental body; any governmental or quasi-governmental, regulatory or administrative agency commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

**Loss(es).** This term includes any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).

**Master Meter(s).** The necessary metering equipment, including a meter house or pit, rate of flow control device, and any other required devices of standard type, for properly measuring the quantity of water traveling through the Seller's Water supply distribution system to the Point(s) of Delivery.

**Maximum Daily Quantity.** The maximum quantity of Water that Seller is obligated to deliver to Purchaser and Purchaser is authorized to take under this Agreement during any 24-hour period, based on meter readings taken by Seller on a consistent 24-hour basis. The Maximum Daily Quantity is specified in Exhibit "A", attached hereto and incorporated into this Agreement.



**Maximum Delivery Rate.** The maximum rate at which Seller is obligated to deliver Water to Purchaser and Purchaser is authorized to take under this Agreement. The Maximum Delivery Rate is specified in Article 7, herein.

**Maximum Monthly Quantity.** The maximum quantity of Water that Seller is obligated to deliver to Purchaser and Purchaser is authorized to take under this Agreement during any calendar month. The Maximum Monthly Quantity is specified in Exhibit “A”, attached hereto and incorporated into this Agreement.

**Party(ies).** Seller and Purchaser are each individually, a Party, and collectively, the Parties.

**Point(s) of Delivery.** The location(s) where Water is provided to Purchaser under this Agreement, as provided in Section 7 herein.

**PUC.** The Public Utility Commission, and its predecessor and successor agencies.

**PWS.** Public drinking water system.

**Rates.** The price to be paid by Purchaser to Seller for Water taken under this Agreement, which shall be based on the rate schedule contained in the most recent ordinance adopted by the City Council of Seller. A copy of the current rate schedule in effect as of the Effective Date is attached hereto in Exhibit “D”.

**Requirement of Law.** This term means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit or any other binding determination of any Governmental Authority.

**Seller Indemnified Party.** The Seller, its officials, employees, contractors, agents and representatives.

**Tax Equalization Charge.** A charge imposed by Seller to customers who are exempt from paying *ad-valorem* taxes imposed to secure bonds issued in connection with the supply of Water.

**TCEQ.** This term shall mean the Texas Commission on Environmental Quality, and its predecessor and successor agencies.

**Term.** This term shall mean the term of this Agreement, as more fully defined in Section 19 of this Agreement.

**Water.** Treated water meeting the standards of treatment established by the Texas Department of Health or the TCEQ and the provisions of the Safe Drinking Water Act, Title 42, Section 300F, U.S.C.A., as administered by the United States Environmental Protection Agency.

1.2 In this Agreement:

- a. unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural, (ii) the words “include,” “includes,” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation,” (iii) the terms “hereof,” “herein,” “hereunder,” “hereto,” and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement, (iv) “or” is used in the inclusive sense of “and/or,” and (v) unless otherwise specified, the terms “year” and “years” mean and refer to years(s);
- b. unless otherwise specified, any reference to any document, instrument or agreement (i) includes and incorporates all exhibits, schedules and other attachments thereto, (ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof, and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time; and
- c. unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

## **2. SALE TO PURCHASER**

2.1 As of the Effective Date, Seller agrees to supply Water to Purchaser, at the Point(s) of Delivery, as specified and further described in Exhibit “A”; provided, however, (i) any single monthly amount of Water furnished by Seller shall not exceed the Maximum Monthly Quantity, and (ii) for any 24-hour period, the amount of Water furnished by Seller shall not exceed the Maximum Daily Quantity. Purchaser shall not take more than the Maximum Monthly Quantity of Water or Maximum Daily Quantity of Water; and regardless of any other provision in this Agreement, Seller is not required to provide Water to Purchaser in excess of the Maximum Monthly Quantity or Maximum Daily Quantity.

2.2 Purchaser agrees that Seller’s obligations under this Agreement are limited to supplying the quantities of Water specified in Section 2.1, herein, and Seller is under no obligation: (i) to provide Purchaser with a sufficient amount of Water for Purchaser to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Purchaser under 30 Texas Administrative Code, Chapter 290, or any other Requirement of Law; or (ii) to increase any of its Water utility infrastructure or capacity in order to satisfy any of the provisions of this Agreement.

2.3 If Purchaser, during the Term of this Agreement, desires to secure additional water supplies from an Alternate Source (other than for an emergency or temporary water supply purposes) in excess of the quantities of Water to be provided to Purchaser under this Agreement, then Purchaser agrees to provide Seller the first option to sell such additional water

to Purchaser. In providing Seller such option, Purchaser shall notify Seller in writing of its desire to secure additional water, and if Seller fails to notify Purchaser that Seller is willing to sell such additional water to Purchaser within 60 days of such receipt of notice from Purchaser, then Purchaser may seek to purchase such additional water from an Alternate Source.

2.4 Purchaser shall not allow a direct connection between the Purchaser's water system and a potential source of contamination. Purchaser has provided Seller an Engineer's Report, attached hereto as Exhibit "C". Based upon the finding in the Engineer's Report, Seller agrees that Purchaser does not need to install a backflow prevention device at the Point of Delivery. Purchaser agrees to operate its PWS only in the manner described in the Engineer's Report. Purchaser agrees to isolate potential sources of contamination from its PWS by an appropriate backflow prevention device if required by Requirement of Law. If a backflow prevention device is necessary by Requirement of Law, then Purchaser agrees to install at each Point of Delivery and at Purchaser's sole cost, a reduced pressure zone ("**RPZ**") device, the appropriateness of which shall be determined by Seller. Purchaser shall submit a plan for the installation of the RPZ to the Seller within 30 days after the notice from Seller of the Requirement of Law and shall install the RPZ no later than 90 days after Seller approves Purchaser's plan. No cross-connection between the Purchaser's public drinking water system and a private water system is permitted, and such potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a RPZ backflow prevention device. Purchaser shall not make a connection between its public drinking water system and a retail customer which allows water to be returned to the Purchaser's public drinking water system.

2.5 In the event Purchaser secures additional water supply(s) from an Alternate Source other than Seller under Section 2.3 of this Agreement, then this Section 2.5 shall apply. During each "**Assessment Period**" (as described within Section 2.6 below), Seller shall assess the Average Monthly Quantity that Purchaser takes under this Agreement. If the Average Monthly Quantity is less than the Maximum Monthly Quantity, Seller may reduce the Maximum Monthly Quantity to equal the Average Monthly Quantity. Furthermore, Seller may also reduce the Maximum Daily Quantity accordingly. Alternatively, Seller may amend this Agreement such that Purchaser must "take or pay" the Maximum Monthly Quantity, meaning Purchaser must pay for at least the Maximum Monthly Quantity even if Purchaser takes less than the Maximum Monthly Quantity in that calendar month. Seller shall give Purchaser 60 days' notice prior to reducing the Maximum Monthly Quantity or billing Water on a "take or pay" basis.

2.6 Seller shall reassess the water supply available to Purchaser and Seller's ability to deliver water to Purchaser every five (5) years (each five year period, an "**Assessment Period**"), with the first reassessment occurring on the fifth anniversary of the Effective Date. At the end of each Assessment Period, Seller shall notify Purchaser of the Water available to Purchaser for the next Assessment Period, subject to the restrictions provided in Section 6.1. If additional Water and capacity is available, then Purchaser shall have 60 days to notify Seller that it would like to increase its Maximum Daily Quantity and Maximum Monthly Quantity, up to the additional amount calculated by Seller. The Parties agree that Seller will review and attempt to accommodate the request of Purchaser to the extent of the request and of the additional Water available; provided, however, if there are other wholesale customers of the Seller that also seek to secure additional water supplies from the Seller, then Seller will use reasonable efforts to allocate such additional

water to all such wholesale customers on an equitable basis, as determined by Seller in its sole discretion. Changes to the Maximum Daily Quantity and Maximum Monthly Quantity shall be memorialized by a written amendment to this Agreement.

### **3. [INTENTIONALLY DELETED]**

### **4. RATES AND COMPENSATION**

4.1 Subject to the adjustments provided for in Sections 5 and 6 of this Agreement, Purchaser shall pay to Seller, at the times and in the manner prescribed in Section 13 of this Agreement, for all Water delivered by Seller at the Point(s) of Delivery, as reflected by the meter volumes determined pursuant to Section 12, and according to the Rates then in effect.

4.2 Purchaser agrees that the Rates initially charged to Purchaser by Seller are just and reasonable and do not adversely affect the public interest, and that Purchaser's acceptance of such Rates was a significant inducement for Seller to enter into this Agreement. Purchaser also agrees that if Purchaser opposes, protests or seeks to overturn the initial Rates charged to Purchaser under this Agreement, then Seller may immediately terminate this Agreement without liability to Purchaser. Purchaser's rights to challenge future changes to these Rates as prescribed by law shall not be limited or abridged by any provision in this Agreement. Purchaser agrees to set and collect rates charged to its customers in a manner sufficient for Purchaser to make full and timely payment to Seller for Water provided under this Agreement.

### **5. RATE ADJUSTMENTS**

5.1 Except as otherwise provided in this Section 5.1, the Rates to be paid by Purchaser for Water under this Agreement are subject to adjustment by Seller on an annual basis. To be clear, the first Rates adjustment can occur in the year 2023. Any such adjustment in the Rates shall become effective on October 1 of that year. Any increase or decrease in the Rates shall be based on the cost of service to Seller utilizing the "cash needs basis" of rate making. In determining the cost of service to the Seller hereunder and in setting the Rates, the Seller may, but need not, consider, but shall not be limited to considering the following factors: operation and maintenance expenses, fixed costs, debt service requirements, costs of Water, contractual obligations, capital improvements attributable to Seller's Water system, administrative overhead, supplies, personnel services, utility services, demands on the Seller's Water system, wholesale Tax Equalization Charge, if any, and all other costs or expenses directly related to Seller's ability to supply Water to its customers, including Purchaser, and to meet the conditions of this Agreement, all as may be determined by the Seller to relate to performance hereunder. Further, the Rates may be adjusted by Seller, at any time, but with not less than 60 days' prior notice to Purchaser for an amount equivalent to any governmental restrictions, imposition, rental fee or charge levied, assessed or imposed by any new or amended federal or state law or regulation.

5.2 All books, records, and reports upon which such adjustment is based shall be made available to the Purchaser at the office of Seller during the regular business hours of the Seller, upon request by Purchaser.

## **6. TAKING EXCESS WATER**

6.1 Purchaser shall monitor the amount of Water taken under this Agreement and shall immediately provide written notice to Seller in the event that it takes Water in excess of the Maximum Monthly Quantity. If Purchaser takes more Water than the Maximum Monthly Quantity, as determined by the Master Meter(s), then Seller shall not charge Purchaser for such Water in excess of the Maximum Monthly Quantity up to ten percent (10%). If Purchaser takes Water in excess of the Maximum Monthly Quantity plus ten percent (110%), then Seller may charge Purchaser an amount equal to twice the Rate then prevailing for the purchase of Water under the terms of this Agreement for each one thousand (1,000) gallons of water or portion thereof taken by Purchaser in excess of the Maximum Monthly Quantity plus ten percent (110%). However, if Purchaser takes Water in excess of the Maximum Monthly Quantity, then Purchaser shall correct the condition causing Water to be taken in excess of the Maximum Monthly Quantity. If the Purchaser takes Water in excess of the Maximum Monthly Quantity for more than two consecutive months during any Assessment Period of the term of this Agreement, then Purchaser shall “take or pay” for all Water of the Maximum Monthly Quantity under this Agreement for each remaining month of the Assessment Period. The Purchaser’s use of the Maximum Monthly Quantity will be reviewed at the end of each 5-year Assessment Period, wherein Seller may further reduce or restrict the amount of Water afforded to Purchaser for the next Assessment Period. It is understood that Seller may install a flow restriction device at the Point(s) of Delivery to reduce the flow of Water if there is an exceedance of the Maximum Monthly Quantity in any month during the term of this Agreement, so that excess Water is not taken by Purchaser.

6.2 During any period when pro-rata allocation of Water is in effect according to any drought contingency plan adopted by Seller, Purchaser shall monitor the amount of Water taken under this Agreement and shall immediately provide written notice to Seller in the event that it takes Water in excess of its pro-rata Water allocation. Purchaser shall pay surcharges on excess Water diversions and/or deliveries according to the enforcement provisions of such drought contingency plan. In such event, any surcharges under the enforcement provisions of such drought contingency plan shall supersede Section 6.1 of this Agreement.

## **7. POINT(S) OF DELIVERY & PRESSURE**

The Point(s) of Delivery for Water delivered and taken under this Agreement is generally located near the Lake Mineral Wells State Park entrance, Park Road 71 and U.S. Highway 180, and/or the City’s Pump Station on F.M. 1821 North between Ram Boulevard and U.S. Highway 180, at the location of the existing Purchaser Master Meter(s), as specified and further described in Exhibit “B”. Water will be furnished at the prevailing pressure of the District’s Hilltop water treatment plant, or its water transmission line, or Seller’s Water distribution system at the Point(s) of Delivery, whichever is appropriate in the sole discretion of the Seller. Purchaser agrees to take Water at the Point(s) of Delivery at a rate not to exceed the Maximum Delivery Rate. If a greater pressure is requested by the Purchaser and the Seller agrees to provide the Water at such greater pressure, the entire cost of providing such greater pressure, if any, shall be borne by Purchaser. Emergency failure of Water pressure or Water

supply shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service. The Parties may agree in writing to relocate Point(s) of Delivery or to add additional Point(s) of Delivery. The Maximum Delivery Rate shall be the lesser of: (i) 0.6 gallons per connection per minute multiplied by the Purchaser's number of metered connections, as may be amended from time to time; or (ii) the Purchaser's Alternative Capacity Requirement approved by the TCEQ, as may be amended from time to time, multiplied by the Purchaser's number of metered connections, as may be amended from time to time, multiplied by 1.15 (safety factor). Purchaser shall notify Seller of any increase or decrease in the number of its metered connections each month. Purchaser also shall notify Seller promptly if the Purchaser's TCEQ-approved Alternative Capacity Requirement changes. The Purchaser's Alternative Capacity Requirement as approved by the TCEQ, if applicable, is as specified and further described in Exhibit "A".

## **8. OWNERSHIP OF WATER**

As between the Parties, Seller shall own and shall be in exclusive control and possession of the Water until the Water is delivered to Purchaser at the Point(s) of Delivery, at which point Purchaser, as between the Parties, shall own and be in exclusive control and possession of the Water.

## **9. INSPECTION OF DISTRIBUTION FACILITIES**

Purchaser shall provide Seller with evidence of the number of service connections installed in any twelve (12) month period within ten (10) Days following receipt of a request from Seller. Within twenty-four (24) hours of receiving a request from Seller, Purchaser shall permit Seller to inspect Purchaser's Water distribution facilities accompanied by Purchaser's licensed operator.

## **10. PURPOSE AND PLACE OF USE; RESALE OF WATER**

Purchaser shall use Water purchased from Seller under this Agreement only for municipal purposes, as that term is defined at Title 30 Texas Administrative Code § 297.1 (32). Purchaser may only resell the Water to its retail customers within (i) its CCN service area and (ii) such other areas as Purchaser may legally serve, save and except the Seller's extraterritorial jurisdiction, unless the Seller consents, and Purchaser shall not permit the use of any of the Water furnished by Seller under this Agreement for any of the following purposes:

- a. resale by Purchaser to another retail public utility without prior written authorization from Seller; or
- b. resale by Purchaser to any customer inside the corporate limits or extraterritorial jurisdiction of Seller, the boundaries of which may be adjusted from time to time, without prior written authorization from Seller, unless such customer is (i) not an existing customer of Seller and (ii) located within Purchaser's CCN, in which case no consent from Seller shall be required.



## **11. WATER QUALITY**

Seller will exercise due diligence and follow best management practices to meet the applicable water quality standards and any Requirement of Law for Water furnished to Purchaser pursuant to this Agreement, at the Point(s) of Delivery.

## **12. METERING FACILITIES**

12.1 Purchaser shall, at its sole cost, furnish, install, test, operate, and maintain at the Point(s) of Delivery the necessary Water tap and Master Meter(s) for properly measuring and recording the quantity of Water taken by Purchaser at the Point(s) of Delivery and the rate at which it is taken; provided, Purchaser's selection of such equipment shall be subject to Seller's approval. Seller acknowledges that Purchaser's existing meters at the existing Point of Delivery are acceptable and approved. The measuring and recording devices and appurtenances shall be sufficient to prevent Purchaser from taking Water at a rate greater than the Maximum Delivery Rate, except when necessary to aid in situations of emergency where the Parties reasonably understand that a greater diversion rate is warranted. All maintenance and/or repairs to the Master Meter(s) shall be made by the Purchaser or a contractor on behalf of the Purchaser, at Purchaser's sole expense. Purchaser shall provide repairs to the Master Meter(s) in a prompt and timely manner. If Purchaser cannot make such repairs in a timely manner, then Seller shall have the option of making such repairs, and Purchaser shall pay Seller for all costs of such repairs, which shall be included in the subsequent invoice that Seller delivers to Purchaser as provided under Section 13 of this Agreement.

12.2 The properly authorized officers, agents and representatives of Seller shall have access to the Master Meter(s), other metering equipment, and all other facilities of Purchaser associated with this Agreement during regular business hours when accompanied by Purchaser's licensed operator; provided, however, that if Purchaser does not provide a licensed operator within forty-eight (48) hours of receiving a request from Seller for access, then Seller shall have access to the Master Meter(s), other metering equipment, and all other facilities of Purchaser associated with this Agreement during regular business hours without a licensed operator of Purchaser. All facilities required for Purchaser to take Water under this Agreement, including, but not limited to, the Master Meters, shall be appropriately marked and lighted in the interest of the safety of Seller's officers, agents, and representatives.

12.3 Purchaser shall test the Master Meter(s) for accuracy once each twelve (12) month period, with such periods commencing on the Effective Date and each anniversary of the Effective Date thereafter. Purchaser shall provide the results of such test to Seller in writing within seven (7) days of the test. In the event that the percentage of accuracy of such metering equipment is found to be within the tolerance of two percent (2%), such meter shall be deemed to have correctly measured the quantity of Water taken under this Agreement. Purchaser shall give Seller five (5) days' notice of its intent to test metering equipment and Seller shall have the right to be present when such testing is conducted. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of two percent (2%), then such meter shall be adjusted at once to register correctly and accurately. If the adjustment reveals Purchaser has underpaid for the amount of water actually delivered, the amount paid

by Purchaser to Seller for the three (3) month period immediately preceding such test shall be adjusted in accordance with the percentage of inaccuracies found by such test. Seller has no obligation to make any reimbursements if the adjustment reveals Purchaser has overpaid. Purchaser shall afford Seller at least five (5) days' notice of its intent to make any adjustment to the Master Meter(s) such that Seller is afforded the opportunity to observe any adjustments that are made to the Master Meter(s) in case any adjustments shall be necessary; provided, either Party can waive such right to observe such adjustments.

12.4 Seller shall have the right to request Purchaser to test any Master Meter(s) more frequently than once per twelve (12) month period as contemplated by Section 12.3 herein. Upon any such request, Purchaser agrees to perform its testing and calibration of such Master Meter(s) following notice to Seller, and if a representative of Seller is present at such testing and calibration, the Parties shall jointly observe any adjustments that are made to the Master Meter(s) in the event any adjustments shall be necessary. For such additional testing requests, the Purchaser shall give Seller notice forty-eight (48) hours in advance of the time when any such testing shall occur. Purchaser may proceed with such testing and adjustment, if necessary, in the absence of any representative of Seller. Seller shall pay the additional cost for any Master Meter tested if such test shows that the Master Meter is accurate to within two percent (2%) registration, but Purchaser shall pay the costs of the additional test and maintenance for each Master Meter where the results indicate that any Master Meter is not accurate to within two percent (2%) registration.

12.5 In the event such metering equipment is out of service or out of repair and the amount of Water taken cannot be ascertained or computed by reading the Master Meter(s), the amount of Water taken during this period shall be estimated by Seller based upon the amount of Water sold in the corresponding period in the year immediately prior to such failure, and adjusted for current conditions at the Seller's reasonable discretion.

### **13. BILLING AND PAYMENT**

13.1 For the purposes of this Agreement, Purchaser shall be billed for all the Water accepted at the Point(s) of Delivery as recorded by the Master Meter(s). Payments for all charges arising under this Agreement shall be due and payable at Seller's address as shown in Section 23 of this Agreement (or at such other place as designated by Seller).

13.2 For purposes of billing, Seller shall read the Master Meter(s) on or about the last Business Day of each month (or more frequently if necessary as determined by Seller) and shall report the total quantity of Water taken for that month to Purchaser on or before the tenth (10<sup>th</sup>) day of the next calendar month.

13.3 Seller shall render to Purchaser at the address shown in Section 23 herein (or such other place as designated by Purchaser), on or before the tenth (10<sup>th</sup>) day of each calendar month, an itemized statement (each statement, an invoice), showing the charges for the quantity of Water provided to Purchaser during the previous month in accordance with the then prevailing Rates and any other charges and fees incurred in accordance with this Agreement. Payments for each invoice rendered under this Agreement shall be due and payable in full at Seller's

address shown in Section 23 herein (or at such other place as designated by Seller) on or before the twentieth (20<sup>th</sup>) day of each calendar month.

13.4 Should Purchaser fail to tender payment for each invoice in full when due, interest on the outstanding balance shall accrue at the rate of twelve percent (12%) per annum from the due date until payment is received by Seller.

13.5 Should Purchaser fail to tender payment in full to Seller within twenty (20) days of the due date, Purchaser will be in breach of a material term and/or condition of this Agreement and Seller may terminate this Agreement as provided in Section 14 of this Agreement, but only following the required notice and opportunity to cure by Purchaser.

13.6 If Purchaser at any time disputes the amount to be paid to Seller, Purchaser shall nevertheless timely make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Purchaser should have been less, or more, Seller shall promptly revise the next invoice amount in a manner that Purchaser or Seller will recover such amount due.

#### **14. DEFAULT AND TERMINATION**

14.1 Except as otherwise provided in this Agreement, in the event Purchaser breaches any of the material terms and/or conditions of this Agreement and upon written notice of such breach of material term(s) and/or condition(s) by Seller to Purchaser, Purchaser shall have thirty (30) days to cure any default(s) after notice is made as provided by Section 23 of this Agreement. If such breach(es) is not corrected within the allotted time, or this Agreement is terminated in accordance with Section 4, then Seller shall have one or all of the rights, in addition to any other remedy available to it by law, as follows:

- a. suspension of delivery of Water hereunder; and
- b. termination of this Agreement without prejudice to any other remedy available to Seller.

14.2 In the event Seller breaches any of the material terms and/or conditions of this Agreement and upon written notice of such breach of material term(s) and/or condition(s) by Purchaser to Seller, Seller shall have thirty (30) days after notice is made as provided by Section 23 of this Agreement to cure any default(s). If such breach(es) is not corrected within the allotted time, then Purchaser shall have the right to seek specific performance of this Agreement to insure continued water supplies for its retail customers and/or such other remedies as Purchaser may have at law or in equity.

14.3 Seller shall have the right, for its sole convenience and without cause, to terminate or suspend, in whole or in part, Seller's performance of any of its duties or obligations under this Agreement, upon thirty (30) days prior written notice to Purchaser, in the event that Purchaser does not purchase any Water during a three (3) month period.

14.4 The Party that is not the Affected Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 14.4 if it has met its obligations under Section 18.1, as limited by Section 18.3. The Party not claiming Force Majeure may, but shall not be obligated to, extend either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

14.5 Upon receipt of any notice of termination delivered pursuant to Section 4, 14, or 19, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to (a) rights and obligations of the Parties arising during or relating to any period prior to termination, and (b) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this Agreement, or if no express survival period is provided for, then until such obligations have been satisfied, or, if later, pursuant to any applicable statute of limitations.

## **15. RELEASE BY PURCHASER**

15.1 To the extent allowed by law, in addition to the other remedies afforded to the Seller in this Agreement, Purchaser shall release, indemnify, defend and hold harmless every Seller Indemnified Party for, from, and against any and all Losses, liens, causes of action, suits, judgments and expenses (including, without limitation, court costs, attorney's fees and costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise of any nature, kind or descriptions of any person or entity directly or indirectly arising out of, resulting from, or related to (in whole or in part):

- a. any environmental conditions caused by or contributed by Purchaser and/or Purchaser's water system; or
- b. any act or omission regarding Purchaser or Purchaser's water system of Purchaser's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over, even if such liabilities arise from or are attributed to, in whole or in part, any negligence of any Seller Indemnified Party.

15.2 Seller shall promptly notify Purchaser of any Losses or Claims in respect of which a Seller Indemnified Party may be entitled to indemnification under this Section 15. Such notice shall be given as soon as reasonably practicable after the Seller becomes aware of the Loss or Claim.

15.3 The amount owing to Seller will be the amount of Seller's Losses net of any insurance proceeds received by Seller following a reasonable effort by Seller to obtain such insurance proceeds.

15.4 Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other under any theory of tort, contract, strict liability or other legal or equitable theory, whether by way of indemnity or otherwise, for any lost profits, exemplary, punitive, special, incidental, indirect or consequential damages of the other Party; provided that the foregoing is not intended to limit the indemnities, if any, which shall be recoverable for Claims by a non-Party to the extent allowed by law.

## **16. OBLIGATIONS AND REPRESENTATIONS OF THE PARTIES**

16.1 Purchaser hereby agrees;

- a. To maintain careful inspection of its Water main pipes and Water distribution facilities, and to construct adequate system infrastructure sufficient to maintain adequate pressure to meet any Requirement of Law, independent of Seller's operation pressure.
- b. To exercise diligence and care in the maintenance of its Water lines, Water mains and distribution facilities and in the installation of connections and laterals that may be connected with its Water distribution system.
- c. To comply with any Requirement of Law and all applicable rules and regulations of the Texas Department of Health, TCEQ, PUC, and any other agency or department that has jurisdiction over the installation or operations of PWSs, with respect to operating Purchaser's PWS.
- d. To adopt and comply with the provisions of any water conservation and drought contingency plan adopted by Seller which is prescribed or approved by the TCEQ and/or Texas Water Development Board, including implementation of any necessary rationing plan or program which the Seller adopts and implements. In lieu of adopting the Seller's water conservation and drought contingency plans, Purchaser may implement alternative water conservation and drought contingency plans, provided those plans comply with Title 30 Texas Administrative Code, Chapter 288, will conserve the same or a greater amount of Water as under the plans implemented by Seller, and have been approved by Seller within thirty (30) days after the Effective Date, or for subsequently adopted plans, within thirty (30) days of their adoption by Purchaser. Such water conservation and/or drought contingency plans shall be applicable to Water taken by Purchaser from Seller. Upon receipt of notice from Seller that Seller's water conservation and drought contingency plans have been revised, Purchaser shall adopt such changes in Purchaser's water conservation and drought contingency plans within thirty

(30) days of their adoption by Seller and submit Purchaser's revised water conservation and drought contingency plans to Seller for approval within thirty (30) days of their adoption by Purchaser. Seller acknowledges that it has received and reviewed Purchaser's water conservation and drought contingency plans and that such plans are hereby approved by Seller. In the event of a water shortage due to drought, the water to be distributed by Seller will be divided in accordance with Texas Water Code § 11.039.

- e. Purchaser shall notify Seller as promptly as possible of all emergency and other conditions of which it becomes aware which may directly or indirectly affect the quality of the Water provided by Seller and to provide Seller a copy, upon receipt, of all notices received from state or federal agencies or departments having jurisdiction over the installation and operation of PWSs.
- f. To file an application with the TCEQ in good faith for an exception to the requirement of 30 Texas Administrative Code § 290.45, reducing Purchaser's minimum water system capacity requirements below 0.6 gallons per minute per connection. Upon approval by the TCEQ of such application for such exception, if approved, Purchaser shall immediately notify Seller of Purchaser's new minimum water system capacity requirements and work with Seller to amend this Agreement to reduce the Maximum Monthly Quantity and Maximum Daily Quantity to an amount that is consistent and in compliance with such approved exception to 30 Texas Administrative Code § 290.45. If the TCEQ subsequently revokes such exception, then the Parties agree to amend this Agreement to increase the Maximum Monthly Quantity and Maximum Daily Quantity to an amount that is consistent and in compliance with the then-applicable water system capacity requirements (currently 0.6 gallons per minute per connection) of 30 Texas Administrative Code § 290.45.

16.2 Purchaser represents and warrants to Seller, as of the date of this Agreement, as follows:

- a. Purchaser is a Texas water supply corporation organized and in good standing under the laws of the State of Texas, is authorized to conduct business in Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.
- b. This Agreement has been duly executed and delivered on behalf of Purchaser, and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.



16.3 Seller hereby Agrees:

- a. Seller shall notify Purchaser as promptly as possible of all emergency and other conditions of which it becomes aware which may directly or indirectly affect the volume or quality of the Water provided by Seller, and to provide Purchaser a copy, upon receipt, of all notices received from Governmental Authorities regarding the emergency or conditions.
- b. To comply with any Requirement of Law and all applicable rules and regulations of the Texas Department of Health, TCEQ, PUC, and any other agency or department that has jurisdiction over the installation or operations of PWSs, with respect to operating Seller's PWS.

16.4 Seller represents and warrants to Purchaser, as of the date of this Agreement, as follows:

- a. Seller is a Texas home rule municipality organized and in good standing under the laws of the State of Texas, is authorized to conduct business in Texas, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.
- b. This Agreement has been duly executed and delivered on behalf of Seller, and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles.

**17. SUSPENSION OR CURTAILMENT OF DELIVERY OF WATER**

17.1 Seller shall have the right to conduct inspections and require tests of the Purchaser's Water distribution system at and near the Points of Delivery. In the event Seller determines that Water from Purchaser's distribution system is flowing back into Seller's pipes or other delivery facilities or that the condition of Purchaser's distribution system or other facilities could create a hazard to the health, safety or welfare of Seller's Water customers, or constitute a waste of the Water furnished under this Agreement, Seller shall have the immediate right to suspend delivery of Water and to disconnect any connections with Purchaser's Water distribution system until Seller is satisfied that such conditions have been corrected. Purchaser shall at Seller's request and at Purchaser's own cost, install a back flow prevention device at each Point(s) of Delivery. Any suspensions under this Section made in good faith by Seller shall not impact Purchaser's obligations under this Agreement, and shall not constitute a breach of this Agreement by Seller.

17.2 Seller may, without liability, curtail in part or in whole, the amount of Water delivered to Purchaser during times of drought, total or partial reduction in the amount of

water provided to Seller by District, or under other conditions when it is necessary to curtail deliveries for the Seller, such as to maintain the operational stability of its Water supply and/or distribution system. In the event of such curtailment, and when reasonably possible, Seller agrees to give Purchaser notice of such curtailment. Any curtailments by Seller under this Section shall not impact Purchaser's obligations under this Agreement, and shall not constitute a breach of this Agreement by Seller. Purchaser's obligation to pay under a "take or pay" structure imposed under Sections 2.5 or 6.1 shall not be affected by this Section 17.2.

## **18. FORCE MAJEURE**

### **18.1 Procedure to Calling Force Majeure**

- a. Notice of Force Majeure. The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Subsection 18.1.a. shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Subsection 18.1.a. shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies, and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.
- b. Obligations During Pendency of Force Majeure. The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under this Subsection 18.1.a.:
  - i. use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;
  - ii. furnish weekly reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and
  - iii. resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.
- c. Resumption of Performance. When the Affected Party is able, or would have been able if it had complied with its obligations under this Section 18.1, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then

the period of Force Majeure relating to such event or circumstance shall be deemed to have ended.

## 18.2 Effects of Force Majeure

- a. Relief From Obligation of Performance. Except as provided in Section 18.3 of this Agreement, provided it has complied with its obligations under Section 18.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.
- b. Relief From Obligation of Counter-performance. Except as provided in Section 18.3 of this Agreement, the non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

## 18.3 Limitations on Force Majeure

- a. Scope and Duration. No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure.
- b. No Extension of Term. Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.
- c. Continuing Responsibility to Make Payments. Regardless of the occurrence or continuation of an event or circumstance of Force Majeure, Purchaser shall not be relieved of its responsibility to make payments as required under this Agreement.

## 19. TERM

Unless this Agreement is terminated beforehand as otherwise provided in this Agreement, this Agreement shall extend for a Term of thirty (30) years, beginning on the Effective Date. The Parties may agree to renew this Agreement for one additional ten (10) year term by executing an amendment to this Agreement, by no later than the 29<sup>th</sup> anniversary of the Effective Date. Purchaser agrees that Seller has no obligation to provide it with Water or any other type of water after the termination of this Agreement. Regardless of any other provision in this Agreement, this Agreement is terminated if a statute, ruling, or other regulation is published or a court of competent jurisdiction rules (or, upon final determination by the Internal Revenue Service) that the Agreement fails to meet the requirements relating to tax exempt bonds. Seller acknowledges that it knows of no such statute, ruling or regulation that would cause the termination of the Agreement as stated in the preceding sentence.

## **20. PLEDGE OF REVENUE**

Purchaser represents and has determined that the Water supply to be obtained under this Agreement is necessary and essential to the present and future operation of its Water system. Purchaser agrees throughout the term of this Agreement to continuously operate and maintain its Water system and to fix and collect such rates and charges for water services to be supplied by its water system as will produce revenues in an amount equal to at least all of its payments under this Agreement.

## **21. ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors, but the Agreement shall not be otherwise assignable in whole or in part by either Seller or Purchaser without first obtaining the written consent of the other Party.

## **22. APPLICABLE LAW**

The Constitution and the laws of the State of Texas and the decisions of its Courts shall govern with respect to any question or controversy which may arise hereunder. Actions taken in the performance of the obligations of this Agreement shall be deemed to occur in Palo Pinto County, Texas.

## **23. NOTICES**

23.1 Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given to the other Party upon either of the following dates:

- a. the date of the mailing thereof, as shown by a post office receipt, if mailed to the party by registered or certified mail at the latest address specified for such other party in writing; or
- b. the date of the receipt thereof by such other party if not so mailed by registered or certified mail.

23.2 Notice shall be made as follows:

If to Seller: City of Mineral Wells, Attention: City Manager, P.O. Box 460, Mineral Wells, Texas 76068.

With a copy to: City of Mineral Wells, Attention: Public Works Director, P.O. Box 460, Mineral Wells, Texas 76068.

If to Purchaser: Sturdivant Progress Water Supply Corporation, Attention: General Manager, 241 Village Bend Road, Mineral Wells, Texas 76067.



23.3 Each Party may change its address as shown above by written notice to the other Party.

## **24. MISCELLANEOUS**

24.1 All headings of the Articles and particular Sections of this Agreement have been inserted for the convenience of reference only and are not to be considered as part of this Agreement and in no way shall they affect the interpretation of any provisions of this Agreement.

24.2 A waiver by either Party of any default by the other Party shall not be deemed a waiver by such party of a subsequent default of the other party.

24.3 In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable or unconstitutional, except for the provisions in Section 17 of this Agreement, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein. Regardless of any other provision of this Agreement, if any of the provisions in Section 17 of this Agreement are held to be invalid, unenforceable or unconstitutional, then the Parties shall meet and confer regarding required changes to the Agreement.

24.4 This Agreement contains all of the agreements between the Parties. As of the Effective Date of this Agreement, this Agreement shall replace any and all prior agreements between the Parties, both oral and written, with regard to the subject matter, including the 1991 Contract.

24.5 Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or Claim under or by reason of this Agreement; or any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreements of any Party with any third Party.

24.6 This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of Seller and Purchaser. No change or modification shall be made to this Agreement which will affect adversely the prompt payment, when due, of all monies to be paid by Purchaser under the terms of the contract or which will adversely affect the tax-exempt status of the tax-exempt obligation issued by Seller. The foregoing notwithstanding, the Parties hereto agree to use their best efforts to modify this Agreement if the Internal Revenue Service determines that a failure to do so would adversely affect the tax-exempt status of any outstanding tax-exempt obligations issued by Seller.

24.7 Either Party shall be entitled to recover court costs and reasonable attorney's fees from the other Party in any legal proceeding brought in relation to this Agreement if it prevails in such proceeding.

24.8 The Seller will file a copy of this Agreement with the PUC within thirty (30) days after it is executed by both Parties.

24.9 All of the above recitals of this Agreement are incorporated and made a part of this Agreement.

24.10 This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

24.11 This Agreement is subject to the rules, regulations or laws as may be applicable to similar agreements in this State, and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like as may be required to comply herewith. All acts performable under the terms of this Agreement are performed in Palo Pinto County, Texas

24.12 This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[remainder of page is intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as indicated below.

**SELLER:**

**CITY OF MINERAL WELLS**

By: Regan L Johnson

Regan L Johnson, Mayor

Date: 07-03-2023

**PURCHASER:**

**STURDIVANT PROGRESS WATER  
SUPPLY CORPORATION**

By: Scott Royal

SCOTT ROYAL, President

Date: 08-10-2023

**ATTEST:**

By: Maion Mc Ladden  
City Clerk

Date: 07-03-2023

**ATTEST:**

By: Scott Royal - Board Member  
(Title)

Date: 8-10-2023  
(Corporation Seal)



## **Exhibit A**

### Maximum Quantities and Delivery Rate

***Maximum Monthly Quantity.*** The Maximum Monthly Quantity is 8,236,015 gallons.

***Maximum Daily Quantity.*** The Maximum Daily Quantity is 409,752 gallons.

**Alternative Capacity Requirement.** As of the Effective Date of this Agreement, or any Amendments thereof, the Parties acknowledge and agree that the Purchaser does **not** have an Alternative Capacity Requirement approved by the TCEQ.

**Exhibit B**

Location of Purchaser Master Meter



# Sturdivant Progress Oaks Crossing Road Water Meter









# Sturdivant Progress Village Bend Road Water Meter



**Exhibit C**

Purchaser's Engineer's Report

**Exhibit D**

Current Rate Ordinance of City



ORDINANCE NO. 2022-21

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 90, UTILITIES, SECTIONS 90-54 AND 90-55, OF THE MINERAL WELLS CODE OF ORDINANCES BY REVISING WATER RATES AND RATES FOR SEWER SERVICE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Mineral Wells, Texas (the "City") currently assesses rates for water and sewer service provided by the City in Section 90-54 and 90-55 of the Mineral Wells Code of Ordinances; and

WHEREAS, the City Council of the City of Mineral Wells has adopted a budget for the fiscal year beginning October 1, 2022 and ending September 30, 2023 and wishes to revise the rates for water and sewer services in accordance with said budget.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINERAL WELLS, TEXAS:

1. That Section 90-54 (1) of the Code of Ordinances of the City of Mineral Wells, Texas be hereby amended to read as follows:

"The following monthly water rates or charges for water furnished by the city shall prevail and shall be charged against and collected from all persons, firms, corporations, both public and private, using city water:

- (1) For all users, including special utility districts, wholesale water supply corporations and the City of Graford, there shall be a minimum monthly bill based upon the size of water meter provided. The minimum monthly bill shall be:

<i><u>Meter Size</u></i> <i><u>(Inches)</u></i>	<i><u>Minimum</u></i> <i><u>Monthly Bill</u></i>
¾ or smaller.....	\$ 26.80
1.....	43.90
1 ½.....	86.17
2.....	145.42
3.....	314.79
4.....	551.76
6.....	1,229.19
8.....	2,177.34

All water use each month shall be charged and billed at rates listed in the table below.

The monthly volume charge for single-family residences, duplexes, apartment units, churches, mobile homes or manufactured homes, and private non-profit organizations, but not including public agencies, which residences or buildings are individually metered for water shall be the Residential Rate.

The monthly volume charge for water metered for irrigation purposes shall be the Irrigation Rate.

The monthly volume charge for all other users, including commercial, industrial, governmental (Municipal), Special Utility Districts, wholesale Water Supply Corporations, and the City of Graford shall be the General Service Rate.

<u>Volume Charge per 1,000 Gallons</u>	<u>Residential</u>	<u>Irrigation</u>	<u>General Service</u>
0 - 2,000 Gallons	\$5.24	\$7.63	\$7.79
2,001 – 7,000 Gallons	\$6.03	\$8.77	\$7.79
7,001 – 15,000 Gallons	\$6.94	\$10.09	\$7.79
15,001 – 30,000 Gallons	\$7.97	\$11.59	\$7.79
All Over 30,001 Gallons	\$9.17	\$13.33	\$7.79

2. That Section 90-55 (b), (c), and (f) of the Code of Ordinances of the City of Mineral Wells, Texas be and it is hereby amended to read as follows:

“(b) The monthly sewer charge for single-family residences, duplexes, apartment units, churches, mobile homes or manufactured homes, and private non-profit organizations, but not including public agencies, which residences or buildings are individually metered for water shall be:

Minimum Bill..... \$ 13.05

Volume charge for every 1,000 gallons of water used..... \$ 7.28

Maximum Residential Bill..... \$100.41

The volume charge shall be based on the average monthly water usage for that water account as billed in the immediately preceding months of December, January and February. The volume charges shall be adjusted annually in April of each year. In extreme and unusual circumstances, the volume charge may be based on the water usage billed for any three full consecutive months during the most recent twelve months for that water account.

When average monthly usage is not available for the preceding months of December, January and February, the sewer bill shall be based on a predetermined monthly residential average use of 4,800 gallons per month, the charge being \$47.99. After the first three full months of service and at the customer's request, the water account may be billed on the average monthly water usage billed for those three months of service.”

“(c) The monthly sewer charge for all other customers connected to the public sanitary sewer system shall be as follows:

Minimum Bill..... \$ 12.67

Volume charge for every 1,000 gallons of water used..... \$ 7.06

Maximum Bill..... No limit”

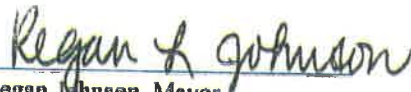
“(f) The city shall bill individual customers connected to the public sanitary sewer system who are not customers of the city water system a monthly fee of \$47.99. Mobile home or

manufactured home parks connected to the public sanitary sewer system who are not customers of the city water system shall be billed a monthly fee of \$47.99 per unit. If no reasonable manner of measuring a customer's water use exists, the sewage rate to an individual sewer user, where payment is not guaranteed by a private sewage collection entity, shall be \$47.99 per month for single-family residences."

3. That this ordinance shall be effective from and after its passage, and the rates, fees, and charges set forth herein shall be reflected on all water and sewer bills rendered after November 1, 2022.

**PASSED AND APPROVED BY THE MINERAL WELLS CITY COUNCIL** in a public meeting held the 13<sup>th</sup> day of September 2022.


CITY OF MINERAL WELLS

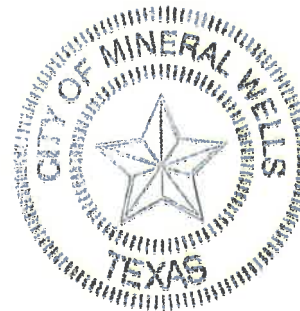
  
Regan Johnson, Mayor

ATTEST:

  
Peggy Clifton, City Clerk

APPROVED AS TO FORM:

  
Eileen Hayman, City Attorney



# **EXHIBIT C**

Sturdivant WSC Notice Received from City



P.O. Box 459, Mineral Wells, Texas 76068-0459

Telephone: (940) 328-7707

September 28, 2023

Sturdivant-Progress Water Supply Corporation  
241 Village Bend Road  
Mineral Wells, Texas 76067

Re: FY 2023-2024 Water Rate Increase

The Mineral Wells City Council recently approved a water rate increase for all utility customers. This rate adjustment is the result of ever-increasing costs to produce quality drinking water for our customers. In any event, the increased fees will go into effect on bills rendered after November 1, 2023, pursuant to City Ordinance No. 2023-17, passed and approved by the City of Mineral Wells on September 12, 2023.

(1) That Section 90-54(1) of the Code of Ordinances of the City of Mineral Wells, Texas, be hereby amended to read as follows:

“The following monthly water rates or charges for water furnished by the city shall prevail and shall be charged against ad collected from all persons, firms, corporations, both public and private, using city water:

(1) For all users, including special utility districts, wholesale water supply corporations and the City of Graford, there shall be a minimum monthly bill based upon the size of water meter provided. The minimum monthly bill shall be:

<b><u>Meter Size</u></b> <b><u>(Inches)</u></b>	<b><u>Minimum</u></b> <b><u>Monthly Bill</u></b>
¾ or smaller.....	\$ 65.96
1.....	108.42
1 ½.....	213.64
2.....	356.68
3.....	751.73



4.....	1,306.26
6.....	2,859.96
8.....	4,990.67

All water use each month shall be charged and billed at rates listed below.

The monthly volume charge for all other users, including commercial, industrial, governmental (Municipal), Special Utility Districts, wholesale Water Supply Corporations, and the City of Graford shall be the General Service Rate.

**General Service Rate:**

Volume Charge per 1,000 Gallons.....\$19.17

Please update your records and feel free to contact me if I can be of further assistance to you.

Sincerely,



Jason Breisch  
Finance Director

# **EXHIBIT D**

Santo SUD Bill Received from City

## Account Detail

Account	27-018000-00	Service	Prev	Curr	Consumption	Charge
		WATER	6056703	6116463	5976000	115,866.18
Property	AT HILL TOP PLANT				Subtotal	115,866.18
Name	SANTO SPECIAL UTILITY DISTRICT				TAX	0.00
Status	Active				Net Due	115,866.18
For Service	10/31/2023 thru 11/30/2023					

DL

New Rate Increase!



City of Mineral Wells  
Water Department  
Post Office Box 459  
Mineral Wells, Texas 76068  
(940) 328-7720

## Statement Summary

Statement ID	SANTO
Statement Date	11/30/2023
Total Due	\$ 115,866.18

Total Due After 01/01/2024	\$ 115,866.18
----------------------------	---------------

SANTO SPECIAL UTILITY DISTRICT  
P O BOX 248  
SANTO TX 76472-0000

PLEASE RETURN STUB WITH PAYMENT

## Service Summary

### \*\*\* BILLING SUMMARY \*\*\*

Number of Bills: 1

Service	Consumption	Amount
WATER	5,976,000	115,866.18
TAX		0.00

Total Services for Current Billing	115,866.18
------------------------------------	------------